

## The Equal Justice Project

The Equal Justice Project (EJP) is a pro-bono student-run charity operating out of the University of Auckland's Faculty of Law.

Members of the EJP Communications Team (Claudia Russell, Hannah Yang, Jasper Lau, Haya Khan, Hart Reynolds, and Olivia Folu), as authorised and edited by the Communications Team Managers (Rebecca Hallas and Daniel Gambitsis) and Head Editor (Meg Williams), have considered the proposed Domestic Violence Victims' Protection Bill.

Feedback in support of the Bill is summarised below by section.

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## 1 Domestic Violence Statistics in New Zealand

There are various statistics which demonstrate New Zealand has one of the worst rates of family and intimate-partner violence in the world.<sup>1</sup> Recent reports from various organisations highlight the significant prevalence of domestic violence within our society and the trauma that many New Zealanders face as part of their daily lives. The focus in this submission of these statistics is to highlight the estimated domestic violence rates across New Zealand, and also to demonstrate that the costs associated with domestic violence are a significant issue that could be addressed by the possible passing of the *Domestic Violence - Victims Protection Bill* (the Bill).

**1.1 New Zealand Family Violence Clearinghouse:**<sup>2</sup> In 2015, there were 110,114 family violence investigations by New Zealand Police.<sup>3</sup> 1 in 3 (35.4%) of partnered New Zealand women reported having experienced physical and/or intimate partner violence in their lifetime.<sup>4</sup> 16.8% of New Zealand women report having experienced sexual violence by an intimate partner in their lifetime; 2% in the last 12 months.<sup>5</sup>

**1.2 The New Zealand Herald:**<sup>6</sup> The police attends, on average, a family violence incident every five and a half minutes. It has been estimated that at least **80%** of family violence incidents are not reported. Family violence is estimated to cost the economy between \$4.1 billion and \$7 billion dollars each year. On average 13 women and 10 men are killed each year as a result of family violence.

**1.3 The Glenn Inquiry (2014):**<sup>7</sup> Victims of lifetime physical violence or threats of physical violence were more likely to be living alone compared to those who never experienced those forms of violence.<sup>8</sup> The workplace could therefore be an appropriate place of intervention for those isolated from supportive networks. The report found the productivity costs for victims included; i) hours lost at workplace due to victims arriving late or leaving early, ii) time taken for employers to find new employees with additional training costs, and iii) hours lost to victims being distracted at work.<sup>9</sup> In 2014, the report estimated productivity losses, incurred by victims, to be estimated at \$894 million dollars.<sup>10</sup> The report also estimated that costs to health care associated with treating the direct effects of intimate partner violence to cost \$377 million. The administrative costs associated with legal services, temporary accommodation and victim support was also estimated to cost \$836 million.<sup>11</sup>

**1.4** In March this year, the Honourable Justice Minister Amy Adams identified the system was 'broken' and stated that New Zealand had the highest rates of family violence in the developed world which was a 'shameful record'.<sup>12</sup> She further stated that novel approaches were needed to better identify risk and recognise the patterns of family violence and that 'we need to act sooner and keep the victims safer'. Her statements would indicate a level of support for the *Domestic Violence - Victims' Protection Bill*, due to the fact that the Bill recognises that domestic violence in New Zealand needs a society-wide response and acknowledges the workplace as a primary place for intervention.

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<sup>1</sup> New Zealand Press Association "NZ worst for domestic violence - UN report" *Stuff* (online ed, New Zealand, 24 July 2011).

<sup>2</sup> New Zealand Family Violence Clearinghouse "Data Summaries 2016: Snapshot" (July 2016)  
<<https://nzfvc.org.nz/sites/nzfvc.org.nz/files/Data-summaries-snapshot-2016.pdf>>.

<sup>3</sup> National Performance & Insights Centre "New Zealand Police Family Violence Investigation Data: Personal Communication" (May 2016) New Zealand Police.

<sup>4</sup> Janet Fanslow and Elizabeth Robinson "Sticks, stones or words? Counting the prevalence of different types of intimate partner violence reported by New Zealand women" (2011) 20 *J. Aggress. Maltreat. Trauma* 741.

<sup>5</sup> Fanslow and Robinson, above n 4.

