

INTERROGATING THE CASE FOR CLIMATE CHANGE LEAVE IN AUSTRALIAN LABOUR LAW

GABRIELLE GOLDING,^{*} TOM HVALA[†]
AND PHILLIPA C MCCORMACK[‡]

This article examines the case for introducing climate change leave as a statutory entitlement in Australia, representing a necessary adaptation of Australian labour law. Existing leave frameworks will become increasingly inadequate for employees as climate change intensifies. We analyse international approaches to climate change leave, particularly Spain's pioneering framework and relevant frameworks in Canada and the United States. We also explore the normative foundations of leave entitlements and assess the Fair Work Act 2009 (Cth)'s capacity to accommodate climate change-related workplace disruptions. We propose implementing climate change leave as a National Employment Standard. Doing so would provide universal coverage and appropriately recognise climate change impacts as a structural societal concern, not an individual burden.

CONTENTS

I	Introduction	65
II	Climate Change Adaptation as an Imperative for Australian Labour Law.....	70
III	'Climate Change Leave' in Spain, North America and Australia	74
	A Spain	75
	B Other Jurisdictions	78
	C Emerging Employer-Initiated Leave Entitlements	81
IV	The Purpose of Labour Law and Leave	84

^{*} Associate Professor in Law, Adelaide University. Gabrielle works on Kurna Country in Tardanya/Adelaide. ORCID: 0000-0001-6522-9920.

[†] PhD Candidate, Melbourne Law School. Tom works between Dja Dja Wurrung (Djandak/Bendigo) and Wurundjeri Land (Naarm/Melbourne). His research is supported by the Australian Government's Research Training Program and The University of Melbourne's Centre for Employment and Labour Relations Law, Melbourne Social Equity Institute and Reproductive Justice Hallmark Research Initiative. ORCID: 0000-0001-8252-5238.

[‡] Associate Professor, Environment Institute and Adelaide Law School, Adelaide University. Phillipa works primarily on Muwanina and Kurna Country in Nipaluna/Hobart and Tardanya/Adelaide. Her research is supported by funding from the Australian Research Council (Project DE250101463). ORCID: 0000-0001-6751-8291.

A	Mitigating Harm	86
B	Reflecting Society’s Changing Attitudes	90
V	Implementing Climate Change Leave in Australian Labour Law.....	93
A	Incorporation as an Express Term in an Employment Contract	94
B	Implementation in a Workplace Policy Document.....	95
C	Inclusion as an Enterprise Agreement Clause	97
D	Development of a New NES.....	99
E	Future Considerations and Proposed Legislative Amendment.....	100
VI	Conclusion.....	106

I INTRODUCTION

This article considers whether climate change leave should become part of Australian labour law. We illustrate the problem — to which climate change leave may be an effective answer — and demonstrate the potential value of this novel form of leave, in narrative form, by first considering the following hypothetical, yet entirely probable, scenario: a secretary at an Adelaide-based accounting firm stares at the news alert on her phone. It reads: ‘bushfires approach the Adelaide Hills and surrounding suburbs — evacuation warnings in place.’ This is the third major fire event of the summer affecting that area. Her townhouse lies in one of the warning zones. She needs to secure her home and wants to help her elderly neighbour evacuate safely, which could take some time. The stress of these ongoing fire threats is also beginning to take its toll on her mental health. She needs time away from work, but her annual leave is exhausted after travelling for her brother’s wedding last month. Her workplace has no specific leave entitlements for these practical challenges, nor for managing her experience of what mental health practitioners have come to understand as ‘climate change-related distress’.¹ When she approaches her manager about taking unpaid leave, she is told that the accounting firm is under extreme deadline pressure due to a major client project, so she must prioritise her professional responsibilities. She feels a sense of dread at the thought of losing her home, knowing that this will not be the last time she will need to take time away from work to protect her livelihood and wellbeing during a period of extreme fire

¹ See, eg, Ang Li and Claire Leppard, ‘Long-Term Mental Health Trajectories Across Multiple Exposures to Climate Disasters in Australia: A Population-Based Cohort Study’ (2025) 10(5) *Lancet Public Health* 391, 397; Rana Rose Kökçinar, ‘Climate Change-Related Distress Within the Dominant Mental Health Paradigm: Problems, Pitfalls, and a Possible Way Forward’ (2022) 10(2) *Psychotherapy and Counselling Journal of Australia* 71204:1–19, 1.

danger. Now, she is caught between the need to safeguard those things and maintain her employment. This hypothetical begs the question: how can Australian labour law adapt as the climate changes? One such adaptation, and the focus of this article, is the introduction of an entitlement to climate change leave.

The nexus between labour law and climate change in Australia remains largely unexplored.² Scholars and policymakers have typically focused on achieving a ‘just transition’ in labour law, so as to ensure a fair and equitable shift to a low-carbon economy,³ as well as the potential to enhance ‘green bargaining’ with a view to integrating environmental considerations in collective bargaining.⁴ Comparatively little attention has been paid to how Australia’s labour law frameworks might evolve to accommodate the emerging challenges that employees may face in a climate-changed world.⁵ More granularly, it appears that there has been no detailed academic consideration of the specific adaptation of leave entitlements in Australia to reflect new climate realities.

The intensification of extreme weather events caused by climate change — including bushfires, floods, cyclones and heatwaves — continues to have direct implications for employees and employers across the country and elsewhere around the world, most recently in catastrophic European wildfires in the summer of 2026.⁶ Yet, existing leave frameworks were designed in an era

² See below nn 31–9 and accompanying text.

³ David J Doorey, ‘Just Transitions Law: Putting Labour Law to Work on Climate Change’ (2017) 30(2) *Journal of Environmental Law and Practice* 201, 207; Frances Flanagan and Caleb Goods, ‘Climate Change and Industrial Relations: Reflections on an Emerging Field’ (2022) 64(4) *Journal of Industrial Relations* 479, 483.

⁴ Eugene Schofield-Georgeson, ‘Legal Obstacles and Possibilities for Environmental Bargaining in Australia’ (2023) 65(3) *Journal of Industrial Relations* 297, 298; Caleb Goods, ‘Climate Change and Employment Relations’ (2017) 59(5) *Journal of Industrial Relations* 670, 674.

⁵ Gabrielle Golding, Phillipa McCormack and Kerryn Brent, ‘The Changing Climate of Australian Employment Law’ (2023) 46(4) *University of New South Wales Law Journal* 1284, 1286; Frances Flanagan and Joo-Cheong Tham, ‘Labour Law and Climate Change’ in Julia Dehm, Nicole Graham and Zoe Nay (eds), *Becoming a Climate Conscious Lawyer: Climate Change and the Australian Legal System* (La Trobe eBureau, 2024) 576, 581, 587, 589; Joo-Cheong Tham, ‘Labour Law and Climate Change’ in Alysia Blackham and Sean Cooney (eds), *Research Methods in Labour Law* (Edward Elgar Publishing, 2024) 114, 114–15. On the law’s role in adapting to climate change more broadly, see generally Jan McDonald and Phillipa C McCormack, ‘Re-thinking the Role of Law in Adapting to Climate Change’ (2021) 12(5) *Wiley Interdisciplinary Reviews: Climate Change* e726:1–21, 2–16.

⁶ Arthur Neslen and Matthew Taylor, ‘Unions in Europe Press for New Worker Protections to Counter Heat Stress’, *The Guardian* (online, 8 July 2026) <<https://www.theguardian.com/>

before climate change was widely recognised as a persistent and worsening work-related concern. As these events become increasingly frequent and severe, the limitations of existing leave entitlements become more apparent. Personal/carer's leave may be quickly exhausted, annual leave allocations prove insufficient, and unpaid leave arrangements create financial hardship precisely when employees may already face additional expenses related to property damage, evacuation requirements or adverse impacts to their physical and/or mental health. A select few employers offer access to some form of disaster leave, but these entitlements are by no means universal, or all-encompassing of the many and varied impacts that may arise because of climate change.⁷ At the time of writing, only one Australian employer, the Australian Youth Climate Coalition ('AYCC'), offers a specific entitlement to climate change leave within its enterprise agreement — an example we return to in detail in Part III(C).⁸

This article therefore interrogates the potential for Australian labour law to recognise climate change leave as a distinct statutory entitlement. We locate this opportunity within the broader framework of existing workplace rights, employer responsibilities, and the evolving nature of the employment relationship in a contemporary context where climate change and its impacts continue to escalate. In doing so, we acknowledge that climate change will continue to challenge the structure and impact of labour law, because it will confront 'many of the assumptions about the rights and responsibilities of industrial relations actors that were developed in more ecologically stable times.'⁹ Moreover, labour law will 'bear ... on both the causes of and the solutions to climate change'.¹⁰ Given this situation, and acknowledging that legal reform to facilitate action on

environment/2026/jul/08/unions-europe-worker-protections-heat-stress-climate-crisis>, archived at <<https://perma.cc/L7CE-2P7L>>.

⁷ See, eg, *Mars Australia Pty Ltd Asquith Manufacturing Stream Enterprise Agreement 2020–2023* [2020] FWCA 3895 (27 July 2020) cl 16.8 ('*Mars Australia*'); 'Leave: Bushfire, Flood or Other Severe Weather Event', *Victorian Department of Education Policy and Advisory Library: Human Resources* (Web Page, 25 January 2023) <<https://www2.education.vic.gov.au/pal/leave-bushfire-flood-or-other-severe-weather-event/policy-and-guidelines>>, archived at <<https://perma.cc/G4N9-CSDZ>> ('Severe Weather Leave Policy').

⁸ *Australian Youth Climate Coalition Enterprise Agreement 2022–2025* [2022] FWCA 2743 (12 August 2022) cl 37.1 ('AYCC Enterprise Agreement').

⁹ Bradon Ellem et al, *Work and Industrial Relations Policy in Australia* (Bristol University Press, 1st ed, 2025) 136.

¹⁰ *Ibid* (emphasis omitted).

climate will likely continue to raise political as well as purely legal questions,¹¹ we focus on the specific issue of how contemporary Australian labour law frameworks can adequately respond to the challenges posed by the changing climate through the introduction of climate change leave.

Our discussion comprises four parts. Part II explains the impacts of climate change on the world of work, particularly in Australia. It evidences the necessity behind Australian labour law adapting to climate change, and more specifically, the need for an entitlement to climate change leave. Part III provides a comparative analysis of climate change leave entitlements internationally, highlighting Spain's pioneering framework and developments in Canada and the United States ('US'). The status of such leave in the Australian context is also considered, as are employer-driven rather than state-driven developments. Our analysis reveals significant disparities in approach across jurisdictions, as well as across specific employers, with the potential for Australian workplaces to fall behind other jurisdictions in the absence of a more widely available entitlement to climate change leave.

With the potential for climate change leave in mind, Part IV examines the normative foundations of leave entitlements in the broader context of labour law. It explores how leave entitlements have evolved, and must continue to evolve, to reflect social goals that society recognises as important (eg gender equality as enhanced by paid parental leave). Leave is to be understood as a vital entitlement that can mitigate a recognised harm (such as domestic and family violence ('DFV') leave). The increasingly urgent and socially accepted goal of combatting climate change,¹² and mitigating its potential adverse impacts, presents a logical evolution of Australia's existing leave frameworks.

To support Australian labour law's adaptive capacity, Part V proposes potential models for implementing climate change leave in Australia. Options range from individual entitlements in contracts of employment, through to collective entitlements present in dedicated workplace policy documents (which

¹¹ For example, the Liberal Party in Australia recently abandoned its commitment to achieving 'net zero' greenhouse gas emissions, with implications for the kinds of policies and reforms that the party would support: see Clare Armstrong and Maani Truu, 'Liberal Party Formally Abandons Net Zero by 2050 Climate Target' (*ABC News Online*, 13 November 2025) <www.abc.net.au/news/2025-11-13/liberals-ditch-net-zero-commitment/106003712>, archived at <<https://perma.cc/5TJ6-2LNM>>.

¹² A recent Ipsos poll revealed that 64% of Australians are concerned about the impacts of climate change on the country, and a majority of Australians (56%) want more action on climate change: Ipsos, *People and Climate Change: Public Attitudes to the Climate Crisis and the Transition to Net Zero* (Report, April 2025) 37, 39.

may or may not be contractual) or negotiated between certain employers and employees in enterprise agreements. We then examine the option of introducing a standalone statutory entitlement under pt 2-2 of the *Fair Work Act 2009* (Cth) ('*Fair Work Act*') as a new National Employment Standard ('NES') — in other words, a proposed addition to the existing 12 minimum terms and conditions available to all national system employees (noting that only certain NES entitlements are available to casuals).

