

Answers to questions taken on notice - Rape & Domestic Violence Services Australia (R&DVSA)

Public hearing, Wednesday 3 October 2018

Question 1

Senator WATERS: ... You mention that New Zealand has recently legislated for 10 days paid leave. Can you tell us a little bit more about the scope of that? Is that for all employees? Have they used that broader definition of family and/or partner that you mentioned? Have any other countries around the world legislated for paid leave?

(Proof Hansard, page 3)

The recently-legislated New Zealand scheme for family and domestic violence is significantly broader in scope than that proposed by the *Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018*. The scheme is paid and extends for a period of ten days. In addition, it extends coverage to a greater diversity of relationships within which family and domestic violence occur, meaning that more people who have experienced family and domestic violence will be able to access financial security and safety.

Domestic Violence—Victims’ Protection Bill (New Zealand)

The *Domestic Violence—Victims’ Protection Bill* received Royal Assent on 30 July 2018. The changes will come into effect on 1 April 2019.

Subpart 5 of the bill will enable employees to take up to 10 days paid domestic violence leave per year.

The New Zealand entitlement is available to any employee “affected by domestic violence” – which is defined broadly so as to encompass the wide range of relationships in which family and domestic violence may occur.¹

Applying the definitions of “domestic violence” and “domestic relationship” in sections 3 and 4 of the *Domestic Violence Act 1995*, an employee will be entitled to family and domestic leave if they experience violence by:

- A spouse or partner; or
- A family member; or

¹ Pursuant to section 72C(a), an employee may take domestic violence leave “if the employee is a person affected by domestic violence (regardless of how long ago the domestic violence occurred, and even if the domestic violence occurred before the person became an employee)”. Section 72B(1) defines “a person affected by domestic violence” as a person who is one or both of the following: a person against whom any other person is inflicting, or has inflicted, domestic violence; and/or a person with whom there ordinarily or periodically resides a child against whom any other person is inflicting, or has inflicted, domestic violence. Domestic violence is defined in section 3 of the *Domestic Violence Act 1995* as “violence against that person by any other person with whom that person is, or has been, in a domestic relationship.” Domestic relationship is defined in section 4 of the *Domestic Violence Act 1995* as including a spouse or partner, family member, person with whom they ordinarily share a household or a person with whom they have a “close personal relationship”.

Education and Employment Legislation Committee - Inquiry into the Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018

- A person with whom they ordinarily share a household; or
- A person with whom they have a “close personal relationship”.

Section 4(4) specifies that it is not necessary for there to be a sexual relationship between the persons in order to have a “close personal relationship”. The court may consider a wide range of factors, including those specified in section 4(4).

As such, the New Zealand scheme is available to employees who have experienced violence within a wide range of relationships, including by intimate partners who they may have never lived with, carers of people with disability, flatmates, relatives and kin.

Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018 (Australia)

The proposed Bill is more restrictive in application. Due to the narrow definitions of “close relative” and “immediate family” in section 12, the Bill may exclude numerous categories of people who are deserving of protection from family and domestic violence.²

Specifically, the Act appears to exclude employees claiming the entitlement in relation to family and domestic violence perpetrated by:

- A current de facto partner, where they do not currently live with the employee;
- A current or former intimate partner, where they do not meet the definition of de facto;
- A housemate;
- Family members such as uncles, cousins, step-parents, step-children, or other in-law relatives; and
- Carers for people with disability or aged people.

Question 2

Senator WATERS: Do you have any statistics or are you aware of anybody who collects any stats on violence perpetrated by partners who are not living together, to quantify how big this definitional issue is?