<sup>6</sup> Anna Leask "Family Violence: 525,000 New Zealanders harmed every year" *The New Zealand Herald* (online ed, New Zealand, 9 May 2016).

<sup>7</sup> Sherilee Kahui and Suzanne Snively "Measuring the Economic Costs of Child Abuse and Intimate Partner Violence to New Zealand The Glenn Inquiry" (2014) The Glenn Inquiry  
<[http://img.scoop.co.nz/media/pdfs/1411/ECONOMIC\\_COSTS\\_OF\\_CHILD\\_ABUSE\\_\\_INTIMATE\\_PARTNER\\_ABUSE.pdf](http://img.scoop.co.nz/media/pdfs/1411/ECONOMIC_COSTS_OF_CHILD_ABUSE__INTIMATE_PARTNER_ABUSE.pdf)>.

<sup>8</sup> Kahui and Snively, above n 7, at 16.

<sup>9</sup> At 29.

<sup>10</sup> At 30.

<sup>11</sup> At 6.

<sup>12</sup> Amy Adams "NZ's highest rate of family violence in the developed world - Amy Adams has had enough" *Stuff* (online ed, New Zealand, 21 May 2017).

**1.5** The Bill seeks to enhance legal protections for victims of domestic violence by offering victims the ability to request a variation of their working arrangements, by replacing the definition of 'hazard' to ensure employers have policies on how to manage workers suffering because of domestic violence, and by providing victims of domestic abuse a minimum entitlement to 10 days paid leave.

The importance of these provisions is that it offers victims in the workplace practical solutions otherwise missing in New Zealand's legislation. As part of the Equal Justice Project, one of our key values is to promote the accessibility of the justice system for people in need. By allowing victims of domestic violence to arrange paid time-off to see lawyers and other support groups, this Bill offers a pathway to safety for many victims, and potentially a win-win outcome for both the employer and the employee.<sup>13</sup> Statistics show that many victims of abuse feel reluctant to report their situation to family and friends, therefore the victim's employer should be obliged to support their staff and view domestic violence as a health and safety issue at the victim's workplace, which could potentially affect the safety of other employees.

**1.6** A strong policy factor in favour of this Bill's provision for a minimum entitlement of 10 days paid leave for victims of domestic violence is the economic and productivity gains. Recent research conducted by Dr. Jim Stanford for the Centre for Future Work at the Australia Institute (2016) found that the leave payment costs to employers were negligible and it would be offset by benefits associated with the provision of paid domestic violence leave, including reduced turnover and improved productivity.<sup>14</sup> The paper estimated the economy-wide utilisation rate of the paid leave for both genders to be around 0.022 - 0.031% of selected sources, therefore it is unlikely to constitute significant incremental labour costs to the employer.<sup>15</sup>

**1.7** These findings are complimented by New Zealand research conducted by Kahui, Ku and Snively (2014) where in the absence of workplace protections for domestic violence victims, they estimated that 14.4 million hours of leave would be taken by victims.<sup>16</sup> The implementation of the programme of protections for domestic violence victims in the workforce would initially result in a cumulative net loss to employers because of the costs of the programme, but by 2024, their estimation of the paid leave programme would result in a net savings/productivity gains to employers.<sup>17</sup> Therefore by allowing employees to request variation in their working arrangements and allowing 10 paid days of leave, this could be an economic and practical way to address the outcomes of domestic violence in New Zealand.

## **2 The Financial Position of Many Domestic Violence Sufferers**

**2.1** The addition of Part 6AB into the Employment Relations Act 2000 is essential in assisting domestic violence victims. Financial security correlates to the ability of a victim to escape an abusive relationship.<sup>18</sup> Lack of financial independence compels victims to stay in abusive relationships after their partners show remorse for their actions, creating a 'cycle of violence'.<sup>19</sup> Increased financial independence cannot prevent domestic violence but it can provide an escape for victims reliant on the government or their abusive partners for finances, thus restricting their ability to be self-sustained.

**2.2** There is a direct correlation between the resources available to a victim of abuse and their likeliness to leave an abusive relationship. Research on women as victims of domestic violence suggests that an increase in relative wages increases her bargaining power; thus lowering the level of violence.<sup>20</sup> Financial independence is key in escaping domestic violence.

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<sup>13</sup> Shine "Bill to address victims of domestic violence in employment" (press release, 13 February 2017).