After considering whether the various options presented in Part V are practical, equitable and effective, we advocate for a legislative approach that establishes climate change leave as a distinct NES, providing a proposed model NES as a working example. This approach provides clarity and universal coverage. Separate and distinct from existing leave entitlements, it also frames climate change impacts as a structural and society-wide concern, rather than one which is individual. In making this suggestion, we acknowledge that the question of 'who pays?' for the entitlement looms large, as does 'how long?' its duration should be, and 'who ought to be eligible?'. Crucially, these questions warrant dedicated and detailed consideration in further academic work, alongside comprehensive stakeholder consultation. To do so now would fall beyond the scope of the present exercise: that is, to examine the need and potential for climate change leave in and of itself, not who it is to be funded by, how long it ought to last for, or who ought to benefit from it. These matters all require complex policy considerations for which Parliament must be responsible, in conjunction with additional research and stakeholder engagement. Nevertheless, for present purposes, we flag the potential establishment of a government redress scheme dedicated to enabling employers to pay their employees for the leave. Providing national leadership on the characteristics of such an entitlement, as well as potentially resourcing it, would be consistent with the Commonwealth government's role of leading the implementation of shared responsibility for climate adaptation and disaster risk reduction.¹³

Our discussion is deliberately limited in its scope. We focus on permanently employed individuals, who can access leave entitlements under the NES (save for paid parental leave and DFV leave, which can be accessed by casuals in certain circumstances).¹⁴ After all, permanent employees represent the traditional

¹³ Australian Government, *National Climate Resilience and Adaptation Strategy 2021–2025* (Strategy, 2021) 13–15.

¹⁴ *Paid Parental Leave Act 2010* (Cth) s 31AA ('*Paid Parental Leave Act*'); *Fair Work Act 2009* (Cth) s 106A(1)–(3) ('*Fair Work Act*'). We note that on 27 November 2025, the Federal Minister

employment model around which Australia's leave framework has been constructed.¹⁵ Our consideration therefore does not include casual employees or independent contractors engaged under a contract for services, since they typically cannot access leave entitlements under the NES. However, that is not to say that those workers are less deserving of an entitlement to climate change leave; it is well-known that they face unique, even elevated, challenges linked to the precarity of their engagements.¹⁶ The potential for climate change leave to disrupt these already tenuous work arrangements requires careful and dedicated analysis, which lies beyond the scope of the present discussion.

II CLIMATE CHANGE ADAPTATION AS AN IMPERATIVE FOR AUSTRALIAN LABOUR LAW

Despite global agreement to minimise anthropogenic climate change and increasingly urgent warnings about the dire effects of runaway climate change, greenhouse gas emissions continue to contribute to increased global warming.¹⁷ The Earth is likely to pass the Paris Agreement's ambitious goal of

for Employment and Workplace Relations, Amanda Rishworth, referred an inquiry into the operation and adequacy of the NES to the House of Representatives Standing Committee on Employment, Workplace Relations, Skills and Training: 'Inquiry into the Operation and Adequacy of the National Employment Standards', *Parliament of Australia* (Web Page) <https://www.aph.gov.au/Parliamentary_Business/Committees/House/Employment_Workplace_Relations_Skills_and_Training/NESInquiry>, archived at <<https://perma.cc/3LNV-H5E2>>. Although div 4A of the *Fair Work Act* regarding casual employment is expressly excluded from the scope of review, the broader interaction of these provisions with other NES entitlements is still relevant, as are the experiences of other types of typically marginalised employees, such as women, those who are young and older, those from a First Nations background and those living with a disability: 'Terms of Reference', *Parliament of Australia* (Web Page) <https://www.aph.gov.au/Parliamentary_Business/Committees/House/Employment_Workplace_Relations_Skills_and_Training/NESInquiry/Terms_of_Reference>, archived at <<https://perma.cc/29AS-V95A>>.

¹⁵ See, eg, Productivity Commission, *The Role of Non-Traditional Work in the Australian Labour Market* (Research Paper, May 2006) 1, 13.

¹⁶ As to that precarity, see generally Michael Quinlan and Michael Rawling, 'Regulating Precarious Work: A Paradigm Shift' (2024) 35(4) *The Economic and Labour Relations Review* 849; Judy Fudge, 'Precarious Employment in Australia and Canada: The Road to Labour Law Reform' (2006) 19(2) *Australian Journal of Labour Law* 105. See also below nn 164–5 and accompanying text.

¹⁷ See, eg, Hans-Otto Pörtner et al, 'Summary for Policymakers' in Hans-Otto Pörtner et al (eds), *Climate Change 2022: Impacts, Adaptation and Vulnerability* (Cambridge University Press, 2022) 3, 33; Judy Lawrence et al, 'Australasia' in Hans-Otto Pörtner et al (eds), *Climate Change 2022: Impacts, Adaptation and Vulnerability* (Cambridge University Press, 2022) 1581, 1647.

limiting climate change to 1.5 degrees Celsius of warming in the near term.¹⁸ The Intergovernmental Panel on Climate Change ('IPCC') has warned that '[e]very increment of global warming will intensify multiple and concurrent hazards (*high confidence*)'.¹⁹ Regardless of the level of future warming, the IPCC notes that long-term impacts will be 'multiple times higher' than those currently observed, and interacting climatic and non-climatic risks will increasingly create 'compound and cascading risks that are more complex and difficult to manage (*high confidence*)'.²⁰ These dire warnings emphasise the need for deep, concerted and sustained action to reduce emissions to zero, including to protect workers, economies, communities and environments.

The global failure to arrest anthropogenic climate change presents real and specific challenges for the world of work. For example, increasing background temperatures and extreme events will coincide in heatwaves with multiple days over 50 degrees Celsius and deadly levels of humidity.²¹ Extreme weather conditions will increase heat-related illnesses, injuries and deaths, particularly for outdoor workers, profoundly increasing the burden of diseases such as cardiovascular, renal and metabolic conditions.²² Climate change will also expose workers such as emergency service workers and first responders to new and more extreme threats from, for example, carcinogens from wildfire smoke and illnesses from contaminated or polluted waters during floods.²³ These changes will also expose workers in some places to new vector-borne diseases such as dengue fever and malaria, as virus-carrying mosquitoes, fleas and ticks track

¹⁸ Intergovernmental Panel on Climate Change, 'Summary for Policymakers' in Hoesung Lee et al (eds), *Climate Change 2023* (Synthesis Report, 2023) 3, 12 [B.1] ('IPCC 2023 Summary'); Climate Action Tracker, *Warming Projections Global Update* (Report, November 2025) 6 <<https://climateactiontracker.org/publications/warming-projections-global-update-2025/>>, archived at <<https://perma.cc/5UW7-N2R5>>.

¹⁹ *Ibid.*

²⁰ *Ibid* 14 [B.2].

²¹ See, eg, Tanya Isaac et al, 'Physiological Strain in Outdoor Workers: The Hidden Danger of High Humidity' (2025) 276 *Environmental Research* 121495:1–8, 1–2; Arshad R Zargar, 'At Least 50 Deaths Blamed on India Heat Wave in Just a Week as Record Temperatures Scorch the Country', *CBS News* (online, 3 June 2024) <<https://www.cbsnews.com/news/india-record-heat-wave-temperatures-deaths-mount-delhi-water-crisis/>>, archived at <<https://perma.cc/E4VT-J46P>>.

²² International Trade Union Confederation, *A Bad Climate: The Climate Crisis Is Putting Workers at Potentially Deadly Risk* (Report, April 2024) 4–14 <<https://www.ituc-csi.org/iwmd24>>, archived at <<https://perma.cc/8PA7-QWEC>> ('*Bad Climate*'). See also Economist Impact, *Vision 2030: Future Adaptation Strategies to Minimise the Impact of Climate Change on Cardiovascular, Renal & Metabolic Care* (Report, 2025) 6, 20.

²³ *Bad Climate* (n 22) 11.

warming temperatures, redistributing into areas where they have not been found before.²⁴

Climate change adaptation is the core conceptual framework through which climate change impacts and potential solutions, are understood.²⁵ Adaptation involves adjusting 'to actual or expected climate and its effects' to moderate harm and taking advantage of beneficial opportunities.²⁶ To be defined as 'effective', adaptation must minimise 'risks of 'inequitable outcomes ... or diminished welfare', making equity a crucial component of the adaptation challenge.²⁷ The IPCC has highlighted the urgency of the challenge, observing that adaptation options 'that are feasible and effective today will become constrained and less effective with increasing global warming'.²⁸ Adaptation also has limits, and the IPCC warns of a 'rapidly closing window of opportunity', emphasising the crucial role for 'political commitment, well-aligned multilevel governance, institutional frameworks, laws, policies and strategies ... [to] facilitate effective climate action'.²⁹ We have written elsewhere about the adaptation imperative for Australian labour law in more general terms.³⁰ However, even with radical action to mitigate warming, some change is already occurring, and climate adaptation is a recognised imperative, across industries and sectors, academic disciplines, and international borders.

Despite this, the relationship between the environment and labour law has been largely unexplored. Kalina Arabadjieva and her co-authors observe that 'environmental problems have never been foregrounded by labour lawyers to the extent they have in the last few years'.³¹ Joo-Cheong Tham suggests this neglect stems from 'the "othering" of nature in labour law; a process rooted in logics dominant in both capitalism and labour law'.³² Bradon Ellem and colleagues similarly contend that 'the regulation of the employment relationship

²⁴ Ibid 13–14, quoting International Labour Organization, *Just Transition Policy Brief: Occupational Safety and Health in a Just Transition* (Policy Brief, September 2023) 6.

²⁵ Pörtner et al (n 17) 5.

²⁶ Ibid.

²⁷ Ibid 7.

²⁸ 'IPCC 2023 Summary' (n 18) 19 [B.4].

²⁹ Ibid 24 [C.1], 32 [C.6].

³⁰ Golding, McCormack and Brent (n 5) 1286–8. See also Todd Denham and Lauren Rickards, *Climate Impacts at Work: Supporting a Climate Ready Workforce* (Report, September 2022).

³¹ Kalina Arabadjieva et al, 'Introduction: The Labour-Environment Nexus' (2023) 39(3–4) *International Journal of Comparative Labour Law and Industrial Relations* 271, 272.

³² Tham (n 5) 115. See also Ania Zbyszewska, 'Regulating Work with People and "Nature" in Mind: Feminist Reflections' (2018) 40(1) *Comparative Labor Law and Policy Journal* 9, 12, 16.

has overwhelmingly been understood as conceptually separate from the task of maintaining a safe and healthy environment.³³ In practice, whether in normative or policy discourses, the areas of labour law and environmental law explicitly and implicitly intersect at times — as explored by Kalina Arabadjieva and Paolo Tomassetti in their consideration of ‘workers’ environmental rights’.³⁴ The available analysis that does explore these intersections focuses on either environmental sustainability or implementing a ‘just transition’.³⁵ As Arabadjieva and her co-authors point out, although a preoccupation with ‘just transitions’ has created ‘innovative trajectories of research in both labour law and environmental law’, it has also overshadowed opportunities for other progressive frameworks to do work.³⁶ For example, from a feminist perspective, Sandra Fredman argues that “[j]ust [t]ransition” frameworks for addressing workers’ concerns about a green economy expressly focus on male-dominated sectors.³⁷ As such, ‘just transition’ frameworks must be evaluated using substantive equality frameworks that are better directed toward achieving structural change.³⁸ Evidently, the ‘many dilemmas regarding the labour-environment nexus and the normative patterns necessary to overcome the current socio-ecological crisis are still uncharted’.³⁹ For present purposes, locating our discussion within an adaptation discourse, our key message is that Australian labour law ought to accommodate climate change leave for employees.

³³ Ellem et al (n 9) 135.

³⁴ Kalina Arabadjieva and Paolo Tomassetti, ‘Towards Workers’ Environmental Rights: An Analysis of EU Labour and Environmental Law’ (Working Paper No 2024.02, European Trade Union Institute, 2024) 4. It is possible that climate change leave could be framed as a ‘workers’ environmental right’ under European Union law in accordance with Arabadjieva and Tomassetti’s reasoning. This idea, while persuasive, is outside scope; we opt for considering the NES and Australian labour law contexts instead. See also Kerrie Blaise and Nadia Ibrahim, *Workers’ Environmental Rights in Canada: A Project with Adapting Canadian Work and Workplaces to Respond to Climate Change* (Report, October 2019) 2; Tonia Novitz, ‘Human Rights as a Regulatory Tool for “Just Transition” in Europe (and Beyond)’ (2023) 39(3–4) *International Journal of Comparative Labour Law and Industrial Relations* 439.

³⁵ Arabadjieva et al (n 31) 273. See also Ania Zbyszewska, ‘Labour Law for a Warming World: Exploring the Intersections of Work Regulation and Environmental Sustainability’ (2018) 40(1) *Comparative Labor Law and Policy Journal* 1, 1; Paolo Tomassetti, ‘Labor Law and Environmental Sustainability’ (2018) 40(1) *Comparative Labor Law and Policy Journal* 61, 64.

³⁶ Arabadjieva et al (n 31) 273–4.

³⁷ Sandra Fredman, ‘Greening the Workforce: A Feminist Perspective’ (2023) 39(3–4) *International Journal of Comparative Labour Law and Industrial Relations* 337, 337.

³⁸ *Ibid* 349.

³⁹ Arabadjieva et al (n 31) 274.

