

# Domestic abuse leave for clergy

## 23/18 Responding to Domestic Abuse

(A report from the Standing Committee.)

### Key Points

- At its meeting of 29 June 2019, the Standing Committee resolved to appoint a committee to consider the matter of domestic violence leave for clergy, in time for the Standing Committee to make a recommendation to the ordinary session of the Synod in 2020.
- The committee recommends the Standing Committee agree that provision be made by parishes to provide leave to clergy who are unable to perform their duties because they are experiencing domestic abuse or dealing with the impact of experiencing domestic abuse.
- The committee recommends that this provision for domestic abuse leave for clergy be effected by way of a request from the Synod that the Standing Committee amend the annual 'Guidelines for the Remuneration of Parish Ministry Staff', with the changes effective 1 January 2021.

### Purpose

1. The purpose of this report is to provide a recommendation regarding the matter of domestic violence leave for clergy.

### Recommendations

2. Synod receive this report.
3. Synod consider the following motion to be moved at a suitable ordinary session of Synod "by request of the Standing Committee" –

"Synod, noting the report 'Domestic abuse leave for clergy' –

- (a) agrees in principle that provision be made by parishes to provide leave to members of clergy who are unable to perform their duties because they are experiencing domestic abuse or dealing with the impact of experiencing domestic abuse; and
- (b) requests the Standing Committee to amend its annual Guidelines for the Remuneration of Parish Ministry Staff to provide for domestic abuse leave for clergy on this basis, with the changes effective 1 January\* 2021."

\* *Subsequent to the Standing Committee's consideration of this matter in March 2020, the ordinary session in 2020 was postponed. As a result, the mover of the motion at Synod intends to move the motion in a form incorporating a date of 1 July 2021 in place of '1 January 2021'.*

### Introduction

4. This report conforms to the use of the terminology of 'domestic violence' in the report to the preferred terminology of 'domestic abuse' where appropriate.

### Background

5. At its meeting on 12 November 2018, the Standing Committee noted the policies and resolutions passed at the 2018 session of the Synod related to the area of domestic abuse and appointed a monitoring committee comprising Canon Sandy Grant and Archdeacon Kara Hartley (**Domestic Violence Response Monitoring Committee**).

6. One function of the Domestic Violence Response Monitoring Committee is to report to the Standing Committee on the progress of the implementation of these policies and resolutions.
7. At its meeting on 17 June 2019, the Standing Committee received a progress report from the Domestic Violence Response Monitoring Committee, and agreed to its various recommendations.
8. Relevantly, paragraph (d) of the report's recommendations requested that the Standing Committee –  
“agree to appoint a small committee, including some familiar with the work that resulted in the *Parental Leave Ordinance 2016*, to consider the matter of Domestic Violence Leave for clergy in time for Standing Committee to make a recommendation to the ordinary session of Synod in 2020, as detailed in paragraph 55.”
9. At its meeting on 29 July 2019, the Standing Committee noted its agreement to paragraph (d) of the report's recommendations and resolved to –
  - (a) appoint Archdeacon Kara Hartley (as Chair), the Rev Natalie Ray, the Rev Mark Tough, and Mr James Flavin (Chair of the Stipends and Allowances Committee) as a committee to consider the matter of Domestic Violence Leave for clergy, in time for Standing Committee to make a recommendation to the ordinary session of Synod in 2020; and
  - (b) request the committee to provide its recommendation to Standing Committee by 1 May 2020.”
10. In addition to the members specified in the above resolution of the Standing Committee, the committee (the **Committee**) includes Ms Susan Duc (Diocesan Legal Counsel).
11. The Committee met once, on 30 October 2019.

## Context

12. At its meeting in May 2019, the Standing Committee received a report from the Stipends and Allowances Committee (the **Stipends Committee**) regarding its preparation of the annual Guidelines for the Remuneration of Parish Ministry Staff (**Remuneration Guidelines**).
13. Among other matters, this report noted the Stipends Committee had agreed to recommend to the Standing Committee that it –  
“consider passing an ordinance to establish a model policy for family and domestic violence leave for ordained ministry staff (perhaps along the lines of the *Parental Leave Ordinance 2016*) which either matches or exceeds the minimum standards now applicable to employees”.
14. In the Diocese of Sydney, ordained ministry staff are ‘officeholders’ whose terms and conditions of office are set out in the ordinances and guidelines of the Diocese. Non-ordained ministry staff are ‘employees’ whose terms and conditions of employment are governed by federal and state legislation, including the *Fair Work Act 2009* (Cth) (the **Act**).
15. The Act sets out the National Employment Standards (the **NES**) which are the ‘minimum standards’ that apply to all employees, including an entitlement to family and domestic violence leave. Non-ordained ministry staff have access to the NES because they are employees. Ordained ministry staff do not have access to the NES because they are ‘officeholders’ and not ‘employees’.