<sup>14</sup> Jim Stanford "Economic Aspects of Paid Domestic Violence Leave Provisions" (briefing paper, Centre for Future Work at the Australia Institute, 2016) at 3 and 23.

<sup>15</sup> Jim Stanford, above n 14, at 16.

<sup>16</sup> Sherilee Kahui, Bryan Ku and Suzanne Snively "Productivity Gains from Workplace Protection of Victims of Domestic Violence" (briefing paper, The New Zealand Public Service Association, 21 March 2014) at 42.

<sup>17</sup> Kahui, Ku and Snively, above n 16, at 42-43.

<sup>18</sup> Paula Meth "The Shelter Dilemma For Women Experiencing Domestic Violence" (2001) 48 *Agenda: Empowering Women for Gender Equity* 113 at 113.

<sup>19</sup> Audra J. Bowlus and Shannon Seitz "Domestic Violence, Employment and Divorce" (2006) 47 *International Economic Review* 1113 at 1113.

<sup>20</sup> Anna Aizer "The Gender Wage Gap and Domestic Violence" (2010) 100 *The American Economic Review* 1847 at 1848.

**2.3** Heath JJ in *R v R* describes the abuser becoming a 'dictator' who rules 'both the household and the individuals within that household,' and they do this through 'fear, intimidation and violence'.<sup>21</sup> By providing victims with a statutory right to request a variation in working arrangements, they gain the ability to exercise control over their finances if the abuse they face restricts their ability to work. Furthermore, if victims are aware that they are able to maintain a job even in light of their situation, the workplace becomes a 'refuge' or 'haven' for them to resort to whilst in or once they escape the abusive relationship.

**2.4** Abusers often obtain control of victims' finances by force, and so escape from such a situation leaves victims with a lack of self-autonomy, emotional support and legal guidance. The addition of Part 6A is beneficial in acting as a preventive measure for situations where recovering victims turn to illegal methods of obtaining finances. In *Cameron v R*, it was ruled that there was a miscarriage of justice in convicting the appellant for 'dishonestly using a document for pecuniary advantage'<sup>22</sup> due to a failure to acknowledge the appellant's psychological state of the 'battered women's syndrome' as a result of her undisclosed abusive relationship.<sup>23</sup>

**2.5** Many victims of abuse have dependent children, therefore maintaining financial independence is essential for survival of their family. The appellant in *Cameron v R* attempted to illegally obtain benefit finances to maintain a lifestyle for her and her children after leaving her abusive partner and the failure of her business.<sup>24</sup> The addition of section 6A allows for such situations to be avoided as victims are not isolated from financial support due to the aftermath of their abusive relationship.

**2.6** It is to be acknowledged that not all victims of domestic violence are employed. Thus this addition is not of great help to unemployed victims. However, in situations such as *R v Chase*, in which the victim committed offences at work to provide finances to the abuser.<sup>25</sup> Statutory rights that provide flexibility at work would greatly assist such extreme issues in which the victim's actions can result in unemployment.

#### *Recommendations*

- Victims of domestic violence may not be comfortable disclosing their situation. Therefore, there should be expressly stated requirements for employers to maintain their confidentiality and to inform employees of their statutory rights.
- The grounds for denying a request in 69ABD (2) should be expressly defined: for example, providing a definition for what is considered an 'inability' to re-organise work, as well as a 'potential' or 'detrimental' impact on quality. This documentation would prove beneficial for both parties in an appeal.
- 69ABB (2)(h) needs to expressly state what a 'document of domestic violence' is. Reconsideration or restatement is recommended to prevent employees being unable to apply due to confusion or unfair denial of employee requests.

### **3 Experiences of Refugee/Migrant Domestic Violence Sufferers**

**3.1** A major factor contributing to refugee and migrant women staying in abusive relationships is social isolation. This itself can be a form of domestic abuse, whereby the abuser keeps their partner from social and community contact.<sup>26</sup> Social isolation is even more salient for women of a migrant or refugee background who are less likely to have traditional family support networks.<sup>27</sup> The isolation means women are less likely to be aware of their rights in New Zealand or the support networks available.<sup>28</sup>

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<sup>21</sup> *R v The Queen* [2015] NZCA 394 at [18].

<sup>22</sup> *Cameron v R* [2015] NZCA 363 at [2].

