



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

**Submission of the
New Zealand Council of Trade Unions
Te Kauae Kaimahi**

To the

Justice and Electoral Select Committee

on the

Domestic Violence - Victims' Protection Bill

P O Box 6645

Wellington

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1. Introduction

- 1.1. This submission is made on behalf of the 30 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With 320,000 members, the CTU is one of the largest democratic organisations in New Zealand.
- 1.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.
- 1.3. The CTU recognises the expertise and experience of our affiliated unions who have experience in this employment issue. We support the submissions from CTU affiliates. These submissions reflect union experiences, policies and their support for paid domestic leave as a minimum employment standard. A number of our affiliates and union organisers have developed particular expertise in domestic violence as it affects workplaces. That experience translates into a deep understanding of domestic violence in the context of women's labour force participation, wages, leave and flexible working arrangements.
- 1.4. This CTU submission states our policy and experience with domestic violence and explains why it is a trade union and employment issue. The last section of the submission recommends technical changes to the Bill to meet the objective of providing the best employment protections for people affected by domestic violence.

2. The Evidence and the Need for this Bill

- 2.1. The CTU welcomes the opportunity to make a submission on this Bill. We applaud the decision by all political parties and all MPs to fully support this Bill to a Select Committee process. The consensus among Parliamentarians and the agreement by all who spoke at the first reading of the Bill was an unusual occurrence. It reflects that there is a national consensus about the need for more action on this issue of significant national importance.
- 2.2. This Bill was unanimously referred to Select Committee not only because of the high level of concerns about domestic violence but also through community leaders and groups such as women's refuges, NGOs and trade unions acting together and calling for the employment needs and rights of victims of domestic violence to be better protected and advanced.

- 2.3. The problem of domestic violence cannot be addressed alone or separately. And nor can domestic violence be treated or responded as a personal problem and individual issue. All levels of government, and organisations at a national and local levels have a part to play in responding to this issue with its tragic and costly consequences. Change will only happen by concerned efforts and strategies and interventions that work together and reinforce each other.
- 2.4. The call for action is driven by our appalling domestic violence statistics. Official NZ Police statistics show that there were 110,114 call outs in 2016 alone for family violence incidents.
- 2.5. Women are at higher risk of domestic violence. A study in 2004 (Fanslow, J & Robinson, E, 2004) reported that approximately 1 in 3 ever-partnered women reported that they had experienced at least one act of physical and/or sexual violence by an intimate partner, and experience of physical and/or sexual violence by a current or previous intimate partner within the previous 12 months was reported by approximately 5% of respondents.
- 2.6. This research found that the majority of violence incidents were perpetrated by current or former male partners. The research concluded that the high lifetime prevalence of all forms of violence against women shows that there must be more serious effort directed to primary prevention of violence.
- 2.7. The statistics show a rising rates of domestic violence incidents are being reported. NZ Police recorded 110, 114 family violence investigations in 2015 – up 85 from 101, 981 in 2014. In 2013 there were 95,101 family violence investigations (Ministry of Social Development, 2017). The NZ Police record a family violence investigation on average every five and a half minutes. 76% of family violence incidents are not reported to the Police. 50% of Intimate Partner Violence (IPV) deaths occurred at the time of actual or intended separation. 76 % of recorded assaults against women are committed by an offender that is identified as family. About half of all homicides in New Zealand are committed by an offender that is identified as family.
- 2.8. The Ministry of Social Development campaign, “It’s not Ok”, has been effective in reaching into local communities and increasing knowledge about family violence, changing attitudes and providing information about where to seek help. Despite this programme and other good programmes, such as the Ministry of Health, Family Violence Intervention Programme that responds to the health effects of family violence, a more systemic approach across all sector is needed to reduce domestic violence rates in New Zealand.

- 2.9. It is a step forward that domestic violence is now recognised as a workplace issue and that workplaces are recognised an essential part of an effective prevention and response strategy to domestic violence.
- 2.10. We welcome the approach to use employment law and the new health and safety legislation as a tool and lever to reduce domestic violence and support victims of domestic violence. Using employment law to advance and respond to social concerns and issue has many precedents which are discussed later in this submission.

