



NT Working Women's Centre

Committee Secretary
Senate Education and Employment Committees
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary

The Northern Territory Working Women's Centre Incorporated (NTWWC) is a community based, not-for-profit organisation that provides free and confidential advice and support services on work-related matters to vulnerable female employees in the NT. Services commenced in 1994, and we operate across the NT, from two offices in Darwin and Alice Springs.

The NTWWC works primarily with women who are not represented by a union, lawyer or other advocate. Women who contact our Centre are often economically disadvantaged and work in precarious areas of employment. Many women who contact our service experience domestic or family violence.

We are pleased to provide this short submission in relation to the Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018.

We welcome the introduction of entitlements in the National Employment Standards to support employees who are experiencing domestic and family violence. We strongly believe that leave entitlements should be paid rather than unpaid, and in this respect we endorse the submission provided to the Committee by the ACTU.

In our submission we wish to primarily address the definitions incorporated in the Bill. We request a review of these definitions to ensure that they are consistent with other entitlements, and that they reflect the clear evidence base on the relationship of domestic and family violence victims to their perpetrator.

We note that the Bill employs the following definition when describing the perpetrator of domestic and family violence:

- (2) **Family and domestic violence** is violent, threatening or other abusive behaviour by a close relative of an employee (...)
- (3) A **close relative** of the employee is 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.

This definition is not consistent with to the Fair Work Commission's definition in the Modern Award Domestic and Family Violence Clause, which explicitly includes former partners:

family member means:

- (i) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
- (ii) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or
- (iii) a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

A reference to a spouse or de facto partner in the definition of **family member** in clause X.2(a) includes a former spouse or de facto partner.

The explanatory memorandum for the Bill states that the Bill would ensure "consistency in entitlements for employees in the national system" in reference to mirroring the new Award provisions. The memorandum states that "the entitlement in the Bill to unpaid family and domestic violence leave is consistent with the new modern award entitlement that the Commission inserted into all modern industry and occupation awards."¹ This is clearly not the case.

A similarly expansive definition is present in most state and territory legislative approached to domestic and family violence. All of them include ex-partners (whether cohabiting or not), as well as former relatives and family members.

For example, the *Domestic and Family Violence Act NT* in section 9, 10 reads as follows (emphasis added):

- A person is in a domestic relationship with another person if the person:
- (a) is **or has been** in a family relationship with the other person; or
 - (b) has **or had** the custody or guardianship of, or right of access to, the other person; or
 - (c) is **or has been** subject to the custody or guardianship of the other

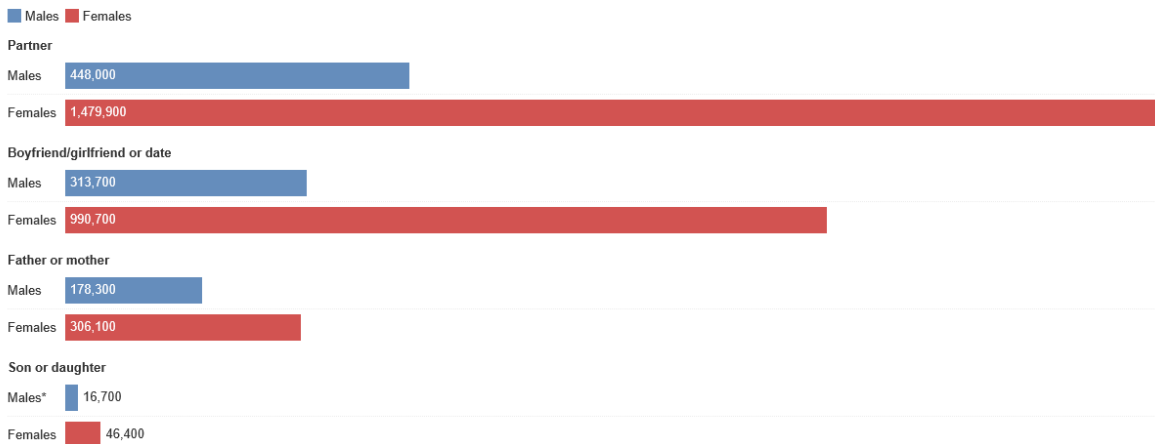
¹https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bid=r6181

- person or the other person has **or has had** a right of access to the person; or
- (d) ordinarily or regularly lives, **or has lived**, with:
 - (i) the other person; or
 - (ii) someone else who is in a family relationship with the other person;
- or
- (e) is **or has been** in a family relationship with a child of the other person; or
- (f) is **or has been** in an intimate personal relationship with the other person; or
- (g) is **or has been** in a carers relationship with the other person.

Our concern is that this definition is too narrow in that it excludes both non-de facto intimate partners (girlfriends, boyfriends, dates), as well as **former** intimate partners of the affected employee. This would have the effect of excluding a significant proportion of domestic and family violence incidents from allowable claims for leave.

The ABS Personal Safety Survey (2012) provides data on the relationship between the perpetrator and victim of domestic and family violence. The ABS defines partner as a cohabiting partner (including a previous cohabiting partner) and defines boyfriend/girlfriend/date as a non-cohabiting partner (including a former or ex non-cohabiting partner). The data shows that this category is one of the largest for perpetrators of domestic and family violence.

People who have experienced domestic violence since age of 15 by relationship to perpetrator



It is well known that victims of domestic and family violence are at a far higher risk during or after separating from their former partners. Research has found that the levels and severity of violence perpetrated by former partners were higher than that experienced from current partners, and that women who experienced violence from former partners were more likely to report sustaining injuries and feeling as though their lives were at risk.² Excluding these situations from the proposed entitlement is not in line with the evidence base.

² <https://aic.gov.au/publications/rip/rip07>

The case study below (name and identifying details changed to protect confidentiality of our clients) illustrates the very real situation that many employees find themselves in with an ex-partner.

Jane holds a senior position in a government agency. She had never disclosed her previous experiences of domestic and family violence as a result of which her then partner received a custodial sentence.

Jane had managed to get on with her life and work until she received a call from Corrections informing her that her ex partner would be due for release in the coming weeks and that she should make sure she had everything in order in case he tried to make contact with her.

Jane disclosed to her manager due to her concern that her ex partner may try to find and contact her at work as she was worried about safety for herself and her co-workers.

Jane's manager had attended the dfv training for managers but wasn't sure if Jane would qualify for some paid leave to get some legal advice and to secure her property prior to her ex partner's release. Jane's manager made contact with one of the course trainers who sought clarification from Jane's HR representative. Even though Jane was no longer experiencing the dfv a decision was made that she could access the leave. This along with some workplace safety planning equipped Jane to feel safer and more supported at work.

We strongly recommend that the definition in the Bill be expanded to include current and former partners (including non-cohabiting partners, or girlfriends, boyfriends and dates) as well as to include past family relationships. This would bring the Bill in line with the award clause and would ensure a greater level of coverage for victim employees of domestic and family violence.

Yours sincerely

Anna Davis
Co-Director
NTWWC
24/9/18