<sup>23</sup> *Cameron v R* at [3].

<sup>24</sup> *Cameron v R* at [17].

<sup>25</sup> *R v Chase* [2016] NZHC 2655 at [43].

<sup>26</sup> Susan Rees and Bob Pease "Domestic Violence in Refugee Families in Australia" (2007) 5 *Journal of Immigrant and Refugee Studies* 1 at 7.

<sup>27</sup> At 8.

<sup>28</sup> Susan Rees and Bob Pease *Refugee Settlement, Safety and Wellbeing: Exploring Domestic and Family Violence in Refugee Communities* (VicHealth, 2006) at 29.

**3.2** Employment can help recent migrants seek help if they are experiencing domestic violence. It is a connection to the wider community that will assist in inhibiting social isolation.<sup>29</sup> The guarantee of continued employment given through this Bill means women can leave abusive relationships without fear they will become more socially isolated due to unemployment.

**3.3** Stable employment is also vital as it helps these women gain financial independence.<sup>30</sup> The Bill will help ensure refugee women have the guarantee of financial independence after leaving their partner.

**3.4** However, continued work must be done within communities to help refugees and migrants settle in New Zealand culture and prevent social isolation. This Bill will assist recent migrants experiencing domestic violence. It signals that in New Zealand domestic violence is not acceptable and that employers will be available to help.

#### *Recommendations*

- Work needs to be done in New Zealand to promote the social inclusion of refugees and stop xenophobic attitudes. This will lessen social isolation and help victims learn of their rights and support networks.
- Government support of organisations like SHAKTI New Zealand, a domestic violence charity aimed at supporting refugee and immigrant women, is encouraged.

## **4 Safeguarding Against Potential Discrimination**

**4.1** The amendments to s 105 of the Employment Relations Act 2000 and s 21 of the Human Rights Act 1993 are necessary provisions to ensure the protection of domestic violence victims against discrimination.

**4.2** It has been found that groups afforded special rights, such as women who take parental leave, are likely to experience discrimination in the workplace as they may be perceived as less able to commit to the firm-specific training often needed for occupational mobility.<sup>31</sup>

**4.3** This discrimination, however, may not be limited to existing victims. There is the likelihood of discriminatory behaviour against those perceived to be of “high risk” of falling into a certain category. Employers, for example have withheld opportunities from women simply for being of child-bearing age because “she will be gone on leave soon anyway”.<sup>32</sup>

**4.4** The hiring stage is also likely to be affected. Forty percent of 500 managers surveyed in the UK admitted to being wary of hiring women of child-bearing age, or who already had a child.<sup>33</sup> This is despite the practice being illegal under UK legislation.<sup>34</sup>

**4.5** Statistics show that Māori report higher rates of intimate partner violence victimisation and perpetration. This rate was found to be between 2.36 to 3.59 times higher in Māori than in non-Māori before statistical adjustment.<sup>35</sup>

**4.6** There is therefore the potential for discrimination against Māori and those perceived to be at a higher risk of being victims to domestic violence, as well as existing victims, both in the workplace and during the hiring process. Without adequate enforcement mechanisms and victim awareness of their rights, this discrimination is likely to occur regardless of legislation.

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<sup>29</sup> At 11.

<sup>30</sup> At 39.

<sup>31</sup> Hadas Mandel and Moshe Semyonov “A Welfare State Paradox: State Interventions and Women’s Employment Opportunities in 22 Countries” (2006) 111 *American Journal of Sociology* 1910 at 1914 – 1915.

<sup>32</sup> Ontario Human Rights Commission *Policy on Discrimination because of Pregnancy and Breastfeeding* (17 December 2008).

<sup>33</sup> Gordon and Slater “Slater and Gordon Highlights Maternity Discrimination” (press release, 12 August 2014).

<sup>34</sup> Equality Act 2010 (UK), s 39.

<sup>35</sup> Dannette Marie, David M. Fergusson and Joseph M. Boden “Ethnic Identity and Intimate Partner Violence in a New Zealand Birth Cohort” (2008) 33 *Social Policy Journal of New Zealand* 126 at 139 – 140.