3. Domestic Violence is a Trade Union Issue

3.1. Though domestic violence is an issue affecting both women and men, more women than men are affected and are victims of domestic violence. Domestic violence is an issue that the CTU Women's Council have identified as a priority action area. 58% of trade union members in New Zealand are women.

3.2. Many of the people experiencing domestic violence are in employment. By supporting women to remain in paid employment, workplaces can through secure employment and support assist women on their pathway out of violence. Keeping a job can be critical to prevent a woman becoming economically trapped in a violent relationship and is a key pathway to leaving a violent relationship (Patton, S, 2003).

3.3. The CTU has been an advocate for the elimination of violence against women. In 2009 at the CTU Conference this remit was passed:

“That the CTU affiliated unions endorse and support the campaign to eliminate violence against women in all its forms, including sexual harassment and bullying, and calls particularly on male trade union leaders to lead and support union-endorsed activities to eliminate violence against women”.

3.4. The CTU and our affiliates have used the “It’s not OK campaign” resources at CTU and union events and seminars extensively. We have also participated in other anti-violence campaigns. A number of male trade unions leaders have been active in the White Ribbon Campaign.

3.5. The CTU and affiliated CTU unions have been inspired and established a close relationship with an Australian initiative called the Domestic Violence Workplace Rights and

Entitlements Project¹. The goal of this Project was reduce the impact of family violence on working women by achieving better workplace rights that enable domestic violence victims to stay safely in their jobs. The Project informed Australian unions and employers about domestic violence issues in the workplace, and promoted the introduction of domestic violence provisions in enterprise agreements.

3.6. As a result of that campaign, paid domestic violence leave was introduced across Australia in 2010 in the form of domestic violence clauses in collective bargaining enterprise agreements. Now over 1.6 million Australian workers are covered by collective agreements with domestic violence clauses containing the following provisions:

- Dedicated additional and paid family and domestic violence leave;
- Confidentiality arrangements re employee details for assurance and respect respected;
- Workplace safety planning strategies to ensure protection of employees is clearly understood by the parties concerned;
- Agreements that provide for referral of employees to appropriate domestic violence services ; nominated / contact person(s) must be provided with appropriate training and paid time off to facilitate this role;
- Employees are entitled to family and domestic violence leave and should also be able to access flexible working arrangements where appropriate;
- Employees are protected against adverse action or discrimination on the basis of their disclosure of or experience of, family and domestic violence.

3.7. Inspired by the success of this Australian project several CTU affiliates have pursued a similar strategy and have introduced domestic violence provisions into collective employment agreements. These provisions, especially the provision of 10 days leave, are similar to some of the provisions in this proposed Bill.

3.8. There has been some encouraging progress in the New Zealand public sector with a handful of state sector employers having domestic violence provision negotiated into collective agreements. Three state sector employers - the Human Rights Commission, the Government Communications Security Bureau and GNS Science have separate and specified domestic violence leave entitlements. Three more state sector agencies – the Ministry of

¹ <https://nzfvc.org.nz/news/australian-clearinghouse-leads-domestic-violence-workplace-project>

Women, Crown Law and the Ministry of Justice - have clauses in their agreements with the discretion to permit leave. Two other state sector agencies are in negotiations and working on policy to include domestic violence leave protections in their agreements.

- 3.9. As public and community concerns about domestic violence rates have increased, some major private sector workplaces have introduced measures for domestic violence leave for employees. The Warehouse announced in 2015 that it will provide 10 days leave for people who were experiencing domestic violence. ANZ, Countdown and the University of Auckland all offer forms of domestic violence leave.
- 3.10. But an optional and voluntary policy which depends on managerial discretion will not produce the impact that is necessary to make widespread change or reach enough working people. Australian unions and anti-violence groups are arguing for domestic violence leave to be a minimum employment standard for all Australian employees.
- 3.11. This call is driven to counter the misperception that domestic violence only affects those in lower socio-economic groups or women not in employment. This was shown very clearly by an Australian Bureau of Statistics survey on personal safety in 2005 which found that nearly two-thirds (62.9%) of Australian women who reported experiencing violence by a current partner were in paid employment (Australian Bureau of Statistics, 2006). It is reasonable to consider that the New Zealand experience would be similar.
- 3.12. New Zealand trade unions are supported in their position on this issue by the international trade union movement. It is a priority issue for many international trade unions, and for the international body of whom we are a member - the International Trade Union Confederation (ITUC). As Sharan Burrow, ITUC General Secretary, says,

