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Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022 - submission

Relationships Australia welcomes the opportunity to make a submission commenting on the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022 (Cth) (the Bill). The Bill amends the *Fair Work Act 2009* (Cth) (the Act).

The work of Relationships Australia

Relationships Australia is a federation of community-based, not-for-profit organisations with no religious affiliations. Our services are for all members of the community, regardless of religious belief, age, gender, sexual orientation, lifestyle choice, living arrangements, cultural background or economic circumstances. Relationships Australia has, for over 70 years, provided a range of relationship services to Australian families, including individual, couple and family group counselling, dispute resolution, services to older people, children's services, services for victims and perpetrators of family violence, and relationship and professional education.

We aim to support all people in Australia to live with positive and respectful relationships, and believe that people have the capacity to change how they relate to others and develop better health and wellbeing. Relationships Australia State and Territory organisations, along with our consortium partners, operate around one third of the 66 Family Relationship Centres across the country. In addition, Relationships Australia Queensland operates the national Family Relationships Advice Line and the Telephone Dispute Resolution Service.

The core of our work is relationships – through our programs we work with people to enhance and improve relationships in the family (whether or not the family is together), with friends and colleagues, and within communities. Relationships Australia believes that violence, coercion, control and inequality are unacceptable. We respect the rights of all people, in all their diversity, to live life fully and meaningfully within their families and communities with dignity and safety, and to enjoy healthy relationships. A commitment to fundamental human rights, to be recognised universally and without discrimination, underpins our work.

Relationships Australia is committed to:

- Working in regional, rural and remote areas, recognising that there are fewer resources available to people in these areas, and that they live with pressures, complexities and uncertainties not experienced by those living in cities and regional centres.

- Collaboration. We work collectively with local and peak body organisations to deliver a spectrum of prevention, early and tertiary intervention programs with people of all genders, including older people, young people and children. We recognise that some families need a complex suite of supports (for example, family support programs, mental health services, gambling services, drug and alcohol services, and housing).
- Enriching family relationships, and encouraging clear and respectful communication.
- Ensuring that services are accessible, including ensuring that social and financial disadvantage is no barrier to accessing services.
- Contributing its practice evidence and skills to research projects, the development of public policy, and the provision of compassionate and effective supports to families.

This submission draws upon our experience in delivering, and continually refining, evidence based programs in a range of family and community settings with diverse identities, including:

- younger and older people
- people who come from culturally and linguistically diverse backgrounds
- Aboriginal and Torres Strait Islander people
- people who identify as members of the LGBTIQ+ communities
- people affected by intergenerational trauma, and
- people affected by complex grief and trauma, intersecting disadvantage and poly-victimisation.

Comments on the Bill

Background – economic and financial effects of family separation and family and domestic violence

Relationships Australia supports the Government's intention that 'No worker should ever have to choose between their safety and their income' (Second Reading Speech). We agree that, in supporting people to leave violent relationships without fear of loss of employment or diminution of financial resources, this workplace entitlement will save lives. It will also mitigate the risk of poverty among separated families, particularly children.

The economic and financial hardship caused by family separation in general is well-documented.¹ That hardship is compounded when separation occurs in the context of violent relationships.

¹ The 2016 Australian census noted that female single parents comprise 82% of single parent households: Australian Bureau of Statistics, 2024.0 – Census of Population and Housing: Australia Revealed, published 27 June 2017, accessed 4 July 2021. <https://www.abs.gov.au/ausstats/abs@.nsf/mf/2024.0> See also de Vaus, D., Gray, M., Qu, L., & Stanton, D. (2007). The consequences of divorce for financial living standards in later life (Research Paper No. 38). Melbourne: Australian Institute of Family Studies; de Vaus, D., Gray, M., Qu, L., &

As canvassed in a range of submissions to Government and Parliamentary inquiries over the past decade, our clients who are experiencing family violence are significantly affected by a range of co-morbidities including:

- poverty and financial stress
- employment precarity
- housing stress and homelessness
- poor mental health, and
- misuse of substances.²

A national study of FDR outcomes, conducted by Relationships Australia, involved approximately 1700 participants, of whom:

- nearly a quarter (23%) presented with high levels of psychological distress, and
- 68% reported experiencing at least one form of abuse, with verbal abuse being the most common (64%).

A large proportion (72%) of parenting participants in the Study also reported significant child exposure to verbal conflict between parents, including yelling, insulting and swearing.