III 'CLIMATE CHANGE LEAVE' IN SPAIN, NORTH AMERICA AND AUSTRALIA

With Australian labour law's adaptive capacity in mind, we now consider relevant examples of climate, disaster and emergency leave in Spain, Canada, the US and Australia. Each provides examples of how Australian labour law might adapt to the changing climate. This Part undertakes a comparative labour law analysis by considering 'labour market rules, institutions and/or processes across more than one system with a view to exploring and accounting for similarities and differences'.⁴⁰ Spain's recent reforms were the catalyst for this approach; it is the first jurisdiction to introduce a comprehensive legislative framework directed at mitigating climate-related risks for employees.⁴¹ The remaining jurisdictions offer, at the time of writing, a select few examples that may inform Australia's future approach. While our analysis of these examples goes 'beyond simply describing the law in one or more ... jurisdictions',⁴² they do not attempt to offer a full account of how specific labour laws operate within a particular country,⁴³ nor do they consider how political, economic, social and cultural contexts have influenced each jurisdiction's approach to climate change.⁴⁴ Such detail goes beyond the capacity of a single article, though we suggest that a more detailed assessment of legal contexts would be beneficial if the Australian Government proposed to adopt such a form of leave in the near-term. With that in mind, we do not suggest that these jurisdictions' approaches should, or could, be mindlessly 'transplanted' into Australian labour law.⁴⁵ Rather, the comparisons drawn here provide important observations that inform our more detailed historical and doctrinal analyses of the Australian legal framework in Parts IV and V.

⁴⁰ Ingrid Landau, 'Evolving Themes and Approaches in Comparative Labour Law' in Alysia Blackham and Sean Cooney (eds), *Research Methods in Labour Law* (Edward Elgar, 2024) 255, 256.

⁴¹ See Marouane Laabbas-el-Guennouni and Kalina Arabadjieva, 'Climate Change Adaptation Means Rights for Workers', *Social Europe* (Web Page, 20 December 2024) <<https://www.socialeurope.eu/climate-change-adaptation-means-rights-for-workers>>, archived at <<https://perma.cc/74KJ-FPA5>>.

⁴² Landau (n 40) 256.

⁴³ See Otto Kahn-Freund, 'On Uses and Misuses of Comparative Law' (1974) 37(1) *Modern Law Review* 1, 27.

⁴⁴ See *ibid* 27; Landau (n 40) 259.

⁴⁵ Landau (n 40) 259.

A Spain

Spain is the first jurisdiction and government to introduce a climate change leave framework.⁴⁶ On 27 October 2024, its State Meteorological Agency issued a warning that an ‘Isolated Depression at High Intervals’ system, called a ‘Depresión Aislada en Niveles Altos’ (‘DANA’) — which is essentially a severe cold drop — was forming off the country’s eastern coast.⁴⁷ In the following days, parts of Spain were inundated with torrential rain.⁴⁸ In the small town of Chiva, for example, Spain’s weather service recorded more rain in eight hours than in the previous 20 months, calling the downfall ‘extraordinary’.⁴⁹ Regrettably, Spanish authorities sent weather alerts to residents’ mobile phones too late, after many had already left home for work or travel.⁵⁰ At least 228 people died, mostly in Valencia.⁵¹ Of those, close to half were aged 70 or over.⁵² More than 4,500 people were trapped by floods, and over 40,000 needed to be rescued or request help.⁵³

⁴⁶ See Jesus Garcia, ‘New Worker Protections: Paid Leave for Disasters and Climate Change Regulations’, *Global Employment News, Insights and Events* (Web Page, 29 November 2024) <<https://knowledge.dlapiper.com/dlapiperknowledge/globalemploymentlatestdevelopments/2024/New-worker-protections-Paid-leave-for-disasters-and-climate-change-regulations>>, archived at <<https://perma.cc/DNC9-BGZ2>>.

⁴⁷ *Real Decreto-ley 8/2024* (Spain) BOE 288, 8 November 2024 24840 (‘Royal Decree-Law’).

⁴⁸ *Ibid.*

⁴⁹ ‘What To Know about Flash Floods That Killed Over 200 People in Spain’, *Al Jazeera* (online, 3 November 2024) <<https://www.aljazeera.com/news/2024/11/3/what-to-know-about-flash-floods-that-killed-over-200-people-in-spain>>, archived at <<https://perma.cc/BYU3-6EHL>> (‘Flash Floods’).

⁵⁰ *Ibid.*

⁵¹ *Royal Decree-Law* (n 47) 7.

⁵² Comunicación Poder Judicial [Judiciary Communications], ‘Más de un Centenar de las 216 Víctimas Mortales Registradas a Causa de la Dana Tenía 70 a Más Años de Edad’ [More than 100 of the 216 Fatalities Recorded as a Result of the Dana Storm Were 70 Years of Age or Older], *Poder Judicial España* [Judiciary Spain] (Web Page, 14 November 2024) <<https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Tribunales-Superiores-de-Justicia/TSJ-Comunidad-Valenciana/En-Portada/Mas-de-un-centenar-de-las-216-victimas-mortales-registradas-a-causa-de-la-Dana-tenia-70-o-mas-anos-de-edad>>, archived at <<https://perma.cc/WH6V-2DAX>>.

⁵³ *Royal Decree-Law* (n 47) 7; ‘Death Toll from Spain Floods Passes 200 as Rescue Teams Search for Missing’, *Al Jazeera* (online, 1 November 2024) <<https://www.aljazeera.com/news/2024/11/1/death-toll-from-spain-floods-passes-200-as-rescue-teams-search-for-missing>>, archived at <<https://perma.cc/LE9C-8MQZ>>.

This Spanish flood event is noteworthy for two reasons. First, scientists suggest the severity of the flood event was exacerbated by climate change.⁵⁴ Carola Koenig of the Centre for Flood Risk and Resilience at Brunel University of London attributed the intensity of the floods to the Mediterranean Sea's recent and 'unusually' high temperatures, noting 'it had its warmest surface temperature on record in mid-August [of 2024]'.⁵⁵ While some scientists have been reluctant to unequivocally link the cause of the floods to climate change, rising temperatures impacted the air's temperature, patterns and amount of moisture, thus increasing the severity of the October floods.⁵⁶ This position reflects broader research foreshadowing a measurable increase in the severity and probability of extreme weather events, including mass floods, occurring in Spain.⁵⁷

Second, employers endangered employees' lives by insisting they continue working, despite emergency warnings from authorities.⁵⁸ The Business and Human Rights Resource Centre, for example, alleges companies such as Mercadona, Inditex and IKEA 'failed to protect their workers, and in some cases actively endangered them, during catastrophic flooding in Valencia'.⁵⁹ Mercadona, a large Spanish supermarket chain, allegedly suggested flooded towns were 'fine' and sent workers out on deliveries after severe weather alerts had

⁵⁴ For an analysis of other factors that contributed to the severity of the event, see generally Pablo Galvez-Hernandez, Yining Dai and Carles Muntaner, 'The DANA Disaster: Unraveling the Political and Economic Determinants for Valencia's Floods Devastation' (2025) 24(1) *International Journal for Equity in Health* 64.

⁵⁵ 'Flash Floods' (n 49).

⁵⁶ Matt McGrath, 'Scientists Sure Warming World Made Spain's Storm More Intense', *BBC* (online, 31 October 2024) <<https://www.bbc.com/news/articles/c98eylqeg06o>>, archived at <<https://perma.cc/VP9H-KZA8>>.

⁵⁷ See, eg, Philippe Roudier et al, 'Projections of Future Floods and Hydrological Droughts in Europe under a +2°C Global Warming' (2016) 135(2) *Climatic Change* 341, 353; Maria Cortès et al, 'Changes in Flood Damage with Global Warming on the Eastern Coast of Spain' (2019) 19(12) *Natural Hazards and Earth System Sciences* 2855, 2870.

⁵⁸ 'Spain Introduces Paid Climate Leave after Deadly Floods', *The Guardian* (online, 29 November 2024) <<https://www.theguardian.com/world/2024/nov/29/spain-paid-climate-leave-floods>>, archived at <<https://perma.cc/D7D6-ZGKZ>> ('Spain Introduces Paid Climate Leave').

⁵⁹ 'Spain: Mercadona, Uber Eats and Glovo Allegedly Forced Delivery Drivers to "Risk Their Lives" during Valencia Floods while Inditex and IKEA Also Accused of Failing to Protect Their Workers', *Business and Human Rights Resource Centre* (Web Page, 11 November 2024) <<https://www.business-humanrights.org/en/latest-news/spain-mercadona-uber-eats-and-glovo-allegedly-forced-delivery-drivers-to-risk-their-lives-during-valencia-floods-while-inditex-and-ikea-also-accused-of-failing-to-protect-their-workers-incl-co-comments/>>, archived at <<https://perma.cc/VB9Q-THZK>>.

been issued.⁶⁰ Companies subject to these allegations refuted or declined the Business and Human Rights Resource Centre's enquiries.⁶¹ Other companies suggested that Spain's authorities failed to inform them or did so too late.⁶² In response, the European Trade Union Confederation's General Secretary, Esther Lynch, suggested that '[t]his was a climate disaster that turned into a labour disaster because of the negligence of employers ... Bosses who put workers' lives at risk by ignoring health and safety rules should face the full force of the law'.⁶³

In response, on 28 November 2024, Spain enacted the *Royal Decree-Law 8/2024*.⁶⁴ The *Royal Decree-Law* amended the country's *Workers' Statute* to create a paid leave entitlement of up to four days for employees unable to access or travel to their workplace due to a force majeure event.⁶⁵ Although the *Royal Decree-Law* has been called 'paid climate leave',⁶⁶ it more accurately comprises a framework of legal mechanisms and requirements that may be used in response to any major incident affecting employees' health.⁶⁷ For example, authorities must have declared an emergency and, to be eligible, employees cannot work remotely.⁶⁸ If the four-day entitlement is exhausted, employees may

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² 'Spain Introduces Paid Climate Leave' (n 58).

⁶³ 'Valencia: Floods Show Work Must Stop in Extreme Weather', *European Trade Union Confederation* (Web Page, 28 November 2024) <<https://www.etuc.org/en/pressrelease/valencia-floods-show-work-must-stop-extreme-weather>>, archived at <<https://perma.cc/E5VE-W4LT>>.

⁶⁴ *Royal Decree-Law* (n 47). See also Laabbas-el-Guennouni and Arabadjieva (n 41).

⁶⁵ The *Workers' Statute*, also called the '*Estatuto de los Trabajadores*', contains the most authoritative and central source of minimum standards for workers' and employers' entitlements and obligations: *Real Decreto Legislativo 2/2015* (Spain) BOE 255, 23 October 2015 11430, arts 3.1(c), 4–5, 34–8 ('*Workers' Statute*').

⁶⁶ See, eg, 'Spain Introduces Paid Climate Leave' (n 58).

⁶⁷ The authors' understanding of the *Royal Decree-Law* is limited to the few sources discussing it which are available in English. The authors thank the anonymous referee who provided additional clarification regarding technical aspects of the *Royal Decree-Law*. Readers interested in understanding the *Royal Decree-Law* in more detail, in Spanish, may wish to consider the following: Margarita Miñarro Yanini, 'El Nuevo Permiso por Riesgo Catastrófico o Fenómenos Climático Adversos' *Los Briefs de la Asociación Española de Derecho del Trabajo y de la Seguridad Social: Las Claves de 2024* (Asociación Española de Derecho del Trabajo y de la Seguridad Social, 2025) 466; Marouane Laabbas-el-Guennouni, 'El Permiso Climático ante Fenómenos Meteorológicos Adversos' [2025] (22) *Trabajo y Derecho* 1–28, 5.

⁶⁸ See Yanini (n 67) 467.

suspend their employment or reduce working hours.⁶⁹ The *Royal Decree-Law* also increases employers' responsibilities to protect employees, mandating that they prepare and implement specific risk-prevention measures for disaster events.⁷⁰ Companies must also inform employees about planned actions in response to disasters and adverse weather.⁷¹

The *Royal Decree-Law* was politically contentious. The regional president of Valencia, Carlos Mazón of Spain's conservative People's Party, rejected calls to resign after it was revealed that on the worst day of the flood, he arrived at an emergency coordination centre after 7pm following a three-hour lunch with a journalist.⁷² When asked about the adequacy of his government's response, he claimed the "apocalyptic" scale of the disaster simply overwhelmed the system' and Spain's national government — led by the leftist Spanish Socialist Workers' Party — was responsible for the disaster.⁷³ Spain's Second Deputy Prime Minister and Minister of Labour and Social Economy, Yolanda Díaz Pérez, framed the *Royal Decree-Law* in response to Mazón's alleged inaction: 'In the face of climate denialism from the right, the Spanish government is committed to green policies.'⁷⁴ The *Royal Decree-Law* illustrates how political parties may — and, in the authors' opinion, will likely — use labour law to respond to significant climate change events in the future.