“Governments have the responsibility to stop violence against women, but too many of them are failing to do so. Impunity is the norm in many places, so we need better laws to prevent violence, and real enforcement of these laws to protect women and girls.”²

- 3.13. Violence against women is on the agenda of the International Labour Organisation (ILO). The ILO has been working for several years to develop an instrument on violence and harassment against women and men in the world of work. On 8 November 2016 the ILO

² <http://www.ituc-csi.org/stop-violence-against-women,12451?lang=en>

Governing Body unanimously endorsed the work and conclusions by a group of experts on the issue of violence in the world of work and requested the ILO Office to prepare the first standard setting discussion by the International Labour Conference in 2018.

4. The Costs of Domestic Violence

- 4.1. A report in 2014 for the Glenn Inquiry estimated the economic cost of domestic as between \$4.1 to \$7 billion per year and rising (Kahui, S, 2014). Research commissioned by the Public Sector Association (PSA) looking at the productivity gains from workplace protection of victims of domestic violence estimated that the cost to employers in New Zealand for the year 2014 was at least \$368 million (Kahui, S, Ku, B, & Snivley, S, 2014).
- 4.2. In Canada the economic costs of violence against women including health care for victims, criminal justice social services and lost productivity are estimated to be in the billions of dollars (Public Services Health and Safety Association, 2010) . But the impacts for victims their family and friends cannot solely be measured in dollars.
- 4.3. Victims of domestic violence are among groups at risk of poverty and exclusion. The nature of domestic violence means its victims are often unable to work, work in their preferred career or stay in job long term.
- 4.4. Cost may be raised by employers as a reason for not implementing domestic violence leave. In Australia when the Fair Work Commission was considering a proposal of up to 10 days leave for people who had been subject to domestic or family violence to attend legal proceedings, medical and court appointments, the employers argued that the costs could be prohibitive and there were some made claims of it costing billions of dollars a year.
- 4.5. Claims like this must be refuted. An analysis commissioned to look at these claims found them to be highly and wildly exaggerated (Stanford, J, 2016). The research considered the likely impact of an extension of domestic violence paid leave in Australia to all employees on the payroll costs of employers to be so small that it would be difficult to measure. The key outcome from the research was that, though in practice 1.6 million people in Australia have provisions for domestic leave, through Collective Employment Agreements, they are not frequently used. The key relevant findings were that:
 - Only 1.5% of female employees and around 0.3% of male employees are likely to utilise domestic leave in a year

- That the costs of domestic violence in all sectors of the society is around 1% of GDP
- That payments are low/ modest on order (in Australia) of \$80-\$120 Million for the whole country – 1/15th of 1% of the total existing payroll
- That the costs are offset by the benefits of reduced turnover and increased productivity.

4.6. That claims from employers that the provisions of paid domestic leave would damage Australian international competitiveness were also not supported. The researchers instead stated that it may enhance Australia's international competitiveness.

5. Why is employment law change necessary?

- 5.1. This Bill is necessary to ensure that legal provisions are available to assist victims of domestic violence obtain essential support in order to escape violent situations and rebuild their lives. Economic insecurity is one of the greatest factors inhibiting victims of domestic violence from escaping violent situations at home.
- 5.2. Through the provisions of paid leave and other support mechanisms, workplaces can play a powerfully effective role in supporting people to escape violence and contribute to the prevention of family and domestic violence.
- 5.3. The Victorian Royal Commission into Family Violence found that workers affected by domestic violence would often exhaust their other leave entitlements (Royal Commission into Family Violence: Summary and Recommendations, 2016).
- 5.4. Employment can be the sole normalising life experience remaining to a person experiencing domestic violence. Staying in employment is essential not only for the stable routine and social relationships but also imperative from a financial basis. Leaving an abusive relationship is one of the hardest things a victim can do. By the time that time there is very little "normal" in life. Risk of violence is greatly increased at the time of leaving a relationship.
- 5.5. Leaving an abusive relationship is made easier by a stable and sympathetic workplace that provides support and understanding. Leaving a relationship in impoverished circumstances and without an income makes that decision more difficult and, for many, impossible.