## NES entitlement to family and domestic violence leave

16. On 12 December 2018, changes to the Act took effect to provide an NES entitlement of five days’ unpaid family and domestic violence leave each year.<sup>1</sup> The entitlement is non-cumulative, and available in full (i.e., not pro-rated) to all full-time, part-time and casual employees.

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<sup>1</sup> Sections 106A(1) and (2) of the Act.

17. The Act states that an employee may take unpaid family and domestic violence leave if:
  - (a) the employee is experiencing family and domestic violence; and
  - (b) the employee needs to do something to deal with the impact of the family and domestic violence, and it is impractical to do so outside their ordinary hours of work.<sup>2</sup>
18. The Act defines 'family and domestic violence' as violence, threatening or other abusive behaviour by a close relative of an employee that seeks to coerce or control the employee, and causes the employee harm or to be fearful.<sup>3</sup>

## Domestic abuse leave for clergy

### Concept of 'leave' for clergy

19. Strictly speaking, 'leave' is not a concept relevant to clergy. Clergy hold office and have certain duties in relation to that office. Clergy are not 'paid' to work any set pattern of hours, but are entitled to payment of their stipend, allowances and other benefits for as long as they are licensed and appointed to the relevant office.<sup>4</sup>
20. There are ordinances which provide 'entitlements' to some forms of leave, such as annual leave and long service leave.<sup>5</sup> The purpose of these ordinances is to manage expectations of the parish (and clergy) regarding these forms of absence by clergy from their parish, and to prevent the making of any complaints regarding the wilful neglect of duties by clergy who are absent for reason of annual leave or long service leave.<sup>6</sup>
21. In essence, the term domestic abuse 'leave' in relation to clergy is a construct, or legal fiction. Nonetheless, for convenience, this report will use the term domestic abuse 'leave' to refer to periods of absence by clergy who are unable to perform his or her duties because they are experiencing domestic abuse or dealing with the impact of domestic abuse.

### Provision of domestic abuse 'leave' for clergy

22. Currently, there are 561 married clergy in the Diocese who are licensed to a parish. Nine of these are women. The Committee recognises that both men and women experience domestic abuse, but statistics indicate that in Australia, a significantly higher proportion of victims of domestic and sexual violence are women.<sup>7</sup>
23. Given the particular nature of domestic abuse and the availability of the NES entitlement to family and domestic violence leave for lay ministers, assistance should also be made available for clergy.
24. The provision of domestic abuse 'leave' for clergy would also be consistent with the Diocese's domestic abuse policy<sup>8</sup> (the **Policy**) and properly demonstrate the Diocese's support of clergy experiencing domestic abuse.

<sup>2</sup> Section 106B(1) of the Act.

<sup>3</sup> Section 106B(2) of the Act.

<sup>4</sup> The Committee acknowledges the general assumption that clergy work a six-day week.

<sup>5</sup> See clause 3 of the *Annual Leave Ordinance 1983*; Part VI of the Schedule to the *General Synod – Long Service Leave Canon 2010 Assenting Ordinance 2010* and clause 3(1) of the *Long Service Leave Ordinance 1973*.

<sup>6</sup> Clause 2(3) of the *Offences Ordinance 1962* and clause 6(2)(a) of the *Ministry Standards Ordinance 2017*.

<sup>7</sup> The Federal Government reports that 1 in 6 women and 1 in 16 men have experienced physical and/or sexual violence by a current or previous partner since age 15: see Australian Institute of Health and Welfare, 'Family, domestic and sexual violence in Australia: continuing the national story, 2019' at [https://www.aihw.gov.au/getmedia/f34a0f82-e60c-4aec-a90b-3b23c009be31/Twitter\\_FDSV\\_2019\\_Main.jpg.aspx](https://www.aihw.gov.au/getmedia/f34a0f82-e60c-4aec-a90b-3b23c009be31/Twitter_FDSV_2019_Main.jpg.aspx).

<sup>8</sup> The Anglican Diocese of Sydney's domestic abuse policy is entitled '*Responding to Domestic Abuse: Policy and Good Practice Guidelines*' (dated 17 October 2018). It is available at <https://safeministry.org.au/wp-content/uploads/Responding-to-Domestic-Abuse-Policy-Guidelines-and-Resources.pdf>.