B Other Jurisdictions

Although not directly connected with climate change, some jurisdictions have introduced leave entitlements relating to adverse weather or emergencies. Indeed, when introducing Spain's framework, Díaz Pérez cited Canada's approach as a source of inspiration.⁷⁵ In Ontario, Canada's southernmost and most

⁶⁹ *Royal Decree-Law* (n 47) final provision 2.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² Sam Jones, 'Valencia's President Admits Mistakes in Flood Response but Will Not Resign', *The Guardian* (online, 15 November 2024) <<https://www.theguardian.com/world/2024/nov/15/valencias-president-carlos-mazon-admits-mistakes-in-flood-response-but-will-not-resign>>, archived at <<https://perma.cc/7529-K2XK>>.

⁷³ *Ibid.*

⁷⁴ 'Spain Introduces Paid Climate Leave' (n 58).

⁷⁵ 'El Gobierno Aprueba unos "Permisos Climáticos" para Evitar Desplazamientos en Catástrofes', *RTVE* (online, 28 November 2024) <<https://www.rtve.es/noticias/20241128/gobierno-permisos-climaticos-evitar-desplazamientos-catastrofes/16350006.shtml>>, archived at <<https://perma.cc/X24L-3KUD>>.

populous province, employees ‘may have the right’ under the *Employment Standards Act*, RSO 2000 (*‘Employment Standards Act’*) to ‘take declared emergency leave, which is an unpaid, job-protected leave of absence.’⁷⁶ To qualify, employees must be prohibited from performing their workplace duties because of an emergency, as declared under the *Emergency Management and Civil Protection Act*, RSO 1990, and, further, either (i) a specific emergency order affecting the employee applies; or (ii) an order under the *Health Protection and Promotion Act*, RSO 1990, is made; or (iii) the employee needs to care for or assist a family member.⁷⁷ Guidance on the leave entitlement notes that the *Employment Standards Act* ‘does not require employers to pay employees while they are on declared emergency leave. However, employees may have a right to be paid under their employment contract or collective agreement.’⁷⁸ While the current statutory scheme stems from a specific COVID-19 context,⁷⁹ it seems reasonable to suggest that such leave, albeit unpaid, may be available if a requisite order were issued in response to a declared climate change-related emergency.

Weather-related leave entitlements in the US also provide a useful point of reference. The US *Code of Federal Regulations*, which contains the general and permanent conditions for US governmental agencies,⁸⁰ permits such agencies

to provide a separate type of paid leave when weather or other safety-related conditions prevent employees from safely traveling to or safely performing work at an approved location due to an act of God, terrorist attack, or other applicable condition.⁸¹

An ‘[a]ct of God’ is defined as ‘an act of nature, including hurricanes, tornadoes, floods, wildfires, earthquakes, landslides, snowstorms, and avalanches.’⁸² Whether climate-induced harms, such as compounding and increasingly extreme events, or climate-related health effects, constitute an ‘[a]ct of God’ is

⁷⁶ ‘Declared Emergency Leave’, *Government of Ontario* (Web Page, 19 September 2025) <<http://www.ontario.ca/document/your-guide-employment-standards-act-0/declared-emergency-leave>>, archived at <<https://perma.cc/3B93-TWF6>>.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ *Employment Standards Act*, RSO 2000, c 41, ss 50.1(1.1)–50.1(1.2).

⁸⁰ ‘Code of Federal Regulations (Annual Edition)’, *GovInfo* (Web Page) <<https://www.govinfo.gov/app/collection/CFR>>, archived at <<https://perma.cc/CDK4-PUZD>>.

⁸¹ *Weather and Safety Leave*, 5 CFR § 630.1601(a) (2018).

⁸² *Ibid* § 630.1602 (emphasis omitted).

increasingly contentious, given that climate change is caused by humans.⁸³ Alternatively, the regulations allow for paid leave if '[a]nother condition' stops employees from performing work.⁸⁴

Disaster leave entitlements in Australia reflect the US approach. That is, while no specific climate change leave entitlement is recognised in legislation, disaster leave may be available for extreme weather in certain workplaces. Authoritative guidance on this issue from the Fair Work Ombudsman ('FWO') — Australia's main employment regulator — is minimal and does not expressly refer to 'climate change'.⁸⁵ In its guidance to employers on how to handle a disaster or emergency, for instance, the FWO notes that '[e]mployers will have to consider available options for employees if they have to temporarily close as a result of a natural disaster or emergency'.⁸⁶ This guidance further states that employers can validly stand down employees under the *Fair Work Act* if they cannot be 'usefully employed'.⁸⁷ The FWO has explained that:

This includes where they [cannot] be usefully employed because of a stoppage of work for which the employer cannot be reasonably held responsible. This may include work stoppages caused by natural disasters, such as bushfires or floods. An employer is not required to make payments to an employee for the period of a stand down, but may choose to pay their employees if they wish.⁸⁸

Employers may also permit employees to take accrued leave, such as annual or long service leave, or personal leave if they sustain an 'illness' or 'injury', or need to care for someone.⁸⁹ Employers may also agree to voluntary share-work arrangements (eg between staff at non-affected work sites) and flexible work

⁸³ The distinction between natural events, or 'acts of God', and those caused by humans is becoming increasingly contentious in light of litigation relating to climate change related events: see, eg, Sophie Marjanac, Lindene Patton and James Thornton, 'Acts of God, Human Influence and Litigation' (2017) 10(9) *Nature Geoscience* 616, 616; Sophie Marjanac and Lindene Patton, 'Extreme Weather Event Attribution Science and Climate Change Litigation: An Essential Step in the Causal Chain?' (2018) 36(3) *Journal of Energy and Natural Resources Law* 265, 266.

⁸⁴ *Weather and Safety Leave* (n 81) § 630.1603(c).

⁸⁵ See, eg, 'Employment Entitlements during Natural Disasters and Emergencies Fact Sheet', *Fair Work Ombudsman* (Web Page) <<https://www.fairwork.gov.au/tools-and-resources/fact-sheets/rights-and-obligations/employment-entitlements-during-natural-disasters-and-emergencies>>, archived at <<https://perma.cc/4DQ8-EY6X>>.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

arrangements (eg permitting working from home).⁹⁰ Thus, as in Canada and the US, leave entitlements regarding adverse weather and related emergencies may be available to Australian employees, depending on their specific circumstances (and particularly depending on their employer).

Employees may have additional entitlements under an applicable modern award or enterprise agreement if they cannot attend work due to an emergency or disaster.⁹¹ Various enterprise agreements contain disaster leave, although the support offered to employees under those industrial instruments differs. For instance, the enterprise agreement for Mars Australia's manufacturing business offers employees up to 76 hours of leave each 12-month period 'for the purposes of protection or repair of their home due to a [declared] natural disaster or state of emergency'.⁹² However, if employees take the leave, '[it] must be repaid by either working a minimum of one ... extra shift per calendar month, or by deducting from the [employee's] annual leave'.⁹³ Thus, the support provides flexibility to employees in anticipation or response to emergencies, but is limited to time off that can be paid back in lieu. In the absence of a specific climate change leave entitlement, the Australian approach would likely benefit from expanded FWO clarification as to whether entitlements to emergency or disaster leave are available for the distinct effects of climate change.

C Emerging Employer-Initiated Leave Entitlements

In addition to the above examples of state-implemented leave entitlements, a small collection of individual employers across the US and Australia have implemented their own climate change leave entitlements. In the US, prior to being acquired, New York-based software company Glitch provided up to five days of paid climate leave for employees to 'respond to increasingly frequent severe weather and environmental disruptions without worrying about work obligations'.⁹⁴ The company offers more time if an emergency is declared or

⁹⁰ Ibid.

⁹¹ Ibid. Employers may also introduce climate change leave by way of workplace policies; however, no employers appear to have adopted this approach. Where relevant policies do operate, they relate to natural disasters and adverse weather, such as the Victorian Department of Education's approach to high-risk bushfires: 'Severe Weather Leave Policy' (n 7). The possibility of introducing a workplace policy to permit climate change leave is returned to below in Part V.

⁹² *Mars Australia* (n 7) cl 16.8.

⁹³ Ibid.

⁹⁴ 'Time Off', *Glitch Company Handbook* (Web Page) <<https://web.archive.org/web/20250706044019/https://handbook.glitch.me/sections/time-off/>>.

evacuation orders are given.⁹⁵ In Australia, Community Legal Centres Queensland offers employees up to five days of paid ‘natural disaster’ leave per calendar year,⁹⁶ which goes beyond the disaster leave entitlement otherwise available under the applicable modern award to include situations where:

- (i) the employee is prevented from attending their normal place of work or need[s] to leave work to return home due to a natural disaster or by measures taken by government or medical authorities in response to a public health emergency; or
- (ii) the employee is prevented from attending their normal place of work because the employee is required to ensure the protection of their family, secure their residence, or undertake temporary repairs, restore belongings, clean up or where the employee is unable to attend work as the only way to work is not accessible as a result of a natural disaster.⁹⁷

The clause omits the express requirement of a declared emergency, provides a non-exhaustive definition of ‘natural disaster’ and can be taken without prior approval ‘in situations of necessity’.⁹⁸

At the time of writing, the AYCC is the only Australian employer to have introduced a specific climate change leave entitlement.⁹⁹ This entitlement, contained in the organisation’s enterprise agreement, provides up to five days of paid ‘Climate Disaster Leave’ for employees ‘[i]n circumstances where an extreme weather event affects an [e]mployee, [their family] or a community they belong to’.¹⁰⁰ When the leave was introduced, the then-AYCC National Director, Alex Fuller, explained that ‘[w]e know that the reality is extreme weather events are becoming more frequent and more extreme as a result of climate change’.¹⁰¹ Employees can access three additional Employee Assistance Program sessions and work flexibility for the duration of the climate disaster event.¹⁰² Additional paid leave may also be provided on a ‘case-by-case’ basis in

⁹⁵ Ibid.

⁹⁶ *Community Legal Centres Queensland Enterprise Agreement 2023* [2022] FWCA 4428 (15 December 2022) cls 43(a)–(b), (h).

⁹⁷ Ibid cl 43(a).

⁹⁸ Ibid cls 43(a), (c), (g).

⁹⁹ *AYCC Enterprise Agreement* (n 8) cl 37.1; ‘Young Workers Lead the Way on Climate Change Leave’, *Australian Unions* (Web Page, 15 July 2022) <<https://www.australianunions.org.au/2022/07/15/young-workers-lead-the-way-on-climate-change-leave/>>, archived at <<https://perma.cc/4EJN-7NFL>> (‘Young Workers Lead the Way’).

¹⁰⁰ *AYCC Enterprise Agreement* (n 8) cl 37.4.

¹⁰¹ ‘Young Workers Lead the Way’ (n 99).

¹⁰² *AYCC Enterprise Agreement* (n 8) cls 37.6, 37.7.

‘extreme circumstances’ where an employee’s ‘living arrangement has been significantly impacted by a climate disaster event’.¹⁰³ Importantly, the agreement includes the following statement:

The AYCC recognises that the climate crisis is already impacting [e]mployees and the communities they live in and are part of. As an organisation focussed on climate justice, the AYCC is committed to providing our [e]mployees with the support they need when they are directly impacted by experiences of climate disaster.¹⁰⁴

The AYCC’s approach is employee-oriented and community-oriented, offering extensive support for staff. Importantly, it is not limited to ‘declared disasters’, providing flexibility as the nature and impacts of extreme climate change events on employees and their communities change.¹⁰⁵

Overall, the abovementioned approaches to climate or similar leave entitlements in Australia and abroad prompt four key observations. First, as demonstrated in Spain, climate change places pressure on employers to balance productivity and occupational health and safety. While governments and employers may be generally aware that adverse weather and disasters can impact employees’ ability to work and their health and safety, some employers will likely underestimate the risks to employees and may put employees’ lives at risk. Second, the introduction of legal mechanisms effectively providing a paid leave entitlement not to attend work in Spain signifies how climate change-related events will likely spark similar political debates elsewhere going forward, including in Australia. Third, as in Canada, the US and Australia, the threat of ‘climate disasters’ is an issue of characterisation. Emergency or disaster entitlements that do not make an express connection to climate change, or that must be triggered by government declarations, stop short of acknowledging how climate change is increasingly impacting our working lives in both dramatic and subtle ways. Finally, as a result, we suggest that guidance from the national level about climate change leave entitlements that empowers and provides flexibility to employees offers a promising way forward.

¹⁰³ Ibid cl 37.8.

¹⁰⁴ Ibid cl 37.1.

¹⁰⁵ Ibid cl 37.3. Cf *Mars Australia* (n 7) cl 16.8.