- 5.6. A study in 2013 by the PSA confirms how widespread domestic violence is and why it is an employment issue (Public Service Association, 2013). This research estimated the extent and impacts of domestic violence on people employed in the public service sector. Of those who participated in the survey 99% said that domestic violence can impact on the work lives of employees; 82% thought that workplace entitlements, such as paid leave and safety policies could reduce the impact of domestic violence in the workplace.
- 5.7. The results of the survey are consistent with similar research conducted internationally. 55% of the participants in the research reported having some experience with domestic violence either in their personal lives or through someone they knew; 31% reported that those who had an experience with domestic violence had it occur while they were in paid employment or the person they knew was in paid employment. 26% of participants had personally experienced domestic violence and more than half of this group (58%) reported being in paid employment at the time.
- 5.8. The PSA research reported that of those who had personally experienced domestic violence while in paid employment 38% reported that the abuse had a negative impact on their ability to get to work. The most common reasons reported by this group for this negative impact were physical injury or restraint (62%), fear of leaving children alone with the abusive partner (41%), partner hiding car keys (26%) and failure of the partner to care for children (24%).
- 5.9. A third of those who responded to a question in the survey about police involvement reported that they had gone to the police about the violence (33%). 8% were involved in Family Court proceedings and one in four had obtained a protection order. Of those who did obtain a protection order, 77% reported that that protection order did not include their workplace.
- 5.10. For women in an abusive relationship the workplace can be both a threat and a source of support and protection. It can provide time for the person to be away from their abuser and for the women to be valued for her skills and ability as well as providing normality in a deeply chaotic and fearful life. It provides income that gives some independence. And it reduces social isolation. But it can also be a place where a person experiencing domestic violence needs protection.
- 5.11. Minimum entitlement in employment law available on a universal basis is the best form of protection and the most enabling for people affected by domestic violence. Having

employment support and protections available and not having to negotiate on an individual or case-by-case basis can be critical for responding to serious needs in a timely way.

- 5.12. Some will argue that domestic violence protections are not an employment law function. This is not so. Crucial employment standards have been established in legislation because of new and important social concerns and issues: maternity leave, paid parental leave, flexible working hours. New Zealand and international employment law has a history and a role in responding to current social issue and concerns. This Bill, if enacted, reflects contemporary social issues for women in employment.
- 5.13. An earlier precedent of pursuing social change in employment legislation is the advancement of equal pay (The Public Service Equal Pay Act 1960, and in 1972, The Equal Pay Act). In 2002 paid parental leave was provided through The Parental Leave and Employment Protection Act 1987. A more recent addition is the introduction into the Employment Relations Act 2000 of legal provisions to request flexible working hours to respond to the expectation of workplaces to provide for flexible working practices to reflect the changes in working and of family life in New Zealand families. The current changes to the equal pay legislation reflects the desire to respond to current employment realities and expectations.

6. Domestic Violence is a Workplace Health and Safety Issue

- 6.1. Domestic violence has a profound effect on workers (the victims, their supporters and their colleagues). A high risk is the likelihood that the abuser will confront or harass the victim at or near their place of work. A failure by a Person in Control of a Business Units (PCBU) to eliminate or minimise these risks may easily lead to profound psychosocial and even physical harm to the victim. As we note in paragraph 4.3, 50% of intimate partner deaths occur at the time of separation.
- 6.2. Often there will be reasonably practicable steps that a PCBU can take in the workplace to reduce these risks such as reassigning the victim from public-facing roles, cybersecurity measures to prevent electronic harassment, ensuring that company car parks are adequately lit and secure and so on. Domestic violence creates risks in and around the workplace. We fully support the specific recognition of this risk in the Health and Safety at Work Act 2015.
- 6.3. We do not support the placing of the duty to manage this risk solely on the PCBU that manages or controls the workplace, however. Like other types of health and safety risks,

there may be reasonably practicable steps that sit with other PCBUs. The duty to control the risk should be a shared duty between PCBUs to the extent they are able to manage and control the risk.