Poverty is a common thread among our clients, and there is a strong negative association between poverty and children's developmental outcomes - impacts which are likely to be amplified later in life for the children who experienced poverty.³ Thus, policies that mitigate

Stanton, D. (2015). The economic consequences of divorce in six OECD countries (Research Report No. 31). Melbourne: Australian Institute of Family Studies; Easteal, P., Young, L., & Carline, A. (2018). Domestic violence, property and family law in Australia. *International Journal of Law, Policy and The Family*, 32, 204–229. doi:10.1093/lawfam/ebz005; Fehlberg, B. & Millward, C. (2014). Family violence and financial outcomes after parental separation. In Hayes, A. & Higgins, D. (Eds.) *Families, policy and the law: Selected essays on contemporary issues for Australia* (1 ed., pp. 235-243) Australian Institute of Family Studies; Fehlberg & Sarma, 2018, pp 89-90; Gray, M., de Vaus, D., Qu, L., & Stanton, D. (2010). Divorce and the wellbeing of older Australians (Research Paper No. 46). Melbourne: Australian Institute of Family Studies; Kelly, J.B., 'Children's Adjustment in Conflicted Marriage and Divorce: A Decade Review of Research', 39 J. A M. Acad.Child & Adolescent Psychiatry 963 (2000); Smyth, B., & Weston, R. (2000). Financial living standards after divorce: A recent snapshot (Research Paper No. 23). Melbourne: Australian Institute of Family Studies; Stock, Corlyon et al, *Personal Relationships and Poverty: An Evidence and Policy Review*, a report prepared for the Joseph Rowntree Foundation by the Tavistock Institute of Human Relations, 2014; Warren, D, *Low Income and Poverty Dynamics - Implications for Child Outcomes*. Social Policy Research Paper Number 47 (2017). Available at <https://www.dss.gov.au/publications-articles/research-publications/social-policy-research-paper-series/social-policyresearch-paper-number-47-low-income-and-poverty-dynamics-implications-for-child-outcomes>.

² See also Family Law Council, *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems – Interim Report* (2015); submission of Relationships Australia South Australia in response to Australian Law Reform Commission Issues Paper 48 on Australia's family law system (submission 62), 4.

³ Warren, D, *Low Income and Poverty Dynamics - Implications for Child Outcomes*. Social Policy Research Paper Number 47 (2017). Available at <https://www.dss.gov.au/publications-articles/research-publications/social-policy-research-paper-series/social-policy-research-paper-number-47-low-income-and-poverty-dynamics-implicationsfor-child-outcomes>. See also Joan B Kelly, 'Children's Adjustment in Conflicted Marriage and Divorce: A Decade Review of Research', 39 J. A M. ACAD.CHILD & ADOLESCENT PSYCHIATRY 963 (2000). Relationships Australia notes that 84% of Australian single parent families are single mother families. In 50% of

economic and financial hardship for parents will deliver real benefits for children and young people throughout their life course.

Relationship breakdown can be both a cause and an effect of poverty and hardship. The stress of poverty can have a negative effect on relationship quality and stability, and cause greater risk of relationship breakdown. In turn, relationship breakdown can increase the risk of poverty for both children and adults.⁴ Further, in the experience of Relationships Australia, the loss of financial resources can have serious socio-economic impacts on all children, not only those in the poorest or most disadvantaged families. For example, parental separation can:

- require children to move away from known and familiar suburbs (perhaps into two new suburbs for shared care)
- require children to leave private schools because of disputes over fees
- require children to leave known schools, perhaps with the consequence of losing contact with friendship groups
- require children to withdraw from costly or inconvenient extra-curricular activities
- lead to loss of, or reduced coverage by, private health care, and
- mean that one or both parents may need to work more hours, leading to a loss of physical and emotional availability to their children at an already fraught time.

It is against this background that Relationships Australia supports measures to mitigate the financial and economic hardship associated with family violence.

We also commend:

- the requirement to pay the leave entitlement at the rate people would have received had they not taken leave (see item 19 of Schedule 1; the Act, s 18)
- the accessibility of the entitlement from the beginning of the employment relationship, in most circumstances (see item 22 of Schedule 1)
- the accessibility of the entitlement to casual employees (of particular importance for 'gig economy' workers) (see item 19, especially proposed paragraph 106BA(1)(b))
- the protection against unlawful adverse action against casual employees (see item 19, proposed sub-clause 106BA(3))
- extension of the entitlement across diverse relationship and household arrangements, reflecting the living circumstances of modern Australians (see item 18 of Schedule 1)

single parent families with dependants, the age of the youngest child is between 0-9 years of age: Australian Bureau of Statistics (2012), Labour Force, Australia: Labour Force Status and Other Characteristics of Families, Cat. No. 6224.0.55.001.