IV THE PURPOSE OF LABOUR LAW AND LEAVE

At this moment, it is important to consider how a climate change leave entitlement, if introduced in Australia, would exist within the broader labour law landscape. The range of leave entitlements under the *Fair Work Act* has expanded significantly since annual leave was first introduced in the 1930s.¹⁰⁶ Under the NES, employees can take paid leave for:

- Personal/carer's leave (ie for illness or injury, or caring responsibilities — up to 10 days per year);¹⁰⁷
- Compassionate leave (relating to death, life-threatening illness or injury, including in respect of miscarriage — up to two days on each occasion);¹⁰⁸
- Community service leave (for the duration of time that the employee is needed, eg for jury duty, volunteering for emergency management or assisting with natural disasters);¹⁰⁹ and
- Long service leave (as guided by the applicable state, territory or Commonwealth Act).¹¹⁰

Modern awards and enterprise agreements may also contain additional leave entitlements (eg disaster leave as mentioned above in Part III).¹¹¹

The growth and variety of leave entitlements in Australia reflect labour law's changing purpose.¹¹² Otto Kahn-Freund, a founding figure of modern labour law, posited that labour law's core function is 'to act as a countervailing force that corrects the imbalance of bargaining power inherent in the employment

¹⁰⁶ Rosemary Owens, Joellen Riley and Jill Murray, *The Law of Work* (Oxford University Press, 2nd ed, 2011) 369. A deeper explanation of each leave entitlement's historical development and underlying rationale is beyond this article's scope. But see the respective chapter concerning the NES in Andrew Stewart et al, *Creighton and Stewart's Labour Law* (Federation Press, 7th ed, 2025) ch 12.

¹⁰⁷ *Fair Work Act* (n 14) ch 2 pt 2-2 div 7 sub-div A.

¹⁰⁸ *Ibid* ch 2 pt 2-2 div 7 sub-div C.

¹⁰⁹ *Ibid* ch 2 pt 2-2 div 8.

¹¹⁰ *Ibid* ch 2 pt 2-2 div 9.

¹¹¹ See, eg, *Super Retail Group Supply Chain Enterprise Agreement 2019* [2019] FWCA 8429 (12 December 2019) cls 102–6; *Allianz Partners Enterprise Agreement 2023* [2024] FWCA 440 (1 February 2024) cl 9.10; *Southern Cross Credit Union Limited Enterprise Agreement 2017–2020* [2018] FWCA 3457 (13 June 2018) cl 25.

¹¹² Guy Davidov, *A Purposive Approach to Labour Law* (Oxford University Press, 2016) 1, 4.

relationship'.¹¹³ While still relevant, contemporary scholarship recognises more nuance, suggesting that labour law has multiple purposes. For instance, in considering how the *Fair Work Act* regulates the employment relationship, Anthony O'Donnell posits that 'one will be forced to confront the multiple — and potentially conflicting — objects and purposes which [the Act] ostensibly seeks to promote'.¹¹⁴ Richard Mitchell and Christopher Arup similarly suggest that

labour laws ... contain a multiplicity of purposes, some more symbolic than applied, or some which might be antithetical to others, and that labour laws might not be interpreted consistently with their original objectives, but ... change through the process of reception and implementation.¹¹⁵

More recent scholarship has gone further. Arabadjieva and her co-authors suggest the fundamental tenets of labour law may soon be upended considering our changing environment.¹¹⁶ They highlight 'the need for a fundamental re-thinking of labour law ... in light of its co-evolution with capitalism and the market economy'.¹¹⁷ They ask, for example, if the current labour market assumes infinite growth and capital accumulation, how will labour law incorporate environmental sustainability once these assumptions vanish?¹¹⁸ As Frances Flanagan and Joo-Cheong Tham highlight, labour law in Australia is presently indifferent to such perspectives.¹¹⁹

Labour law's purpose is also influenced by context. John Howe highlights that 'labour law has been used for multiple purposes over time, often depending on the particular geographic, political and socioeconomic context'.¹²⁰ The

¹¹³ Anthony O'Donnell, 'When Was "Labour Law"?' in John Howe, Anna Chapman and Ingrid Landau (eds), *The Evolving Project of Labour Law: Foundations, Development and Future Research Directions* (Federation Press, 2017) 60, 61; Sir Otto Kahn-Freund, *Labour and the Law* (Stevens & Sons, 2nd ed, 1977) 1–4.

¹¹⁴ O'Donnell (n 113) 63.

¹¹⁵ Richard Mitchell and Christopher Arup, 'Labour Law and Labour Market Regulation' in Christopher Arup et al (eds), *Labour Law and Labour Market Regulation: Essays on the Construction, Constitution and Regulation of Labour Markets and Work Relationships* (Federation Press, 2006) 3, 11. See also Richard Johnstone and Richard Mitchell, 'Regulating Work' in Christine Parker et al (eds), *Regulating Law* (Oxford University Press, 2004) 101, 102.

¹¹⁶ Arabadjieva et al (n 31) 275.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Flanagan and Tham (n 5) 587–601.

¹²⁰ John Howe, 'A Different World: The Regulatory Project in Labour Law' in John Howe, Anna Chapman and Ingrid Landau (eds), *The Evolving Project of Labour Law: Foundations,*

context at the heart of this article, climate change and its increasing impact on Australian workplaces, has been made apparent in Part I. We therefore emphasise two core propositions about the purpose of leave as a fundamental feature of labour law and climate adaption, which we expand upon directly below. First, climate change causes harm, and, to the extent that it affects employees and employers, that harm ought to be mitigated by Australian labour law (akin to the introduction of paid DFV leave in Australia).¹²¹ Second, implementing a climate change leave entitlement reflects society's changing attitudes; in other words, as society's awareness of climate change has evolved, so too must Australian labour law (just as understandings of gender equality have advanced in the context of paid parental leave).

A Mitigating Harm

Leave entitlements can serve the purpose of mitigating harm, as illustrated by the introduction of paid DFV leave in Australian workplaces. DFV has been declared 'a national crisis in Australia'.¹²² While this 'harm' has always existed, society's understanding of, and response to DFV has changed. The Victorian Government's Royal Commission into Family Violence arose from an improved awareness 'of the seriousness with which the Victorian community ... regard[s] family violence and its consequences for individuals and families'.¹²³ The community recognises that governmental responses have previously been ineffective in reducing the severity of the violence.¹²⁴ The establishment of Royal Commissions into DFV, as well as broader cultural change and recognition of the issue, illustrate 'the priority the community is prepared to accord [DFV] in order to address the problem'.¹²⁵

Development and Future Research Directions (Federation Press, 2017) 72, 77. Mitchell and Arup similarly suggest that '[l]abour law may ... be seen to have many values and objectives, and ... these may vary in prominence and priority over the passage of time': Mitchell and Arup (n 115) 13.

¹²¹ On climate mainstreaming, see generally Anita Foerster and Alice Bleby, *Climate Mainstreaming in Practice: Using Law to Embed Climate Change in Government Policy and Decision-Making* (Report, 2023).

¹²² Kate Fitz-Gibbon et al, *Safe, Thriving and Secure: Family Violence Leave and Workplace Supports in Australia* (Report, December 2021) 4.

¹²³ *Royal Commission into Family Violence: Summary and Recommendations* (Report, March 2016) vol 1, 1.

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

Importantly, while the broader Australian community understands DFV is 'harmful', it also increasingly understands that DFV is a workplace issue. As Kate Fitz-Gibbon and her co-authors explain:

Experiences of DFV not only impacts on victim-survivors' engagement in the workforce but also their work performance and their career progression. Workplaces can be common sites of DFV with perpetrators utilising a range of abusive behaviours to disrupt individuals' participation in the workplace and their engagement with co-workers and managers. Furthermore, there is growing consensus that workplaces can play a critical role in responding to DFV through supporting employees affected by DFV.¹²⁶

DFV leave has therefore emerged as a critical support for employers to offer employees.¹²⁷ It embeds 'workplace recognition that employees may need time off work' during crisis or a difficult time.¹²⁸ DFV leave also helps create a safe and supportive workplace environment, as without options for DFV leave, victim-survivors are more likely to withdraw or be terminated from their employment.¹²⁹ The leave entitlement, alongside other workplace support mechanisms, are also 'an important support for the economic security of family violence victim-survivors'.¹³⁰

Paid DFV leave was not introduced overnight. The entitlement succeeded because the push from anti-domestic violence advocates, unions and academics towards a social equity orientation was stronger than resistant actors' desire to maintain a 'business orientation'.¹³¹ While paid and unpaid iterations of the leave entitlement were slowly introduced to workplaces across the country, in 2018 the Fair Work Commission ('FWC') varied modern awards to allow employees five days of unpaid DFV leave.¹³² More recently, in addition to broadening key definitions and availability of the entitlement to all employees, the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022*

¹²⁶ Fitz-Gibbon et al (n 122) 4.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Emma McNicol, *Research Brief: Paid Family Violence Leave* (Report, 2021) 1.

¹³⁰ Ibid.

¹³¹ Susan G Ellicott, 'Arriving at a Social Equity Orientation on Workplace Domestic Violence Policy in Australia' (2022) 32(4) *Labour and Industry* 358, 358, 372–3.

¹³² 4 *Yearly Review of Modern Awards: Family and Domestic Violence Leave* [2018] FWCFB 1691, [245], [307] (Ross J, Deputy President Gooley, Commissioner Spencer), cited in Fitz-Gibbon et al (n 122) 4.

(Cth) introduced a new entitlement of 10 days' paid leave under the NES entitlements, to ensure that '[n]o worker ... ever ha[s] to choose between their safety and their income'.¹³³ So far, an independent review indicates the paid DFV leave entitlement is working as intended.¹³⁴

In the same way that DFV leave protects vulnerable employees from significant harm, so too can climate change leave. There is now clear evidence that climate change will, and is already, causing substantial harm to workplaces, workers and employers.¹³⁵ For example, in 2019, the International Labour Organization projected the loss of 2% of total working hours per year by 2030 because of just one climate-related harm: heat stress.¹³⁶ Global productivity will drop by an equivalent of 80 million full-time jobs, 'either because it is too hot to work or because workers have to work at a slower pace'.¹³⁷ Agricultural and construction workers are expected to be the worst affected by heat stress, but other exposed sectors include emergency workers, tourism, sports and transport workers, and environmental managers.¹³⁸ Extended and extreme heat can damage and reduce the lifespan of equipment, increasing the costs of doing business in hot weather.¹³⁹ Heat stress also has particularly severe effects for vulnerable workers, such as older workers and those that work outdoors.¹⁴⁰ From a work health and safety perspective, heatstroke not only affects

¹³³ See, eg, Kate Seymour et al, *Independent Review of the Operation of the Paid Family and Domestic Violence Leave Entitlement in the Fair Work Act 2009* (Report, August 2024) 78; Commonwealth, *Parliamentary Debates*, House of Representatives, 28 July 2022, 175 (Tony Burke, Minister for Employment and Workplace Relations); Stewart et al (n 106) 602–3.

¹³⁴ Seymour et al (n 133) viii.

¹³⁵ International Labour Organization, 'Climate Change Creates a "Cocktail" of Serious Health Hazards for 70 Per Cent of the World's Workers' (Press Release, 22 April 2024) <<https://www.ilo.org/resource/news/climate-change-creates-%E2%80%98cocktail%E2%80%99-serious-health-hazards-70-cent-world%E2%80%99s>>, archived at <<https://perma.cc/X3S6-B24X>>. In Australia, this understanding includes self-reported harms and concerns: see Denham and Rickards (n 30) 44.

¹³⁶ International Labour Organization, *Working on a Warmer Planet: The Impact of Heat Stress on Labour Productivity and Decent Work* (Report, 2019) 3 ('*Working on a Warmer Planet*').

¹³⁷ *Ibid* 3, 26.

¹³⁸ *Ibid* 3, 28.

¹³⁹ Srinivas Garimella and Matthew T Hughes, 'Physicists Explain How Heat Kills Machines and Electronics', *Scientific American* (online, 5 September 2023) <<https://www.scientificamerican.com/article/physicists-explain-how-heat-kills-machines-and-electronics/>>, archived at <<https://perma.cc/GP9H-KL6L>>; Natural Capital Economics, *Heatwaves in Victoria: A Vulnerability Assessment* (Final Report, 18 April 2018) 41, 65.

¹⁴⁰ *Working on a Warmer Planet* (n 136) 3.

productivity by slowing or preventing work during the hottest hours of a day but can also cause workers to become sick and, in extreme cases, die.¹⁴¹

Climate driven harms to employers and employees are not only becoming more frequent and severe but, increasingly, will compound and cascade across sectors, systems and values. For example, in the lead up to the Black Summer bushfires of 2019–20, an extended period of drought coincided with an intense heatwave and catastrophic bushfires across multiple Australian states.¹⁴² These extreme fire events were closely followed by record-breaking floods in regions such as the northern rivers of New South Wales. Those floods radically exacerbated the damage and trauma of the fires, delayed the recovery process, and rendered it far more complex.¹⁴³ Floods, storms and fires can dramatically interrupt supply chains (which often operate on a ‘just in time’ basis), delaying, among other things, the delivery of food and medicine to remote workers, preventing shift changes at work sites and risking injuries and/or reduced income to transport workers.¹⁴⁴

The cascading effects of climate change highlight the deep entanglement and co-dependencies of industries, workers, communities and environments across the continent. For example, extended heat waves with multiple days over 50 degrees Celsius, increasingly likely in some parts of Australia,¹⁴⁵ will trigger dangerous levels of heat stress for workers, reduce river flows, increase dam evaporation, damage ecosystems and agricultural production (eg by killing pasture and reducing irrigation options) and, as a result, harm farming communities and perhaps tourism operators.¹⁴⁶ Migration away from drought and heat-affected areas will decimate some towns and industries, break social bonds and remove crucial services from those that choose to stay.¹⁴⁷ In short, these

¹⁴¹ Ibid 13.