- 6.4. The Ministry of Business Innovation and Employment and WorkSafe as the health and safety policy and regulatory agencies have an important part to play in providing guidance and regulations around what is reasonably practicable for a PCBU to do in relation to domestic violence in the workplace (and this will likely differ depending on type of business and resources available to it).
- 6.5. Training workers, managers and health and safety representatives to recognise signs of abuse and knowing how to suggest ways to access appropriate support is imperative.

7. Domestic Violence is a Gender Equality Employment Issue

- 7.1. The vast majority of the victims/ survivors of domestic violence are women and children.
- 7.2. While violence can occur in both mixed and same sex relationships, and also affect men, it is women who are more likely to be victims of domestic violence.
- 7.3. Though the relationship between gender and violence is complex there is evidence suggesting that gender inequalities increase the risk of violence by men against women and inhibit the ability of those affected to seek protection.
- 7.4. In the employment context gender inequality translates into women on lower pay rates, more likelihood of precarious employment and direct gender discrimination in employment. Employment is a critical issue for women affected by domestic violence and can make the difference between leaving an abusive relationship or not.
- 7.5. Gender equality is a key part of the solution in reducing New Zealand's rates of violence against women. In an employment context that means employment which ensures that the conditions of employment that provide for economic independence, safety and security are assured and in place.

8. Domestic Violence is a Human Rights Issue

- 8.1. Working people are entitled under human rights law to be protected from discrimination, harassment and abuse in the context of their work. The right to protection from violence

and to security is embedded in international law and human rights agreements that New Zealand has ratified including:

- The International Covenant on Civil and Political Rights
- The Convention on the Rights of the Child
- The Convention on the Elimination of all Forms of Discrimination against Women
- The Convention on the Elimination of All Forms of Racial Discrimination
- The Convention on the Rights of Persons with Disabilities
- The Declaration on the Rights of Indigenous Peoples.

8.2. Domestic and family violence violates a wide range of human rights including the right to life; to the highest attainable standards of physical and mental health, to the right to decent work, to be free from torture and other cruel, inhuman or degrading treatment or punishment.

8.3. In 1993 a UN Declaration on the Elimination of Violence against Women was passed³. The objective of this Declaration was to strengthen and complement the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).

8.4. Article 1 of the Declaration on the Elimination of Violence against Women, defines violence against women as *“any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”*

8.5. The 2012 Committee on the Elimination of Discrimination against Women – the expert UN Committee who monitor CEDAW, was hard hitting in its comments and called for New Zealand to better protect women against violence through legislative and institutional frameworks. The Committee identified a number of concerns including that many of the recommendations in the Report of the Taskforce for Action on Sexual Violence had not been implemented. While positive developments such as the “It’s not Ok” Campaign were noted, the Committee expressed its concern about the high and increasing levels of violence against women (United Nations, 2012). The committee called upon the State to :

(a) to take the necessary measures to encourage the reporting of domestic and sexual violence cases, including by ensuring that education professionals, health care

³ http://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.21_declaracion%20eliminacion%20vaw.pdf

providers and social workers are fully familiar with relevant legal provision and are sensitized to all forms of violence against women and are capable of complying with their obligations to report cases.

- 8.6. International instruments provide a benchmark. And they are effective in raising standards. New Zealand's practice is that if an international treaty has been ratified then the domestic law should be consistent with the ratified international treaty.
- 8.7. A welcome new development is the specific inclusion of violence against women in the Sustainable Development Goals (SDGs) and targets. Measures to prevent and address violence against women are in 3 of the 17 goals: Goal 3: Healthy Lives and Wellbeing for All; Goal 5: Gender Equality and Empowerment; and Goal 16: Peaceful and Inclusive Societies.
- 8.8. New Zealand is a signatory to the SDGs. Our adoption of the SDGs carries with it the expectation that domestic policy and law will be consistent with the commitments we make to international conventions and law.