⁴ Stock, Corlyon et al, Personal Relationships and Poverty: An Evidence and Policy Review, a report prepared for the Joseph Rowntree Foundation by the Tavistock Institute of Human Relations, 2014. Data shows that it is resident mothers and children who are at greater risk of falling into persistent poverty.

- the measures to ensure that employees benefit from the most advantageous entitlements available to them (see, eg, clause 757E)
- the clarification that attendance at court hearings would be included as a reason for accessing the proposed entitlements (see item 17 of Schedule 1)
- the phased commencement arrangements to support small businesses to lawfully provide the entitlement (see item 22, proposed clause 52), and
- proposed mechanisms to help parties to resolve uncertainties about the interaction between the proposed entitlement and other processes, provided for by other laws (see item 22, proposed clause 53), and to ensure that employees suffer no detriment from the commencement of the proposed entitlement.

Impact on fragmentation

Relationships Australia welcomes the Government's recognition that 'family and domestic violence is not just a criminal justice or social issue, but an economic and a workplace issue.' (Second Reading Speech). Across multiple submissions to Parliamentary and Government inquiries, Relationships Australia has expressed concerns about the burden of fragmentation of laws, systems, policies and bureaucracies, which is too often forced onto the shoulders of those least equipped to bear that burden. Government recognition that the effects of family violence traverse all dimensions of social, economic, cultural and political life is a key step towards lifting that burden.

People who use violence in relationships

The Second Reading Speech and the Explanatory Memorandum understandably emphasise the operation and significance of the proposed entitlement to those seeking to leave violent relationships.

Relationships Australia considers that there are strong public policy reasons to amend the Bill to expressly allow the entitlement to be exercised by people who use violence in their relationships.⁵ It is in the public interest for governments to identify and facilitate opportunities to remove barriers to help-seeking by people who use violence in their relationships. These barriers may include taking time off work (eg losing shifts) to attend counselling, behaviour change programmes or other support services, or to make arrangements to move out of the family home. Removing barriers to help-seeking further buttresses other initiatives to keeping women and children safe and minimising disruption to their lives.

While there is currently nothing in the Bill to preclude the entitlement from being accessed by people who use violence, the language of section 106B of the Act that will remain intact suggests that the entitlement is available only to a person against whom family and domestic violence is used.

⁵ Its potential application to people who use violence is alluded to at paragraph 15 of the Explanatory Memorandum.

The pro-social significance of removing barriers to help-seeking were recognised, for example, by the Business Council of Australia in its recently published *Domestic and Family Violence Support – A Best Practice Guide for Employers* (July 2022), which encourages employers to make leave available for ‘perpetrators who can demonstrate they are seeking help to change to abusive behaviour (sic) and/or improve the safety of their family, are paying child support where required and have not breached a protection order’.⁶

Accordingly, the Act, and explanatory and public awareness material about the proposed entitlement, should make clear that a person should not have to choose between earning an income and attending to matters that will end their use of violence.

Suggestions for clarification

To enhance the clarity and comprehensibility of the Bill and its supporting materials, we suggest:

- including in the Explanatory Memorandum more detailed information about the operation of ILO Convention (No. 190), including about the implications if that Convention does not come into force on or before 1 February 2025 (see paragraph 26 of the Explanatory Memorandum)
- explaining the relationship between civil penalties (as referred to, for example, at paragraph 3 of the Explanatory Memorandum) and civil remedies (see note to clause 757C, paragraphs 81 and 82 to the Explanatory Memorandum), and
- in view of the sensitivity of the circumstances - what evidence an employee can be asked to provide to substantiate that they meet the requirements to access the entitlement.

Conclusion

We have accepted an invitation from the Committee to appear on a panel at public hearings about this Bill on 22 August. We look forward to the opportunity to further assist the Committee in its consideration of this Bill.

Thank you again for the opportunity to participate, and kind regards,

Nick Tebbey
National Executive Officer

⁶ Guide, pp 6-7.