### Recommendations

- Establish a regular review of hiring and workplace practices to be carried out by the Human Rights Commission or some other such body.
- To avoid ambiguity, insert provisions explicitly providing that discrimination on the grounds of being likely to be a victim of domestic violence based on race or gender is discrimination based on race or gender is illegal.

## **5 Domestic Violence Leave in Australia and Canada**

### **Australia**

**5.1** Approximately 1.4 million Australians are, or have in the past, been in an abusive relationship. About 800,000 are in the paid workforce.<sup>36</sup>

**5.2** Under s 65 of Australia's Fair Work Act 2009, employees have the right to demand flexible working arrangements. This includes changes in work hours, in patterns of work and in the location of work. These requests may only be refused on reasonable business grounds.<sup>37</sup>

**5.3** Australian law has yet to legislate domestic violence leave for employees but the initiative has been taken by employers. Using enterprise bargaining, domestic violence leave clauses have been included in many agreements setting down wages and conditions. Many of the clauses put into effect by private businesses in Australia mirror what the New Zealand Domestic Violence-Victims' Protection Bill 2016 hopes to accomplish with its clauses providing paid domestic violence leave; this similarity can be used to assess the costs and benefits that New Zealand's own law changes would bring.

One of the world's first agreements to include paid domestic violence leave was signed at Victoria's Surf Coast Shire Council in Torquay in 2010. The clause provided an extra 20 days paid leave.<sup>38</sup> In 2012, the Australian Council of Trade Unions' (ACTU) Women's Committee's domestic violence policy was endorsed by the ACTU Congress and has led to domestic violence clauses being included as part of the standard claims by many unions. Due to collective bargaining, over one million workers received access to domestic violence leave with 70% having access to paid leave.<sup>39</sup> Currently 1.6 million workers have access to domestic violence leave.<sup>40</sup> In March 2016, the Victorian Royal Commission into Family Violence report noted that 840 enterprise agreements had been approved between 1 January 2012 and 30 June 2015, containing family violence provisions of some kind, most of which provided for family violence leave.<sup>41</sup> Domestic violence leave been gaining momentum in the private sector as well with businesses like Telstra and Virgin Australia providing 5 and 10 days paid domestic violence leave respectively. Between 2014 (when first implemented) and November 2016, 102 people took the benefit of Telstra's confidential leave.<sup>42</sup>

**5.4** In regard to the costs employers would incur from implementing paid leave for victims of domestic violence, research by the Centre for Future Work at the Australia Institute found that the incremental wage pay-outs would be equivalent to 0.02 per cent of existing payrolls. The research estimated that the cost to universally extend domestic violence leave to all workers be between \$80 million - \$120 million per year for the whole economy. These costs would further be reduced by reduced turnover and improved productivity.<sup>43</sup> At a panel for the International Labour Organisation, Elizabeth Broderick, Sex Discrimination Commissioner from the Australian Human Rights Commission, discussed research on the health and economic costs of domestic and family violence.

<sup>36</sup> *MCC Playing our Part: Lessons Learned 2016* (Male Champions of Change Australia, November 2016) at 4.

<sup>37</sup> Fair Work Act 2009 (Australia), s 65.

<sup>38</sup> Ben Schneiders "Paid domestic violence leave setting a world standard" *The Sydney Morning Herald* (online ed, Australia, 27 October 2012).

<sup>39</sup> Ludo McFerran, Project Manager, Safe at Home, Safe at Work, Australia "Impact of domestic violence in the workplace" (Joint Government of Australia/ILO side event at the 57th Session of the CSW, 6 March 2013).

<sup>40</sup> Joanna Mather and Jaclyn Keast "Telstra introduces domestic violence leave" *Financial Review* (online ed, Australia, 13 January 2015).

<sup>41</sup> State of Victoria, Royal Commission into Family Violence: Summary and recommendations, Parl Paper No 132 (2014–16) at 82.

<sup>42</sup> Mather and Keast, above n 40.

<sup>43</sup> Jim Stanford, Economic Aspects of Paid Domestic Leave Provisions (Centre for Future Work at the Australia Institute, December 2016) at 3.

