

## Parental Leave Ordinance 2016

### Explanatory Statement

#### Key Points

- The bill for the Parental Leave Ordinance 2016 seeks to provide a framework for parental leave for members of the clergy licensed to parishes (“ministers”) through a model policy that may be adopted by parishes
- Ministers are generally not entitled to parental leave under the *Fair Work Act 2009* because they are not employees

#### Evidence

##### *Background*

1. In 2015, the Synod considered exposure draft legislation to provide for parental leave for parish clergy and resolved as follows –

##### *41/15 Parental leave for parish clergy*

Synod, noting the report Parental leave for parish clergy –

- (a) agrees in principle to making provision for parental leave for parish clergy,
- (b) requests Standing Committee to consider whether such provision is best made by ordinance, by policy, or by some other instrument,
- (c) invites Synod members to send any comments on the exposure draft to the Diocesan Secretary by 31 December 2015 and requests the Standing Committee to take these comments into account in finalising a proposal for consideration at the 2016 session of Synod.

2. A total of 10 submissions were received. For the most part, these submissions addressed issues of principle rather than drafting aspects. Common issues of principle in the submissions were –

- A concern about the cost of parental leave to parishes and the potential for this to act as a disincentive for a parish to engage young women
- An inconsistency in clergy being office-holders and yet being provided with employee-like entitlements
- A need for flexibility – making provision for parental leave through a policy or guidelines rather than by ordinance

3. The Standing Committee appointed a committee comprising Archdeacon Kara Hartley (Chair), the Rev Natalie Ray, the Rev Andrew Graham and a person appointed by the Stipends and Allowances Committee (being Mr Paul Willis) to consider the submissions and bring a proposal to the Standing Committee.

##### *Achieving parental leave through a policy*

4. The Committee notes the three common themes in the submissions that are noted above and considers that parental leave should be provided through a model policy that parish councils can adopt, with or without amendment. The form of parental leave appropriate in one parish may not necessarily be appropriate in another. There needs to be flexibility to determine the best outcomes for ministry and clergy families in the local context.

5. The Committee also acknowledges that there is a diversity of views across the Diocese, held in good conscience, concerning family and, in particular, the desirability of a mother returning to work following the birth of a child. There are multiple ways to be godly in this area. Considerations with respect to parental leave for clergy include –

- The high cost of housing (and living in general) in Sydney – as more families have double-incomes, economic pressure builds for more families to have double-incomes.
- The role of clergy in modelling godly family living – and what godly family living actually looks like in a secular and materialist society where parenting responsibilities are increasingly being outsourced.
- A desire for the conditions of parish clergy to be in keeping with the standards of general society – and for our parishes to not be less generous towards clergy families with young children.

- The roles of a father and mother in a Christian family – and the common view that the interests of a child are best served by mothers’ providing primary care, especially when a child is very young.
- Differing care networks among clergy – such as the level of parental support provided by members of ministers’ extended family or friends.

*An ordinance framework for the policy*

6. The Committee considers that a parental leave policy for parish clergy should be under the framework of an ordinance rather than Synod passing a resolution to commend a model form of policy for adoption by parishes. The reasons include –

- The ordinance will require parishes to notify the Registrar when they adopt, amend or exclude the Policy. This will enable the extent of adoption of the Policy by parishes to be measured, and also for amendments to be tracked. If common problems or amendments are emerging this will provide an opportunity to improve the model form of Policy. It is proposed that the Ordinance be reviewed after a period of 3 years.
- Implementing the Policy will necessitate the overriding of provisions in other ordinances. This can only be done by ordinance. The two instances are: providing that parental leave does not interrupt continuity of service and to suspend parish cost recovery obligations pertaining to “ministry costs” while a female minister is on parental leave.
- In the event that an Assistant Minister chooses not to return to perform the duties of their office at the end of a period of parental leave, but did not resign, it would be necessary to revoke the licence of that minister. Presently this would require giving 3 months notice under the *Assistant Minister’s Ordinance 1990*, which is not practical after a person has already taken parental leave. Special provision should be made for revocation of licence if an Assistant Minister does not return to work following parental leave.

*Explanation of the policy*

Parental Leave for Women

7. Under the Model Policy a female minister will be entitled to up to 52 weeks continuous maternity leave and up to 52 weeks continuous adoption leave. These entitlements are similar to those of female employees under the national employment standards in the *Fair Work Act 2009*, except that an employee can request an additional period of leave of up to 52 weeks, which can only be refused on ‘reasonable business grounds’.

8. Parental leave is to be unpaid, except that parish cost recoveries payments pertaining to ‘ministry costs’ will be paid for the first 2 weeks of leave, which is consistent with the paternity leave period for male ministers.