(Proof Hansard, page 4)

Australia’s National Research Organisation for Women’s Safety (ANROWS) has collected statistics on violence perpetrated by partners who are not living together. While the ABS Personal Safety Survey primarily collects data about the prevalence of data perpetrated by a “partner” within a married or de facto relationship, ANROWS has analysed the data

² Section 106B(3) defines a close relative of the employee as a person who: (a) is a member of the employee’s immediate family; or (b) is related to the employee according to Aboriginal or Torres Strait Islander kinship rules. Section 12 of the Fair Work Act defines “immediate family” as: (a) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or (b) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee. Section 12 of the Fair Work Act states that “de facto”: (a) means a person who, although not legally married to the employee, lives with the employee in a relationship as a couple on a genuine domestic basis (whether the employee and the person are of the same sex or different sexes); and (b) includes a former de facto partner of the employee.

Education and Employment Legislation Committee - Inquiry into the Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018

according to the more inclusive definition of “intimate partner,” incorporating boyfriend/girlfriend and date relationships. ANROWS CEO Heather Nancarrow has stated, “This definition is a more accurate representation of the size of the problem because it captures the full range of intimate partner relationships.”³

According to their analysis of the 2016 Personal Safety Survey, since the age of 15, approximately one in four women (23% or 2.2 million) has experienced at least one incident of violence by an intimate partner (intimate partner = a current or previous partner with whom the respondent lives or has lived, or a current or former boyfriend, girlfriend or date with whom the respondent has not lived with).⁴

This is compared with one in six women (17% or 1.6 million) who has experienced at least one incident of violence by a partner (partner = a person whom the respondent lives with, or lived with at some point, in a married or de facto relationship).⁵

Extrapolating from these statistics, we estimate that approximately one in 17 women (6% or 600,000) has experienced at least one incident of violence by an intimate partner with whom they have never lived with in a married or de facto relationship.

Question 3

Senator WATERS: The staff turnover point is a particularly good one because if people aren't able to take leave, if they need longer than five days or if they simply can't maintain that connection to the workplace because they need to move cities, for example—do we have any statistics on how many survivors of violence do need to sever their connection with the workplace?

(Proof Hansard, page 5)

A 2017 New Zealand study commissioned by Women's Refuge and entitled 'What's Hers is Mine and What's Mine is Mine: Women's Experiences of Economic Abuse in Aotearoa New Zealand' considered the impact of family violence on women participating and remaining in paid employment.

They survey of 450 people found that 60 percent of people who had experienced domestic violence were in full-time employment before they entered an abusive relationship, and yet **more than half of them lost their jobs during that relationship.** Those who stayed in employment were subjected to numerous hardships affecting their future employment prospects, and those who left found it difficult to re-enter the workforce.⁶

³ ANROWS, 'Every fourth woman in Australia a victim of intimate partner violence', Media Release, 22 October 2015, <https://www.anrows.org.au/resources/news/media-release-every-fourth-woman-in-australia-victim-intimate-partner-violence>.

⁴ ANROWS, 'Violence against women: Accurate use of key statistics', https://www.whiteribbon.org.au/wp-content/uploads/2018/07/ANROWS_VAW-Accurate-Use-of-Key-Statistics.1.pdf.

⁵ Ibid.

⁶ Women's Refuge, 'Women's Refuge research reveals the impact of family violence on employment', Media Release, 8 March 2017, <https://womensrefuge.org.nz/womens-refuge-research-reveals-the-impact-of-family-violence-on-employment/>.

**Education and Employment Legislation Committee - Inquiry into the Fair Work
Amendment (Family and Domestic Violence Leave) Bill 2018**

Question 4

Senator WATERS: Can you let us know where that study was from or who conducted that?

(Proof Hansard, page 5)

When providing evidence to the Committee, I stated that research conducted in New Zealand showed that for every woman whose experience of violence was prevented as a result of the workplace protections in a particular year, an average of \$3,371 in production-related costs are avoided. This research was referenced by the ACTU in their submission to the committee. The source is as follows:

Kahui S, Ku B, Snively S, *Productivity Gains from Workplace Protection of Victims of Domestic Violence* (commissioned by the New Zealand Public Service Association), March 2014.