25. The Policy defines 'domestic abuse' as –

“1.1.2 **Domestic abuse** includes but is not limited to emotional, verbal, social, economic, psychological, spiritual, physical and sexual abuse. Such behaviour often seeks to control, humiliate, dominate or instil fear in the victim.”<sup>9</sup>

### Approach to provide domestic abuse 'leave' for clergy

26. The Committee considered the following approaches to provide domestic abuse leave for clergy –

- (a) establishing a Diocesan 'fund' to which each parish would make a contribution by way of Parish Cost Recoveries (**PCR**);
- (b) enacting an ordinance to provide the framework for each parish to confer an entitlement to domestic abuse leave for clergy licensed to the parish, such as for parental leave;<sup>10</sup> and
- (c) amending the Remuneration Guidelines to provide for domestic abuse leave as another form of 'leave' for clergy.

27. Apart from the NES entitlement to five days' unpaid family and domestic violence leave each year, the Committee is not aware of any current express policies or practices within the Diocese which provide domestic abuse leave to staff members.

28. For the reasons set out below, the preferred approach to provide domestic abuse leave for clergy is to amend the Remuneration Guidelines (see paragraph 26(c)).

29. The provision of domestic abuse leave for clergy should have regard to the NES entitlement to domestic violence leave, which is available to lay workers. Its view is that the NES entitlement is both compassionate for the victim and reasonable for the parish.

30. As the NES entitlement is unpaid and non-cumulative, it would be unhelpfully burdensome to impose a levy on parishes to create a fund to provide for domestic abuse leave for clergy (see paragraph 26(a)), and an unnecessary administrative complexity to enact an ordinance for the grant of such leave (see paragraph 26(b)).

31. As for the amount of domestic abuse 'leave' for clergy, it would not be appropriate to specify the amount of 'leave' that a parish is to provide to clergy licensed to that parish because clergy are not strictly entitled to leave.

32. The better approach is to enable each parish to discuss and agree with a member of clergy the amount of domestic abuse leave needed in their circumstances. This approach is consistent with the provision in the Remuneration Guidelines for sick and carer's leave for clergy.

### Proposed amendments to the Remuneration Guidelines

33. The proposed amendments to the Remuneration Guidelines to provide for domestic abuse leave for clergy are included in the Annexure to this report.

34. The amendments were originally proposed to take effect from 1 January 2021. However, subsequent to the Standing Committee's consideration of this matter, the October 2020 session of Synod was postponed. The target date for commencement is now to be 1 July 2021.

35. It is proposed that domestic abuse leave will be provided as part of 'Sick and Carer's leave and other special leave'<sup>11</sup> in the Remuneration Guidelines.

36. Any member of clergy who is unable to perform their duties because they are experiencing domestic abuse or dealing with the impact of domestic abuse, will be paid the agreed stipend and allowances during the period of domestic abuse leave, or until a course of action can be mutually agreed upon.

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<sup>9</sup> An expansive description of 'domestic abuse' is set out in Appendix 1 of the Policy.

<sup>10</sup> See *Parental Leave Ordinance 2016*.

<sup>11</sup> See paragraphs 14.1 and 14.2 of the Remuneration Guidelines.

37. This approach mirrors the provision of leave for sickness or accident.<sup>12</sup>
38. The period of domestic abuse leave is not specified in the Remuneration Guidelines. As stated above, the intention is to provide the individual parish and member of clergy with a framework to discuss and agree on the appropriate amount of leave which takes into account the needs of both parties.

For and on behalf of the Standing Committee.

DANIEL GLYNN  
**Diocesan Secretary**

8 April 2021

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<sup>12</sup> See paragraph 14.1 of the Remuneration Guidelines.

## Amendments to the Guidelines for the Remuneration of Parish Ministry Staff

1. The annual Guidelines for the Remuneration of Parish Ministry Staff (the “Remuneration Guidelines”) are amended by –
  - (a) inserting the following new paragraph in the ‘Key points for 2021’ on the first page –

“Paragraph 14.1 dealing with ‘Sick and Carer’s leave and other special leave’ has been amended to provide leave for clergy who are experiencing domestic abuse or dealing with the impact of experiencing domestic abuse.”
  - (b) amending paragraph 14.1 to include the wording set out in underlined text as follows –

“14.1 If a Rector or Assistant Minister is unable to perform their duties due to sickness or accident, or because they are experiencing domestic abuse or dealing with the impact of experiencing domestic abuse, the parish must continue to pay the agreed stipend and allowances during any period of leave taken by the rector or assistant minister, or until a course of action can be mutually agreed upon (e.g., early retirement). In the case of prolonged illness (including that arising from the domestic abuse) financial assistance may be available to the parish through the Sickness and Accident Fund (refer section 16).”
2. The amendments to the Remuneration Guidelines contained herein are to take effect from 1 July 2021.