It was estimated that it would cost the Australian economy “\$15.6 billion by 2021-2022 unless effective action is taken”.<sup>44</sup>

**5.5** The White Ribbon Foundation reports that workplaces benefit from being involved in domestic violence leave schemes and evidence demonstrates that it improves productivity, reduces absenteeism, improves retention rates and changes staff attitudes and behaviours." Findings have shown that the implementation of such domestic violence clauses has raised good awareness of the issue, with many now reporting on domestic violence.<sup>45</sup>

This initiative within the private sector has led to calls for the Australian Government to legislate the rights to domestic violence leave. In March 2016, the Victorian ‘Royal Commission into Family Violence’ report made a recommendation to the Victorian Government to encourage the entitlement to paid family violence leave.<sup>46</sup> The Labour Party pledged to legislate five days of paid domestic violence leave if it returned to Government.<sup>47</sup>

### Canada

**5.7** Currently the province of Manitoba is the only jurisdiction in Canada with laws in relation to paid domestic violence leave. The Employment Standards Code Amendment Act (Leave for Victims of Domestic Violence, Leave for Serious Injury or Illness and Extension of Compassionate Care Leave) allows up to 10 days’ leave (including 5 days paid leave) and an additional period 17 weeks. The Act states that the leave is to be used for purposes such as seeking medical attention, obtaining services from a victim services’ organization or obtain counselling, temporarily or permanently relocating to a safe place, and seeking legal help or law enforcement assistance.<sup>48</sup> The employee cannot be discriminated against for seeking or taking leave.

**5.8** A private member’s bill in the province of Ontario, Bill 177, ‘Domestic and Sexual Violence Workplace Leave, Accommodation and Training Act, 2016’ has been referred to a standing committee. This bill would amend the Employment Standards Act 2000 and provide 10 days paid leave to victims of domestic violence.<sup>49</sup> It also gives the victim statutory rights to change their work location and hours unless it would place the employer under undue hardship.<sup>50</sup>

**5.9** A national study released in 2014 by the Canadian Labour Congress and the University of Western Ontario’s Centre for Research & Education on Violence Against Women & Children found that one third of participants indicated they had experienced domestic violence. 81.9% of those affected by domestic violence said that it negatively affected their work performance. Almost 40% said it kept them from getting to work, and for almost 10% it meant losing their job. For over half, at least one type of abusive act took place at or near their workplace. Most often in the form of harassing emails, calls and texts, stalking or physical violence.

The study showed that the influence of violence spread beyond the immediate victim and that 30 per cent of co-workers reported that their work performance suffered due to the stress they were feeling for their victimized colleagues. Canadian employers lose \$77.9 million annually due to the direct and indirect impacts of domestic violence.<sup>51</sup>

Australia and Canada have yet to establish exhaustive and substantive laws on the issue of paid leave for domestic violence victims. It has been clearly recognised in each country that the effect of domestic violence has extended far beyond a person’s home, affecting the work place and economy. Australian businesses provide a clear model on how domestic violence leave can be implemented effectively and have positive results.

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<sup>44</sup> Ms Elizabeth Broderick, Sex Discrimination Commissioner from the Australian Human Rights Commission “Impact of domestic violence in the workplace” (Joint Government of Australia/ILO side event at the 57th Session of the CSW, 6 March 2013).

<sup>45</sup> Above n 39.

<sup>46</sup> State of Victoria, Royal Commission into Family Violence: Summary and recommendations, Parl Paper No 132 (2014–16).

<sup>47</sup> Nicholas Jones “Calls for paid leave for domestic violence victims” *The New Zealand Herald* (online ed, Auckland, 2 March 2016).

<sup>48</sup> Victoria State Government “Victoria backs family and domestic violence leave” (press release, 16 May 2016).

<sup>49</sup> Domestic and Sexual Violence Workplace Leave, Accommodation and Training Bill 2016 (177-1), cl 49.6.

<sup>50</sup> Above n 49, at 16.1 and 19.1.

<sup>51</sup> Centre for Research & Education on Violence Against Women and Children “Can Work be Safe, When Home Isn’t? Initial Findings of a Pan-Canadian Survey on Domestic Violence and the Workplace” (2014) Learning To End Abuse < [http://www.learningtoendabuse.ca/sites/default/files/DVWork\\_Survey\\_Report\\_2014\\_EN\\_0.pdf](http://www.learningtoendabuse.ca/sites/default/files/DVWork_Survey_Report_2014_EN_0.pdf)>.