¹⁴² Natural Hazards Research Australia, *Understanding the Black Summer Bushfires through Research: A Summary of Key Findings from the Bushfire and Natural Hazards CRC* (Report, January 2023) 10. See also Lawrence et al (n 17) 1601.

¹⁴³ Matthias Kemter et al, ‘Cascading Hazards in the Aftermath of Australia’s 2019/2020 Black Summer Wildfires’ (2021) 9(3) *Earth’s Future* 2020EF001884:1–7, 1.

¹⁴⁴ Lawrence et al (n 17) 1649.

¹⁴⁵ See Sophie C Lewis, Andrew D King, Daniel M Mitchell, ‘Australia’s Unprecedented Future Temperature Extremes under Paris Limits to Warming’ (2017) 44(19) *Geophysical Research Letters* 9947, 9948, 9954–6.

¹⁴⁶ Lawrence et al (n 17) 1591, 1608, 1615, 1625.

¹⁴⁷ On work, climate and migration more generally, see International Trade Union Confederation, *Decent Work at the Nexus between Climate Change and Migration* (Policy Brief, June 2024).

harms are real and worthy of remedy, including through an entitlement to climate change leave.

B *Reflecting Society's Changing Attitudes*

In addition to mitigating harm, leave entitlements also reflect society's attitudes. Understandings of 'decent work' are useful here. The concept of 'decent work', first pronounced by the International Labour Organization,¹⁴⁸ has influenced economic and social reform around the world, including in Australia.¹⁴⁹ As Rosemary Owens and others explain:

'Decent work' ... is designed to give life to Article 23 of the *Universal Declaration of Human Rights*, which declares that everyone has the right to 'just and favourable' conditions of work and remuneration, including equal pay for equal work.¹⁵⁰

Realising "just and favourable" conditions of work' depends on adopting 'policies and practices which ... enable individuals to obtain work that provides an adequate income in conditions where social standards are not compromised and rights are protected'.¹⁵¹ Such 'standards' are normative and play a central role in producing social and cultural meaning.¹⁵² They are particularly dynamic, responding to changing economic conditions and social expectations as well as institutional and political factors.¹⁵³ This dynamism demonstrates that legal categories and rules are 'capable of radical transformation' and responding

¹⁴⁸ See Owens, Riley and Murray (n 106) 311.

¹⁴⁹ Ibid. Angelique Bletsas and Sara Charlesworth also highlight that '[i]n 1998, the International Labour Organization advanced the notion of "decent work" as a way to enhance opportunities for women and men to obtain productive work in conditions of freedom, equality, security and human dignity. The concept is now both salient and contested in national and international policy debates': Angelique Bletsas and Sara Charlesworth, 'Gender Equality and Decent Work in Australia' (2013) 48(1) *Australian Journal of Political Science* 44, 44.

¹⁵⁰ Owens, Riley and Murray (n 106) 311. Notably, notions of ensuring a minimum standard of working rights for workers 'as a human being living in a civilised community' were first espoused by Higgins J in *Ex parte McKay* (1907) 2 CAR 1, 3 ('*Harvester Case*'): 'The World's First Minimum Wage', *Museums Victoria* (Web Page) <<https://museums.victoria.com.au/article/innovation-stories/the-worlds-first-minimum-wage/>>, archived at <<https://perma.cc/Y7DU-4EN4>>.

¹⁵¹ Owens, Riley and Murray (n 106) 311.

¹⁵² See *ibid* 311, 316.

¹⁵³ Ibid 314, citing C Wilfred Jenks, *Social Justice in the Law of Nations: The ILO Impact after Fifty Years* (Oxford University Press, 1970) 74.

to progressive social or economic developments.¹⁵⁴ These values are reflected not only in the level of conditions set but also in relation to the subject matter being regulated.¹⁵⁵

As Owens and others have highlighted, leave entitlements ‘represent the basic values of the community in relation to work.’¹⁵⁶ This notion is reflected in ongoing improvements to Australia’s paid parental leave scheme, which reflect society’s acceptance of, and commitment to, gender equality. Australia’s parental leave scheme provides for paid and unpaid leave, permitting eligible carers that meet certain work and income tests to receive a government-funded payment at the minimum wage of up to 24 weeks.¹⁵⁷ Parental leave has become a core policy instrument that assists new parents to maintain paid work and family responsibilities, and, most importantly, enhances women’s economic opportunities and gender equality.¹⁵⁸ This approach benefits the whole of society. Marian Baird and others have observed that:

Well-designed parental leave has the potential to challenge social norms and related gender inequalities and to deliver significant social and economic benefits,

¹⁵⁴ Owens, Riley and Murray (n 106) 316, citing Karl Klare, ‘The Horizons of Transformative Labour and Employment Law’ in Joanne Conaghan, Richard Michael Fischl and Karl Klare (eds), *Labour Law in an Era of Globalization: Transformative Practices and Possibilities* (Oxford University Press, 2004) 3. Klare takes this suggestion one step further, saying that ‘the dominant discourse in most legal fields is conservative and apologetic ... [l]abour law is a rare exception, a legal discipline whose mainstream tradition is progressive’ and ‘a promising site for transformative projects’: at 3.

¹⁵⁵ Owens, Riley and Murray (n 106) 316.

¹⁵⁶ Ibid 312. This idea — that the law should reflect society’s values — was central to Kenny J’s reasoning in *Richardson v Oracle Corporation Australia Pty Ltd* (2014) 223 FCR 334, 366–7 [117]–[118], where her Honour ‘held that the orthodox “range” of general, non-economic damages in sexual harassment jurisprudence was no longer consistent with prevailing societal standards’: Madeleine Castles, Tom Hvala and Kieran Pender, ‘Rethinking *Richardson*: Sexual Harassment Damages in the #MeToo Era’ (2021) 49(2) *Federal Law Review* 231, 231–2.

¹⁵⁷ *Fair Work Act* (n 14) ss 70–2; *Paid Parental Leave Act* (n 14) ss 7–61, 64, 65(1). For further explanation, see Stewart et al (n 106) 589–98. Owens, Riley and Murray also note that ‘[t]he *Fair Work Act* falls within the traditional arc of regulation in Australia by mandating *unpaid* parental leave. This failure of regulation is contrary to longstanding international standards on paid maternity leave’: Owens, Riley and Murray (n 106) 351 (emphasis in original).

¹⁵⁸ Marian Baird and Gillian Whitehouse, ‘Parental Leave Policy: Time to Grow’ in Marian Baird, Elizabeth Hill and Sydney Colussi (eds), *At a Turning Point: Work, Care and Family Policies in Australia* (Sydney University Press, 2024) 47, 47.

especially where it normalises usage by both parents and provides pathways for men and fathers to participate in child care.¹⁵⁹

The paid parental leave scheme has been recently adjusted to provide 130 days' paid leave, paid superannuation contributions and the ability for paid parental leave to be taken fully flexibly.¹⁶⁰ Recent efforts to further improve Australia's paid parental leave scheme demonstrate the need for more shared leave flexibility and for men to take on greater caring responsibilities.¹⁶¹ The scheme has been refined as our understanding that parenthood disproportionately impacts women's careers has improved,¹⁶² highlighting that leave entitlements can serve an important function of promoting and reflecting values that society deems important.

Introducing a climate change leave entitlement, as a means of anticipating climate harms and implementing adaptation strategies, would similarly reflect society's evolving standards in terms of how we understand climate change. Employees have expressed their desire for adaptation action at work to mitigate the health impacts, stress and disruptions caused by climate change.¹⁶³ But adapting Australia's labour law can also offer benefits that flow beyond individual employees, benefiting Australian society more broadly. Healthier employees, safer workplaces, more secure supply chains, increasingly flexible and adaptable employment conditions, and more rapid reinstatement of infrastructure and services after extreme events are all desirable outcomes in a future that will be ravaged by climate extremes. These outcomes will be unachievable if climate risks to employees, employers and industries are ignored, downplayed or treated in a haphazard and case-by-case manner. On the other hand, these highly desirable outcomes can be actively pursued through effective and long-term adaptation planning and crucially, implementation of adaptation strategies into Australian labour law — chief amongst which, we say, is an entitlement to climate change leave.

¹⁵⁹ Ibid.

¹⁶⁰ Stewart et al (n 106) 357.

¹⁶¹ Marian Baird and Elizabeth Hill, *Next Steps for Paid Parental Leave in Australia* (Report, 18 November 2022) 7, 9; Annabel Crabb, 'Men at Work: Australia's Parenthood Trap' [2019] *Quarterly Essay* 75: 23–5, 41–4.

¹⁶² See Workplace Gender Equality Agency, *Advancing Gender Equitable Take Up of Parental Leave and Flexible Work: A Guide for Employers* (Guide, 2024) 2.

¹⁶³ Denham and Rickards (n 30) 26–31.

V IMPLEMENTING CLIMATE CHANGE LEAVE IN AUSTRALIAN LABOUR LAW

Attention now shifts from ‘why’ to ‘how’. We explore the potential legal frameworks for implementing climate change leave for employees within Australian labour law. We evaluate four distinct implementation pathways for those employed permanently, including incorporation of the entitlement as an express term in an individual employment contract, part of a workplace policy document (which may or may not be contractual), part of an enterprise agreement, and legislatively, as part of the NES, contained under pt 2-2 of the *Fair Work Act*.

We argue that legislative incorporation of a paid entitlement to climate change leave into the NES emerges as the most comprehensive solution. It would offer the widest available coverage, consistent application and robust enforcement mechanisms, though significant research gaps remain regarding precisely how the entitlement ought to be formulated. We acknowledge, however, this proposal is not perfect. It does not necessarily provide the requisite protection for independent contractors nor those commonly engaged in ‘precarious work’.¹⁶⁴ For example, if a flood event like that in Spain happened in Australia, even with the proposed legislative reform to the NES, vulnerable workers such as gig workers — like Uber Eats and Deliveroo drivers — would not benefit from protections in the NES.¹⁶⁵ Moreover, the NES, as part of the *Fair Work*

¹⁶⁴ This shortcoming speaks to the intersection of climate change with other key labour law and industrial relations issues, including, for instance, workplace control, the growth of contracting and the purpose of labour law (including whether, and how, it remains a ‘countervailing force’ in the face of new and more nuanced forms of work). Guy Ryder, in his report to the 106th session of the International Labour Conference, notes that the International Labour Organization ‘can only pursue its mandate for social justice effectively if it integrates environmental sustainability into the Decent Work Agenda’: Guy Ryder, *Work in a Changing Climate: The Green Initiative* (Report of the Director-General No I, International Labour Office, 2017) 1 [1].

¹⁶⁵ The need for a more comprehensive reform process in respect of broader categories of who the NES does or does not protect remains. In Europe, Carré and Tomassetti’s draft proposal for a directive on ‘just transition’ presents multiple ideas for a more inclusive method of reform: Lucien Carré and Paolo Tomassetti, ‘Towards a Directive on Just Transition within the European Union: A Draft Proposal Exercise’ (Working Paper No 2025/10, Department of Law, European University Institute, July 2025) 8. See particularly the definition of ‘persons’ in arts 1 and 2: at 15. In respect of the adoption of an EU Directive on Platform Work in March 2024, see also Sandra Fredman et al, ‘Fair Work for Platform Workers: Lessons from the EU Directive and Beyond’ (2025) 54(3) *Industrial Law Journal* 425, 454–7. While useful, the directive system in Europe is vastly different to labour law structures in Australia; thus, this comparison is aspirational only. In Australia, such workers are currently afforded select protections

Act, operate according to a culture of individual rights and enforcement, reflecting a significant shift away from collective rights.¹⁶⁶ Thus, to the extent climate change is a collective and all-encompassing problem which requires transformative solutions rather than a piecemeal or individualist approach, reforming the NES potentially falls short.¹⁶⁷ Nevertheless, in the absence of such change, as a working solution, we conclude this Part with a proposed draft amendment to the NES as a starting point for future legislative development, positioning climate change leave as a fundamental legislative workplace right, responsive and adaptive to ever-increasing climate change disruptions.

A Incorporation as an Express Term in an Employment Contract

The option of implementing climate change leave as an express term in individual employment contracts represents a flexible approach, allowing for tailored arrangements that reflect the specific circumstances of both employers and individual employees. For instance, employees in regions and sectors that are more susceptible to specific climate-related events might negotiate more generous climate change leave entitlements in their individual contracts.¹⁶⁸ Similarly, employers with operations in multiple locations could design different leave arrangements for employees working across different sites, based on their climate vulnerability profiles. If incorporated as an express term in an employment contract, climate change leave would become a legally enforceable entitlement, providing employees with a contractual right that can be enforced through a claim for breach of contract.¹⁶⁹ Indeed, courts typically enforce express contractual terms, unless they arose in a context where vitiating factors

under the *Fair Work Act*, such as those under pts 6-4A and 6-4B, however, these would not apply to specific climate change related harms. Casuals and independent contractors have traditionally not been afforded leave entitlements under the *Fair Work Act* (save for in very limited circumstances). There is much broader debate as to whether they should be, however, that is beyond the scope of the present exercise: see, eg, Stewart et al (n 106) 240–2 [8.63]–[8.66].

