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Submission of the Synod of Victoria and Tasmania, Uniting Church in Australia to the Senate Education and Employment Committees on the *Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018*
24 September 2018

The Synod of Victoria and Tasmania, Uniting Church in Australia, welcomes the opportunity to make a submission to the inquiry into the *Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018*. The Bill represents a small step forward on recognizing the need to provide family violence leave to employees experiencing family violence and should be passed by the Parliament. However, in the view of the Synod the leave entitlement should be paid leave and should be for longer than the Bill allows.

The 2015 Lay Staff Collective Employment Agreement of the Synod introduced 20 days of paid leave for staff experiencing family violence, the relevant clause stating:

An employee experiencing domestic violence will have access to twenty (20) days per year of paid special leave for medical appointments, legal proceedings and other activities related to domestic violence. This leave will be in addition to existing leave entitlements and may be taken as consecutive or single days or as a fraction of a day and can be taken without prior approval.

An employee who supports a person experiencing domestic violence may take carer's leave to accompany them to court, to hospital or to mind children.

The Synod recognizes that the new entitlement is consistent with the entitlement in the Model Clause developed by the Fair Work Commission, as part of the four Yearly Review of Modern Awards (4 Yearly Review). The Model Clause, which took effect in 123 modern industry and occupation awards from 1 August 2018, provides an entitlement to five days of unpaid family and domestic violence leave for employees whose terms and conditions of employment are set by one of those awards. Thus, any introduction of paid family violence leave in the National Employment Standards of the *Fair Work Act* would also need to be reflected in modern industry and occupation awards for fairness and consistency.

The Synod supports subsection 106D so that an entitlement to leave as a result of family violence provided by a State or Territory law dealing with leave for victims of any type of crime,



does not reduce the entitlement to family violence leave provided in this amendment to the *Fair Work Act*.

The Synod is also supportive that the entitlement to family violence leave commences from the moment an employee commences their employment and they do not need to wait a period of employment before being entitled to the family violence leave.

The Synod also supports the Bill specifying that it does not prevent an employer offering a longer period of family violence leave than the five days provided for in the Bill. It would be helpful if the Bill also specified that the Bill does not prevent an employer from providing paid family violence leave.

The Synod is concerned that the leave is only available where it is impractical for the employee to undertake the action they need to in response to the family violence outside of their ordinary hours of work. The Synod would prefer to see this clause removed, as it will open up an area where uncaring employers may seek to argue the person being subjected to family violence should go to significant lengths to deal with actions needed in response to the family violence outside of their ordinary hours of work.

The definition of family and domestic violence in the Bill is narrow, even more narrow than section 4AB of the *Family Law Act 1975*. By comparison, the definition of family violence used in section 5 of the Victorian *Family Violence Protection Act 2008*:

family violence is—

(a) behaviour by a person towards a family member of that person if that behaviour—

(i) is physically or sexually abusive; or

(ii) is emotionally or psychologically abusive; or

(iii) is economically abusive; or

(iv) is threatening; or

(v) is coercive; or

(vi) in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person.

By contrast, the definition used in the Bill would appear not to allow an employee to access the family violence leave provision if they were seeking to take action on behalf of one of their children being subjected to family violence if they themselves were not the target of abusive behaviour directly.

The New Zealand definition used to provide family violence leave is taken from their *Domestic Violence Act* which defines family violence in Section 3 as:

(1) In this Act, domestic violence, in relation to any person, means violence against that person by any other person with whom that person is, or has been, in a domestic relationship.

(2) In this section, violence means—

(a) physical abuse:

(b) sexual abuse:

(c) psychological abuse, including, but not limited to,—

(i) intimidation:

(ii) harassment:

(iii) damage to property:



(iv) threats of physical abuse, sexual abuse, or psychological abuse:
(iva) financial or economic abuse (for example, denying or limiting access to financial resources, or preventing or restricting employment opportunities or access to education):
(v) in relation to a child, abuse of the kind set out in subsection (3).

(3) Without limiting subsection (2)(c), a person psychologically abuses a child if that person—

(a) causes or allows the child to see or hear the physical, sexual, or psychological abuse of a person with whom the child has a domestic relationship; or

(b) puts the child, or allows the child to be put, at real risk of seeing or hearing that abuse occurring;—

but the person who suffers that abuse is not regarded, for the purposes of this subsection, as having caused or allowed the child to see or hear the abuse, or, as the case may be, as having put the child, or allowed the child to be put, at risk of seeing or hearing the abuse.

(4) Without limiting subsection (2),—

(a) a single act may amount to abuse for the purposes of that subsection:

(b) a number of acts that form part of a pattern of behaviour may amount to abuse for that purpose, even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial.

(5) Behaviour may be psychological abuse for the purposes of subsection (2)(c) which does not involve actual or threatened physical or sexual abuse.

The New Zealand *Domestic Violence – Victims’ Protection Act* explicitly grants family violence leave to a person where a child residing with them is subjected to family violence from another party (section 72B).

The law in the Canadian province of Alberta allows for an employee to take up to 10 days of unpaid family violence leave when a child or ‘protected adult’ in their care is being subjected to family violence, not just when the employee themselves is the subject of the family violence.¹

The Synod urges the Committee to recommend a broadening of the definition of family violence used in the Bill, at a minimum to allow an employee to access family violence leave when they are needing to take actions for the protection of a dependent person (such as a child or an elderly parent) from family violence.

The Synod notes that in July the New Zealand Parliament passed legislation granting 10 days of paid family violence leave to employees, which included the ability of a person to take leave to protect their children.²

The Philippines Government also allows for 10 days of paid family violence leave under the *Anti-Violence Against Women and Their Children Act of 2004*.

¹ <https://www.alberta.ca/domestic-violence-leave.aspx>

² Eleanor Ainge Roy, ‘A huge win’: New Zealand brings in paid domestic violence leave’, *The Guardian*, 26 July 2018, <https://www.theguardian.com/world/2018/jul/26/new-zealand-paid-domestic-violence-leave-jan-logie>



Laws providing paid leave relating to domestic violence also exist in Canada at a provincial level, in Manitoba, Saskatchewan, Alberta and Ontario. Under the law in Manitoba, employees experiencing domestic violence are entitled to five paid days of leave and a further five days of unpaid leave.

The Saskatchewan law was passed on 7 December 2017 and allows for a maximum of 10 days of unpaid leave, whether the violence is directed at the employee personally, their children or a person for whom an employee is a caregiver, regardless of whether that person and the employee have lived together at any time.³ The law notes domestic violence can come in the form of intentional, reckless or threatened acts or omissions that cause bodily harm or property damage; similar acts or omissions that cause reasonable fear of bodily harm or property damage; psychological or emotional abuse; forced confinement; sexual abuse; and post-traumatic stress disorder as a result of domestic violence.

The Alberta law allows for 10 days of unpaid family violence leave.

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³ Martha Porado, 'What do Canadian provinces offer around domestic violence leave?', *Benefits Canada*, 13 December 2017, <https://www.benefitscanada.com/news/what-do-canadian-provinces-offer-around-domestic-violence-leave-107713>