### *Recommendations*

- From assessing the laws and conditions in Australia and Canada, any costs to businesses of implementing domestic violence leave clauses is off-set by the increased work productivity and morale. The financial independence and stability which it would provide would also have a significant effect on reducing New Zealand's high domestic violence rate, giving victims the capacity to leave an abusive relationship quicker.

## **6 Evidence in Response to Economic Concerns from Similar Policy**

**6.1** One concern which may be of issue regarding the amendment to 72 (c) (5) of the Holidays Act 2003 is that it may place undue financial strain on business owners, particularly small businesses. On the evidence, the Equal Justice Project supports the amendment. We believe the strong message the amendment makes is one that is necessary to support our domestic violence victims.

**6.2** Contrary to the government's initial response that the amendments would be too costly, there is an emerging body of research which suggests the consequences of failing to make such amendments: that domestic violence costs employers significantly.<sup>52</sup> Policies which combat domestic violence have the potential to provide net benefits to employers.<sup>53</sup> Research has compared the costs of re-training and recruiting new employees to the cost of retaining existing employees who are domestic violence victims. An estimated \$153 million was lost in 2014 across the New Zealand workforce replacing victims whose employment had been terminated.<sup>54</sup>

**6.3** It makes better economic sense to support victims in the workplace through paid leave and human resource policies than have the employee leave their employment.<sup>55</sup> An abusive spouse can hinder an employee's ability to get to work on time. They may hide keys and otherwise try to get the victim fired, trying to increase their partner's dependency in the relationship. Once at work, 12% of victims report being harassed via phone and email.<sup>56</sup> Abuse can also weigh on the victim's mind and make concentration difficult. The provision for ten-day leave may allow victims to move out of the vulnerable state, thus increasing productivity. The workplace training policies provided by the Health and Safety at Work Act 2015 s 37(1A) can increase these benefits. Employees who are trained, for example, not to reveal an employee's location to the abusive partner, increase that employee's safety and ability to contribute at work.<sup>57</sup>

**6.4** Similar cost concerns have been raised in the past in relation to paid parental leave legislation. A California study on the state's 'Paid Family Leave' programme showed that the business community prior to the introduction of the legislation expressed concerns that it would impose extensive new costs on employers and involve a particularly serious burden for small businesses. After 5 years, the concerns proved to be unfounded, and the vast majority of employers reported that it had minimal impact on their business operations.<sup>58</sup> In regard to our own Parental Leave and Employment Protection Bill, evaluation in 2003 showed that the scheme's impact on business had been predominantly positive or neutral.<sup>59</sup>

### *Recommendations*

- Ensure there is sufficient regulation and guidance for workplace policy under s 37 of the Health and Safety at Work Act 2015. This may take the form of a national guidebook for employers.
- Recognise that the ten-day leave provision is of great importance, and ensure that it remains in the bill.

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<sup>52</sup> Anusha Bradley "Govt Won't Back Domestic Violence Bill" (13 February 2017) Radio NZ <<http://www.radionz.co.nz/news/national/324417/govt-won't-back-domestic-violence-bill>>.

<sup>53</sup> Sherilee Kahui, Bryan Ku, and Suzanne Snively "Productivity gains from workplace protection of victims of domestic violence" (21 March 2014) New Zealand Public Service Association <<https://www.psa.org.nz/assets/Reports/Workplace+Productivity+Improvements+for+DV+21+May+2014.pdf>> at 32.

<sup>54</sup> Above, n 53, at 37.

<sup>55</sup> Suzanna Snively "The Audacity of Caring" (22 July 2015) National Council of Women New Zealand <<https://www.ncwnz.org.nz/suzanne-snively-the-audacity-of-caring/>>.

<sup>56</sup> Above n 53, at 25.

<sup>57</sup> Above 53.

<sup>58</sup> Eileen Appelbaum and Ruth Milkman "Leaves That Pay: Employer and Worker Experiences with Paid Family Leave in California" (15 January 2011) Center for Economic and Policy Research: City University of New York <<http://cepr.net/documents/publications/paid-family-leave-1-2011.pdf>> at 47.

<sup>59</sup> (6 May 2004) 617 NZPD 13354.

- Schedule a review by the Human Rights Commission or some other such body into the desirability of extending domestic violence leave beyond 10 days, after the law has been in operation for a few years. It may be preferable to only consider allowing additional *unpaid* leave.