9. The Domestic Violence – Victim's Protection Bill

9.1. Part 2- The Employment Relations Act 2000

- 9.1.1. The flexible working provisions in the Bill that are proposed in this Bill need to be changed to reflect the changes made in 2014 to the Employment Relations Act 2000, Part 6AA (Flexible Working).
- 9.1.2. The CTU has previously submitted that the flexible working hours provisions in the Employment Relations Act 2000, are inadequate to serve the purpose intended. Our major issue is that the current provision provide only a right to request and not a statutory right to flexible working hours.
- 9.1.3. Accessing flexible working hours is even more important for people experiencing domestic violence. Usually, requests by victims of domestic violence are urgent and essential to their ability to continue working. This urgency mandates a stronger and faster system than the current flexible work provisions.
- 9.1.4. Under the current Part 6AA, flexible working requests can be too easily refused without reasonable justification and are subject to challenge only on process grounds. Flexible working requests should only be turned down when the

employer has reasonable grounds to refuse and that these reasons should be able to be subject to challenge by the employee. Therefore we recommend the insertion of “reasonably” before “accommodated” in proposed s 69ABD(2) and a new proposed s 69ABE(1)(c) “has unreasonably declined a request on one or more of the grounds under s 69ABD(2).”

- 9.1.5. Acting with responsiveness to these flexible working hours requests is critical. We recommend changes to s 69(AB (b) to require an employer to deal with a flexible working hours request as soon as possible and no later than 5 days after receiving it.
- 9.1.6. Because domestic violence can be an ongoing issue repeat issue for some domestic violence victims there should be no restriction on the frequency of requests for flexible working hours. Section 69ABB should allow an employee who is a victim of domestic violence to make a request at any time. Section 69ABC (a) needs changing for an employer to deal with the request as soon as possible and not later than 5 working days.
- 9.1.7. An employer has a critical role to play in supporting and responding to a person experiencing domestic violence but they do not necessarily have specialist information or knowledge. We recommend a change to section 69 ABC to require employers to provide the employee with information about or referral on to appropriate specialist domestic violence services.
- 9.1.8. We recommend that the penalty for non-compliance should be the same as penalties generally under the Employment Relations Act 2000 and not capped at \$2,000 (proposed s 69ABE (7)).
- 9.1.9. We are concerned that referring refusals to consider flexible work hours requests to Labour Inspectors to assist (proposed s 69ABE) will not provide a timely or adequate response. Due to resourcing issues, the Labour Inspectorate is much slower than the Employment Mediation Service. The Employment Mediation Service is also much more skilled at interest-based problem solving than the Labour Inspectorate. Rather than putting pressure on the already stretched Labour Inspectorate, the affected employee should be able to request urgent mediation.

9.1.10. Confidentiality is a crucial component of employment for victims of domestic violence. An assurance of this in law is necessary and should be incorporated and added as into s 69ABC (e) as an employer duty. We also support the addition of a new section stating that the employee's request for domestic violence leave and their domestic violence document are kept confidential.

9.2. **Part 3- The Health and Safety at Work Act 2015**

9.2.1. Unlike many of types of legislation, the Health and Safety at Work Act 2015 is performance-based legislation (based on the Australian "Robens" model). This means that the Act sets out general duties (such as the duty to manage risks so far as is reasonably practicable) which are then specified in regulations or guidance developed in partnership between Government, workers and employers. This devolved regulatory structure poses challenges for a piece of primary legislation such as a Member's Bill.

9.2.2. We recommend that there be a general duty on PCBUs to respond to domestic violence. We support that instead of cl 11 amending s 37 that a new Section 36A with similar content be added which sets out the duty of the PCBU.

9.2.3. A new 36A section would be consistent with the Health and Safety at Work Act 2015 structure and describe the duty of the PCBU in relation to domestic violence and the risk of domestic violence. It should identify that the PCBU must ensure that the health and safety of persons in the workplace is not put at risk by hazards resulting from domestic violence.

9.2.4. We urge that the formulation of "all reasonable and practicable steps" under cl 12 is avoided. This is too close to the formulation in the Health and Safety in Employment Act 1992 of "all reasonably practicable steps" and the Health and Safety at Work Act 2015 framing of "reasonably practicable." Both of these terms have very specific technical meanings and the current phrasing confuses these substantially.