¹⁶⁶ See Breen Creighton, 'A Retreat from Individualism? The Fair Work Act 2009 and the Re-Collectivisation of Australian Labour Law' (2011) 40(2) *Industrial Law Journal* 116, 123–5.

¹⁶⁷ Tham contends that 'to re-embed "nature" by reorienting labour law', labour law scholarship must engage with climate change in a transformative way by promoting 'revolutionary impulses', such as 'invigorating democratic solidarity' and 'envisioning the end of economic growth and capitalism': Tham (n 5) 115.

¹⁶⁸ See Productivity Commission, *Natural Disaster Funding Arrangements* (Inquiry Report, No 74, 17 December 2014) vol 2, 346–7, 353.

¹⁶⁹ Andrew Stewart, Warren Swain and Karen Fairweather, *Contract Law: Principles and Context* (Cambridge University Press, 2019) 156–7.

exist (eg if the term contravenes a statutory provision or relevant industrial instrument) or due to unfair conduct.¹⁷⁰ They also cannot be unilaterally altered without mutual consent or an express contractual right to do so.¹⁷¹

Despite these advantages, relying solely on individual employment contract terms to implement climate change leave presents two key limitations. First, it would likely result in substantial disparities across workplaces. To the extent that employees are empowered to negotiate their own employment contracts, those with greater bargaining power — typically, those in higher-paying roles or with highly specialised skills — would be better positioned to negotiate more favourable climate change leave entitlements, while vulnerable, lower-paid employees with limited bargaining power might receive a minimal entitlement or perhaps no entitlement at all. The contractual approach also risks creating a patchwork of inconsistent entitlements within individual workplaces, let alone across industries more broadly. Small businesses with limited resources, for instance, might be reluctant to offer climate change leave. Such inconsistency would undermine the ideal objective of providing universal protection to employees impacted by the same climate change-related events.

Second, certain contractual terms may be drafted in a way that limits their practical utility. For example, employers might incorporate restrictive eligibility criteria or burdensome evidentiary requirements, making employee access to the leave difficult in a practical sense. Without a universal standard applicable to all employees (eg under the NES), the quality and accessibility of an express contractual climate change leave entitlement may vary substantially from one employee to another.

B Implementation in a Workplace Policy Document

Workplace policies offer an alternative mechanism for implementing climate change leave, providing a framework that applies uniformly across a workplace. Policies can be developed more rapidly than amending individual employment contracts or industrial instruments (ie modern awards or enterprise agreements), allowing employers to respond quickly to emerging climate change needs. Policies can also be updated more simply than other instruments, to reflect changing circumstances or lessons learned from any initial implementation. A well-designed climate change leave policy would likely outline eligibility

¹⁷⁰ Ibid pt VI.

¹⁷¹ Ibid 250.

criteria, application procedures, leave duration and associated evidentiary requirements. It might also specify how the leave interacts with other entitlements. Such policies can be tailored to the specific needs and resources of an organisation, while maintaining internal consistency and uniformity amongst employees.

A critical consideration when implementing climate change leave through a workplace policy is whether the policy itself is contractual in nature.¹⁷² The legal effect of a policy-based entitlement depends on whether a court would consider that it forms part of an employee's employment contract or not.¹⁷³ Where a policy is deemed to have contractual force (ie through express incorporation into employment contracts or via conduct indicating an intention to be contractually bound by it) employees gain enforceable rights that are akin to those arising from an express contractual term discussed above.¹⁷⁴ In such cases, a breach of the policy may give rise to a claim for breach of contract, potentially exposing the employer to an award of damages or specific performance in the event of that contractual breach.¹⁷⁵

Conversely, policies lacking contractual force provide more limited protection for employees. Non-contractual policies may create legitimate expectations upon the parties but do not necessarily give rise to enforceable legal rights.¹⁷⁶ Employers generally retain the right to unilaterally amend or withdraw non-contractual policies, subject to consultation requirements.¹⁷⁷ This outcome may generate significant uncertainty for employees regarding the stability of their climate change leave entitlement. Moreover, even when policies are contractual, enforcement can be challenging for individual employees who may not possess the resources or knowledge to pursue legal action for breach of contract. The remedies available for breach may also be limited and not

¹⁷² As to classifying workplace policies as contractual or not, see, eg, Anna Chapman, John Howe and Susan Ainsworth, 'Organisational Policies and Australian Employment Law: A Preliminary Study of Interaction' (Working Paper No 53, Centre for Employment and Labour Relations Law, The University of Melbourne, February 2015) 5–8; Mark Giancaspro, 'Do Workplace Policies Form Part of Employment Contracts? A Working Guide and Advice for Employers' (2016) 44(2) *Australian Business Law Review* 106.

¹⁷³ For the various situations in which a policy document is deemed to be contractual, see Giancaspro (n 172) 107–11.

¹⁷⁴ See, eg, *ibid* 108.

¹⁷⁵ *Ibid*.

¹⁷⁶ *Ibid* 116.

¹⁷⁷ *Ibid* 111–12.

adequately compensate employees for lost wages or opportunities resulting from denied climate change leave in any event.

C Inclusion as an Enterprise Agreement Clause

Enterprise agreements present a collective approach to implementing climate change leave, which establishes standardised entitlements for all employees covered by the relevant agreement, as is the case (uniquely, at present) for the AYCC discussed earlier in Part III(C). Under the *Fair Work Act*, enterprise agreements function as legally binding industrial instruments, setting out the terms and conditions of employment for employees and their employers covered by the agreement.¹⁷⁸ They are typically negotiated through a collective bargaining process involving employers, employees and often union representatives.¹⁷⁹

Implementing climate change leave through an enterprise agreement offers several advantages. The bargaining process enables employee representatives to advocate for robust leave entitlements that reflect employees' specific needs.¹⁸⁰ It also promotes consistency within the workplace, ensuring that all employees covered by the agreement receive the same entitlements, irrespective of their individual bargaining power.¹⁸¹ Enterprise agreements must also be approved by the FWC, thereby ensuring they pass the 'better off overall test' when compared to an otherwise applicable modern award.¹⁸² Requisite compliance with the 'better off overall test' therefore helps to maintain minimum standards, preventing agreements from undermining existing employee protections. Enterprise agreement entitlements are also enforceable, so if there were a breach of an enterprise agreement clause relating to climate change leave, affected employees, representative unions and the FWO would then be permitted to initiate enforcement proceedings, providing multiple pathways to address the employer's noncompliance.¹⁸³ Employees may, in turn, be entitled to seek various civil remedies, including:

¹⁷⁸ *Fair Work Act* (n 14) ss 12, 40, 65C, 66MA, 76C, 172(1).

¹⁷⁹ See *ibid* ch 2 pt 2-4 divs 3, 8.

¹⁸⁰ *Ibid* ss 176-7.

¹⁸¹ See *ibid* s 53.

¹⁸² *Ibid* ss 186-7.

¹⁸³ *Ibid* ss 50, 539.

- 1 Compensation for economic and non-economic loss resulting from the breach;
- 2 Injunctions requiring the employer to provide the leave entitlement;
- 3 Orders of specific performance directing compliance with the agreement; and
- 4 Pecuniary penalties payable to either the affected employees or the Commonwealth.¹⁸⁴

Not only would such remedies provide meaningful protection for an employee's climate change leave entitlements, but they would also generate strong incentives for employer compliance.

Despite these strengths, enterprise agreements retain certain limitations as vehicles for implementing climate change leave. Most obviously, they provide uneven coverage across Australia's working population. Enterprise agreement coverage in Australia has declined over recent years,¹⁸⁵ leaving a substantial proportion of the workforce without access to collectively bargained entitlements, which may include climate change leave if negotiated. Moreover, there is the threat of coverage disparities, which are particularly pronounced in certain sectors and for vulnerable employees. Industries with lower union membership and greater casualisation, such as hospitality, retail and agriculture, tend to have lower enterprise agreement coverage.¹⁸⁶ Ironically, however, employees across those sectors — including many working outdoors — may face heightened exposure to climate change-related hazards yet remain less likely to benefit from an enterprise agreement based entitlement to climate change leave. Lastly, the enterprise bargaining process can be protracted and resource-intensive,¹⁸⁷ potentially delaying the implementation of what would otherwise

¹⁸⁴ Ibid ss 545(2), 546.

¹⁸⁵ For example, the latest available data indicates that in May 2023, federal and state enterprise agreements covered just 34% of all Australian employees: 'Employee Earnings and Hours, Australia', *Australian Bureau of Statistics* (Web Page, May 2023) <<https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/employee-earnings-and-hours-australia/may-2023>>, archived at <<https://perma.cc/SV5G-D4DM>>.

¹⁸⁶ 'Trade Union Membership', *Australian Bureau of Statistics* (Web Page, August 2024) <<https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/trade-union-membership/latest-release>>, archived at <<https://perma.cc/L6WF-XQXA>>.

¹⁸⁷ Anthony Forsyth et al, *Fair Work Australia's Influence in the Enterprise Bargaining Process* (Report, 30 September 2012) 148; Alison Pennington, *On the Brink: The Erosion of Enterprise Agreement Coverage in Australia's Private Sector* (Report, December 2018) 32, 54.

be a desirable climate change leave entitlement. Small and medium-sized enterprises may lack the capacity to engage effectively in bargaining,¹⁸⁸ further limiting the potential impact of this approach.

D *Development of a New NES*

As foreshadowed from the outset of this article, implementing climate change leave as a new NES presents the most useful long-term approach. By way of reminder, the NES entitlements are the ‘safety net’ of 12 minimum terms and conditions applicable to all national system employees, regardless of their industry, occupation or employment status (with certain exceptions for casuals).¹⁸⁹ Positioning climate change leave as a new NES would ensure universal and consistent coverage across Australia’s permanent workforce, ensuring that all permanent employees, including those with limited bargaining power or without enterprise agreement coverage, receive basic protection during climate change-related disruptions. Such consistency would promote clarity and certainty for both employers and employees regarding their rights and obligations. It would also facilitate more effective educative and compliance efforts, as stakeholders would need to navigate a single set of rules, as opposed to a patchwork of contractual, policy-based or enterprise agreement-driven entitlements. The universality of the NES entitlements are particularly valuable in that sense, given the indiscriminate nature of climate change impacts, which, as touched upon in Part I, can affect Australian employees across all number of regions and industries.

As an NES, climate change leave would also benefit from the robust enforcement framework established under the *Fair Work Act*, which prohibits contraventions of NES entitlements and provides for civil penalties in the event of non-compliance.¹⁹⁰ Enforcement could be pursued by affected employees,

¹⁸⁸ *Enterprise Bargaining Outcomes from the Australian Jobs and Skills Summit: Regulation Impact Statement* (Impact Statement No 22-03169, 2022) 19 <https://oia.pmc.gov.au/sites/default/files/posts/2022/10/Regulation%20Impact%20Statement_0.pdf>, archived at <<https://perma.cc/P7VT-92Y6>>.

¹⁸⁹ *Fair Work Act* (n 14) pt 2-2.

¹⁹⁰ *Fair Work Act* (n 14) s 44. Given our proposal to introduce climate change leave via the NES, s 44 is the most logical enforcement mechanism. Alternative enforcement mechanisms may warrant further consideration. For example, as part of their explanatory note on their draft directive on a ‘just transition’ in the European Union, Lucien Carré and Paolo Tomassetti propose ‘Article 12’ which ‘establishes a threefold enforcement mechanism to ensure effective

unions with standing and the FWO, paving the way for multiple avenues for addressing potential violations.¹⁹¹ NES entitlements also serve as a foundation for Australia's broader workplace relations system. In that sense, modern awards and enterprise agreements cannot exclude or provide less favourable provisions than the NES entitlements.¹⁹² Indeed, either instrument might be varied and adapted to provide for an entitlement more favourable than what is otherwise contained within the NES entitlements.¹⁹³ Therefore, if established as an NES, climate change leave would set a minimum standard that could only be enhanced, not diminished, through other industrial instruments, thus creating an elevating effect whereby the NES establishes a baseline that can only be improved upon, not undercut.

E Future Considerations and Proposed Legislative Amendment

While the above analysis supports implementing climate change leave as a new NES, there are significant research gaps regarding its optimal function and design. Of particular importance are questions surrounding whether the entitlement ought to be paid and whether it should be cumulative. Deciding whether the entitlement is paid will have significant implications for both employees and employers. For employees, unpaid leave may facilitate job security during climate disruptions but fails to address income security, potentially forcing difficult, if not impossible, choices between financial security and personal safety. Such a concern is particularly elevated for lower-income employees. Therefore, our recommendation is that the entitlement ought to be paid. For employers, the risk of creating a financial burden arising out of the entitlement is high. With that cost in mind, we suggest the creation of federally funded 'National Climate Change Leave Redress Scheme', which would acknowledge the need to distribute the financial burden beyond individual employers, though the specific mechanics of this scheme would require its own separate and dedicated legislative regulation and associated research. To implement such a scheme would attract complex policy considerations which fall beyond the scope of the present exercise.

compliance', comprising pecuniary sanction by Member States, a 'transparent and accessible complaints procedure' enabling the reporting of violations and the establishment of a helpdesk to offer guidance and support to companies: Carré and Tomassetti (n 165) 11.