9. Subject to meeting the eligibility criteria, a female minister on parental leave will be entitled to 18 weeks pay at the national minimum wage under the *Commonwealth Paid Parental Leave Scheme*. These payments are subject to income tax. The National Minimum Wage is currently \$672.60 per week before tax.

10. A female minister may remain in occupation of any accommodation usually provided by the parish during any period of parental leave if she pays an occupation fee to the wardens which the Regional Bishop has approved as being just and equitable having regard to all of the circumstances. What is just and equitable may vary depending on a variety of factors. For example: whether the accommodation is owned by the parish or leased, the market value of rent in the area, the housing needs of the other staff of the parish and any alternative housing options available to the minister.

11. The notice requirements are set out in paragraph 4 of the Model Policy. They require 3 months’ notice before the commencement of the leave, but give flexibility if it is not reasonably practicable for the minister to comply with this requirement.

12. Parental leave may be extended once under paragraph 4 at the request of the minister by her giving notice. Any further extensions must be by agreement. The total period of leave cannot exceed 52 weeks.

13. Parental leave may be cancelled or shortened at the request of the minister on the terms set out in paragraph 6 of the Model Policy.

14. Paragraph 8 of the Model Policy provides for a female minister to undertake ministry duties on a limited or part-time basis while on parental leave, subject to this being agreed between the female minister, rector and wardens. Any remuneration or benefits for performing such duties would require the agreement of the parish council. The nature of ministry is such that it may be desirable for a female minister to continue

to have some duties while on leave. The Model Policy will allow flexibility where there is mutual agreement.

#### Parental Leave for Men

15. Under the Policy a male minister will be entitled to –
  - (a) up to 2 weeks paternity leave up to the date being 6 weeks after the birth of the child, and
  - (b) up to 2 weeks continuous adoption leave at any time up to 6 weeks after the placement of the child.
16. To provide flexibility, this leave can be taken in one period or in separate periods with the agreement of the rector and the wardens, but must be taken within 6 weeks after the birth or adoption of the child.
17. Under the policy a male minister will continue to receive their stipend, allowances and other benefits for the 2 week period. Since the leave is paid there will not be any entitlement to up to 2 weeks 'Dad and Partner Pay' at the national minimum wage under the *Commonwealth Paid Parental Leave Scheme*. If a parish wished to take advantage of the *Commonwealth Paid Parental Leave Scheme* it would need to modify the policy by providing that the leave is unpaid.
18. The entitlements of male clergy to parental leave are more limited than for male employees under the *Fair Work Act 2009 (Cth)* who are entitled to up to 8 weeks leave concurrently with their wife if she is on leave, or 52 weeks leave if they are the primary carer. One reason for limiting the entitlements of male clergy is because ministry in a parish could be seriously affected if it is the rector who was absent for an extended period. However a parish can chose to provide a longer period of leave if it wishes.
19. The notice requirements are set out in paragraph 10 of the Model Policy.

#### General Provisions

20. A minister will only be entitled to parental leave if they have had at least 12 months of continuous service licensed to a position in the Diocese of Sydney immediately prior to the time of taking the leave. Parental leave will not break a minister's continuity of service but, to the extent the leave exceeds 2 weeks, it is not to be taken into account in determining a minister's period of service for the purpose of long service leave and annual leave entitlements.
21. A minister may take any annual leave or long service leave instead of, or in conjunction, with parental leave. However, in the case of a female minister, the total period of leave cannot be extended beyond the maximum period of 52 weeks. Though a more favourable arrangement could be agreed upon in accordance with paragraph 14 of the Model Policy.
22. The bill provides that the entitlements of a minister to parental leave are minimum entitlements. Entitlements that are more favourable to the minister may be agreed between the minister taking leave, the rector and wardens (and in the case of a rector's taking leave, the Regional Bishop).
23. The Model Policy provides a framework for a female minister who has taken parental leave to request a return to office on a part-time basis. The paragraph does not impose any obligation on the rector or the Archbishop to agree to this request. Circumstances may make it impractical to grant this request.
24. The Archbishop may revoke the licence of a minister, after giving the minister opportunity to show cause, if the minister does not return to perform the duties of office at the end of the period of parental leave.
25. Paragraph 16 of the Model Policy provides a means for the resolution of disputes in respect to the operation of the Policy by involving the Regional Bishop.

#### **Recommendation**

26. The Standing Committee recommends that the Synod pass the bill as an ordinance.

For and on behalf of the Standing Committee

ROBERT WICKS  
*Diocesan Secretary*

24 August 2016