9.2.5. We recommend that training to support victims of domestic violence is in addition to the training for Health and Safety Representatives under Clause 12 of this schedule.

- 9.2.6. Domestic violence is both unreported and under-reported and while there is a need for an expansive set of ways for victims to claim support and protection we have some concerns that too expansive a list could be used as evidence that a worker is a domestic abuser (as is required by the changes to the HSW Act (cl 11). While the Employment Relations Act (Section 103A) provides protections, these obligations need to be identified in policies and regulations under the Health and Safety at Work Act 2015.
- 9.2.7. A challenge with the Bill as a drafted is that it appears to suggest that a domestic violence document may be used to identify a worker for a PCBU as an abuser and thereby trigger a requirement for the PCBU to take steps to address this. There are significant challenges with the natural justice of such an approach: many of the domestic violence document category (such as a note from a doctor or a domestic violence support agency) provide no ability for an alleged abuser to put their side of the case. For them to face employment consequences such as suspension or redeployment is a grave breach of procedural fairness. While an employer will be subject to the test of justification in s 103A of the Employment Relations Act 2000 for their actions, a PCBU who is not an employer may not be.
- 9.2.8. We urge for inclusion in the protocols and policies for domestic violence that employers have to follow processes of natural justice and cannot act to disadvantage or dismiss a person who is alleged to have committed domestic violence without proper cause or adequate investigation.

9.3. **Part 4- The Holidays Act 2003**

- 9.3.1. Three changes are proposed/ supported:
- 9.3.2. The addition of a confidentiality requirement for approval for domestic leave in s 72C.
- 9.3.3. The deletion of proposed s 72C (5) (b). The reference to “within a year” in proposed s 72C (5) (a) renders this redundant.
- 9.3.4. That it is either “sick leave” or “bereavement leave” in proposed s 72C (6) rather than “sick or bereavement leave.”

9.4. **Part 5- The Human Rights Act 1993**

- 9.4.1. The Bill supports working people affected by domestic violence to maintain employment thereby reducing the impacts of that violence on individuals and workplaces.
- 9.4.2. Adding the inclusion of being a victim of domestic violence as a prohibited ground of discrimination is an essential human rights protection given that the impact of the Bill could mean that a higher number of employees will come forward to expose domestic violence and to request employment protection. The addition of being a victim of domestic violence as a prohibited ground of discrimination is essential to prevent employees facing adverse employment effects – such as pressure to resign - after identifying that they are victims of domestic violence.
- 9.4.3. Adding being a victim of domestic violence as a prohibited ground of discrimination in the Human Rights Act will ensure that employers cannot discriminate against an employee if their attendance or performance at work suffers as a result of being a victim of domestic violence.
- 9.4.4. The Australian Capital Territory has introduced legislation to make it illegal to discriminate against an employee because they are being, or have been, subject to family violence or domestic violence.
- 9.4.5. The CTU strongly supports the inclusion of being a victim of domestic violence as a prohibited ground of discrimination in the Human Rights Act. This is consistent with our international obligations.

10. Conclusion

- 10.1. The Domestic Violence—Victims' Protection Bill will provide legal and employment support and protection to New Zealand workers affected by domestic violence. It will assist workplaces to manage the impacts of domestic violence and support people affected by domestic violence to maintain employment and manage in an organised and supportive way their complex needs and arrangements.
- 10.2. Reducing the impacts of domestic violence requires an integrated approach, involving all sectors of the community, including the workplace. Changes to employment health and safety and human rights law to protect victims of domestic violence will strengthen and

complement other measures and programmes to reduce New Zealand appalling domestic violence statistics and domestic violence outcomes.

- 10.3. Employment law has an essential role in providing protections and support for working people in responding to current social and economic issues. Domestic violence is a workplace health and safety responsibility as well as an employment issue.
- 10.4. There is a duty in a modern society, in a reasonably affluent society and in a country that has led human and employment rights developments to ensure that working people have the legal safeguards and protections to counteract the threat and reduce the risk of domestic violence.
- 10.5. Domestic violence is a gender equity issue. Changes to employment law are part of the package of changes that are needed to ensure full gender equality in employment for working women.

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