¹⁹¹ *Fair Work Act* (n 14) s 539.

¹⁹² *Ibid* s 55.

¹⁹³ *Ibid*.

As to whether the entitlement ought to be cumulative, our preliminary view is that it should not accumulate from year to year for several reasons. Unlike more predictable absences (eg annual leave), climate change leave would respond to immediate, unforeseen emergencies that have the potential to vary significantly in terms of frequency and intensity across different years. A cumulative approach could create substantial financial and resourcing burdens for employers, who would need to account for potentially large banks of unused leave that might be claimed simultaneously during major climate events. A cumulative entitlement would also carry the potential to disproportionately burden smaller businesses and those located in climate vulnerable regions. With the purpose of climate change leave being to provide immediate protection during emergencies, rather than to function as an additional form of long-service benefit, a non-accumulating annual reset approach better reflects the unpredictable nature of climate events. It would also align with how other emergency-driven leave entitlements (eg DFV leave) typically function,¹⁹⁴ thereby ensuring a more sustainable and predictable system for both employers and employees, while still allowing for adequate protection when a circumstance requiring climate change leave does arise.

The questions of appropriate duration and eligibility criteria remain. Regarding duration, further research is needed to determine the typical length of climate change-related disruptions across different event types and regions. After all, extreme weather events can last for several days, and the exact duration will vary based on event type and severity.¹⁹⁵ Bushfire evacuations, for example, may require longer absences than temporary flood events.¹⁹⁶ Health-related support and treatment may, on the other hand, require shorter periods of leave (eg an afternoon every two months to visit a psychologist), but over longer timescales. A flexible approach might involve establishing a base entitlement (say, five days annually), with provision for extended leave during declared emergencies. Again, more detailed research is required to determine the optimal balance between employee needs and employer capacity.

Eligibility criteria present another complex research challenge. Some key questions requiring further analysis would likely include:

¹⁹⁴ See, eg, *Fair Work Act* (n 14) s 106A(2)(b).

¹⁹⁵ Blair Trewin, Damian Morgan-Bulled and Sonia Cooper, *Australia State of the Environment 2021: Climate* (Report, 2021).

¹⁹⁶ On legislative provision for this, see Jane McAdam, 'Exploring the Legal Basis in Australia for Evacuations from Disasters: Avoiding Arbitrary Displacement' (2022) 45(4) *University of New South Wales Law Journal* 1329, 1345–6.

- 1 What types of climate change events should trigger the entitlement?
- 2 What degree of impact should be required (eg declared emergencies, evacuation orders, property damage, transport disruption and adverse impacts on physical and/or mental health)?
- 3 Should eligibility extend to indirect impacts (eg caring for dependent children affected by school closures)?
- 4 What documentation or evidence should be required, particularly given the chaotic nature of climate emergencies?
- 5 Should the entitlement apply differently to certain employees (eg those working remotely)?

Addressing these questions, and undoubtedly others, will require substantial interdisciplinary research drawing on climate science, labour economics, public health and legal expertise. Engagement with stakeholders — including employees, employers, unions and climate change experts — will be essential in the development of practical and effective eligibility frameworks.

Recognising the need for further research, while acknowledging the urgency of addressing climate change-related work disruptions, we propose the following draft amendment to the NES entitlements as a starting point for future policy development:

Subdivision CB — Climate Change Leave

106F Purpose of climate change leave

- (1) The purpose of climate change leave is to provide employees with a period of absence from work when they are unable to attend or perform their duties due to the direct or indirect impacts of extreme weather events, or to alleviate other personal or community harm as a result of climate change.
- (2) For the purpose of this subdivision, ‘extreme weather event’ includes those which are acute (ie sudden and severe) or chronic (ie developing slowly but with serious effects).

106G Entitlement to climate change leave

- (1) During each year of service with their employer, an employee is entitled to five days of paid climate change leave.
- (2) Climate change leave:

- (a) accrues progressively during a year of service according to the employee's ordinary hours of work; and
- (b) does not accumulate from year to year.

106H Taking climate change leave

- (1) An employee may take climate change leave if they are unable to attend work or perform their duties because:
 - (a) they have been directly or indirectly affected by an extreme weather event or climate-related emergency, including in relation to an employee's physical and/or mental health; or
 - (b) they need to care for a member of their immediate family or household who has been directly or indirectly affected by an extreme weather event or climate-related emergency, including in relation to their physical or mental health; or
 - (c) they volunteer (whether through a registered charity or not) in advance of or in response to an extreme weather event or climate-related emergency; or
 - (d) their ordinary transport to work has been disrupted by an extreme weather event or a climate-related emergency; or
 - (e) their workplace has been rendered unsafe or inaccessible due to an extreme weather event or climate-related emergency.
- (2) An employee must give their employer notice of their intention to take climate change leave as soon as practicable, which may be after the period of leave has commenced.
- (3) An employer may require an employee who has given notice under subsection (2) to provide evidence that would satisfy a reasonable person of the employee's entitlement to climate change leave.

106I Payment for climate change leave

- (1) If an employee takes paid climate change leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.
- (2) Payment for climate change leave may be subject to reimbursement through the National Climate Change Leave Redress Scheme as established by regulation.

Overall, this draft legislative provision establishes an initial baseline entitlement, while still encouraging further refinement through research and stakeholder consultation.

Table 1: Distinguishing Climate Change Leave from Existing Leave Entitlements

Existing entitlement	Duration and coverage of existing entitlement	Examples of climate effects that may require a dedicated entitlement to climate change leave
Annual leave <i>(Fair Work Act s 87)</i>	Up to 20 days for every 12 months worked. Purpose is unconstrained.	The social, communal and health-related justifications for this form of leave will remain valid (and perhaps even more important) as the climate changes. If this category of leave were the primary source of climate-related leave, it may, in future, come to be used entirely for responding to disruptions to the workplace, employees’ commutes and/or risks to their property, family or mental and emotional health, rather than for the purposes it was designed to address, including the need for rest, relaxation and recreation.
Personal/carer’s leave <i>(Fair Work Act ss 96–7)</i>	Up to 10 days for every 12 months worked. Purpose is restricted to illness, injury or caring responsibilities for a dependent person.	This form of leave may not be available for use in extreme events. It is also unlikely to extend to caring responsibilities for vulnerable communities beyond traditional dependents, eg checking on elderly neighbours during heatwave events or helping to sandbag a community centre prior to a flood. Even if it were available for climate-related purposes, as climate change increases the direct effects (illness, injury) and cascading effects (food insecurity, transport blockages, closed workplaces) of extreme events, climate anxiety, and sometimes accumulated trauma, it may be unreasonable to expect employees to choose between caring for neighbours or communities, and dependent family in more traditional ways.

Existing entitlement	Duration and coverage of existing entitlement	Examples of climate effects that may require a dedicated entitlement to climate change leave
Compassionate leave <i>(Fair Work Act s 104)</i>	Up to two days on each occasion. Relating to death, life-threatening events, stillbirth or miscarriage.	The very contained and individual-focused circumstances that underpin the need for this form of leave will continue to exist as the climate changes. Life-threatening illness or injury and death occurring directly or indirectly because of climate change will become more widespread, larger in scale and potentially longer in duration, justifying a different, additional category of leave.
Community service leave <i>(Fair Work Act ss 108–12)</i>	Unspecified, as required. Must be for a recognised volunteering reason (eg jury duty, volunteer firefighting or registered membership of the State Emergency Services).	This form of leave is directly relevant to climate-driven increases in the frequency, severity, scale and duration of extreme events. However, new forms of volunteering are likely to emerge as traditional forms of volunteering decline, and future climate-related volunteering may rarely fall into the categories of volunteers that are protected by this leave. Moreover, many of the effects of climate change do not relate to volunteering or community service but rather to the compounding physical, emotional, cultural and economic pressures which cannot be addressed by this form of leave.

A final point for contemplation is that this proposed NES entitlement to climate change leave anticipates something more than, and distinct from, existing leave entitlements in Australian labour law, including those that address similar issues. We demonstrate these distinctions according to each ‘notionally’ otherwise applicable leave entitlement in Table 1 above. This exercise serves to illustrate the characteristics of what we suggest would become a more holistic and employee-focused approach to climate change leave, and meaningfully extend beyond the Australian-specific examples described above in Part III(C).

Emerging examples in Australia of non-legislative disaster and emergency leave entitlements are welcome. However, these new forms of leave will not always be available for the kinds of harm that climate change is imposing on employees, workplaces and communities. Moreover, disasters and emergencies are not a natural phenomenon. They are a legal phenomenon. That is, if an extreme event occurs, it must be declared to be an emergency or disaster by a state or Commonwealth official, otherwise that designation and its resulting implications for employers and employees will not be applied.¹⁹⁷ Where disaster or emergency leave requires such a declaration, it will not be available.

For these reasons, we argue that the proposed NES entitlement to climate change leave represents a reasonable evolution of Australian labour law that is consistent with broader trends. A new, national climate change leave NES entitlement would offer an increasingly necessary form of protection for employees, from novel, emerging and climate-mediated harm. The entitlement may be driven, as DFV leave was, by changing social expectations about leave's role in mitigating harm in a climate-changed world.

VI CONCLUSION

As Australia faces the reality of a climate-changed world, labour law must adapt. We have demonstrated that the impact of the climate crisis on the workplace demands contemporary and innovative solutions. Without change, the Adelaide-based secretary confronting bushfire evacuations and mental health challenges while balancing her work obligations — as described in our opening — will become emblematic of countless Australian employees faced with similar dilemmas in future.

Part II explained the nexus between climate change and workplace disruption. It revealed that extreme weather fundamentally challenges traditional employment structures in the Australian context. These disruptions are not merely theoretical; they are already occurring throughout Australian workplaces, exposing the inadequacy of existing leave entitlements in addressing climate-related emergencies. As bushfires, floods, cyclones and heatwaves increase in frequency and severity, Australian employees are navigating fraught choices

¹⁹⁷ See, eg, *National Emergency Declaration Act 2020* (Cth) s 11; *Emergencies Act 2004* (ACT) s 156; *State Emergency and Rescue Management Act 1989* (NSW) s 33(1); *Emergency Management Act 2013* (NT) ss 19(1), 20(1); *Public Safety Preservation Act 1986* (Qld) s 5(1); *Emergency Management Act 2004* (SA) ss 23, 24; *Emergency Management Act 2006* (Tas) s 42(1); *Emergency Management Act 1986* (Vic) s 23(1).

between safeguarding their livelihoods and fulfilling employment obligations. Their plight highlights that a dedicated entitlement to climate change leave is not merely desirable, but imperative.

Part III explored climate change leave frameworks internationally, largely focusing on Spain as the first jurisdiction to introduce a specific workplace entitlement that responds to climate change. US and Canadian legislative frameworks are also relevant, to the extent they may provide support to employees impacted by adverse weather. Our comparative analysis highlighted a handful of considerations relevant to the Australian context, namely, the likelihood that employers may put employees at risk during extreme weather events; the politicisation of climate change which presents opportunities for political stakeholders to confuse emergency messaging; that ‘natural disasters’ are not always immediately able to be expressly linked to climate change (thus, issues of characterisation remain); and the scope for national agencies, such as the FWO, to determine that current disaster leave entitlements apply, at least for extreme weather, though perhaps not for extended or highly localised events.

Part IV explored how leave entitlements, as a fundamental aspect of labour law, can develop to respond to emerging harms and reflect society’s changing values. Just as paid parental leave recognises gender equity imperatives, and DFV leave acknowledges and mitigates the workplace dimensions of a societal harm, climate change leave is similarly necessary. From the range of implementation models evaluated in Part V, establishing a paid climate change leave entitlement as an NES offers the most compelling option. By elevating climate change leave to a universal paid statutory entitlement, Australia would send a powerful message that climate resilience is not merely an individual responsibility but a collective priority for all of society. This approach would ensure equitable access across different industries, regions and socioeconomic groups, preventing climate adaptation from becoming a privilege available to just a few.

The questions of funding and duration of an entitlement to paid climate change leave, flagged in Part V(E), represent important implementation challenges requiring further detailed research and stakeholder engagement but should not delay progress toward establishing it as a fundamental entitlement under the NES. A government redress scheme supporting employers to provide the entitlement could offer a promising mechanism to distribute cost sharing equitably, while recognising the state’s shared responsibility for climate change adaptation.

Relatedly, the path toward establishing climate change leave will undoubtedly involve robust debate among employer groups, unions and policymakers.

Such debate ought not focus on whether climate change leave is necessary but rather on how best to implement it in a manner that balances the interests of all stakeholders. As climate impacts intensify, we should not ask whether Australia *should* adapt its labour law to incorporate the entitlement but *how quickly and comprehensively* that adaptation could occur.