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13 June 2024

Flinders University
Independent Review Team

By email: FDVLeaveReview@flinders.edu.au

Re: Independent Review of the Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022 (Cth)

The Australian Services Union (ASU) welcomes the opportunity to make a submission regarding the *Independent Review of the Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022 (Cth)*.

The ASU is one of Australia's largest unions, representing approximately 135,000 members. ASU members work in a wide variety of industries and occupations in both the private, public and community sectors. Our members work with people who are living with family, domestic and sexual violence and the related protection of children and young people.

The ASU negotiated the world's first entitlement to paid family and domestic violence leave in a workplace agreement at Surf Coast Shire Council in 2010. This paved the way to expand this workplace entitlement to other industries and workplaces and was taken up by members of the trade union movement nationwide.

Whilst an estimated 1 in 3 workers had access to paid leave through enterprise agreements, millions of workers employed on Modern Awards had no entitlement to paid leave. The ASU was determined to change this and continued the push for paid family violence leave to be available to every worker if they were escaping family violence or starting to build a life free of violence.

The ASU launched the We Won't Wait campaign for 10 days paid family and domestic violence leave to be legislated in the National Employment Standards, after an ASU member was working with a woman who had been a victim but had to abandon a court hearing after her employer told her she had to return to work or lose her job. The ASU continued this campaign to ensure every worker had the time, support and job security they needed to escape and recover from an abusive relationship.

It was a very proud day on the 27th October 2022 when the *Fair Work Amendment (Paid Family and Domestic Violence) Bill 2022* was passed by both Houses ensuring 10 days paid domestic violence leave as a right for approximately 11 million workers, including part-time and casual workers.

Positive impact of the legislation

Family and domestic violence (FDV) is now recognised to be a serious and widespread problem in Australia, with enormous individual and community impacts and social costs. Family and domestic

violence is a workplace issue and impacts upon workplaces in several ways. Workplaces have a key role to play in ending the national family violence crisis.

Employers play a crucial role in administering the 10 days paid family and domestic leave, ensuring that workers have the necessary support during this challenging time. We know workers (and women in particular) are more likely to survive, leave and remain away from a violent relationship if they have a secure job and a secure form of income.

On average, it takes seven attempts for a women to leave a domestic violence situation. The CEO of Women’s Community Shelters observed when a women is able to access financial resources, it may only take three attempts to leave whereas those who lack financial resources can actually take up to 30 attempts to leave.¹

10 days paid family and domestic violence leave has allowed many workers to take the necessary time off work to attend court or appointments/meetings with police, medical professionals, housing and tenancy services, Centrelink, refuge staff, counsellors, etc.

Currently, there isn’t publicly available data on the number of people who have applied for and taken this new form of leave. Anecdotally our members tell us they have witnessed a greater uptake of women utilising this leave, compared to under the old legislation when leave was unpaid, or workers had to utilise other forms of leave (annual or sick leave).

We have heard from our members working at domestic violence services that many women workers have commented on how difficult it would have been for them to leave an abusive relationship if they had not been able to access paid leave and remain in paid employment. They can’t imagine what this would have looked like for them, prior to the introduction of the new legislation.

Comment from an NSW domestic violence front-line worker

“I had an older woman client say she wished the leave had been around years ago as she would not have had to wait until she is 75 to leave her violent husband.”

Women Illawarra told us that since the legislation was passed, more women are attending court, with paid FDV leave empowering them to be able to do this. On average it takes 5 days in the court system, and paid FDV leave has really helped working women to be able to navigate the court system effectively. By alleviating financial pressures, paid FDV leave has allowed women to focus on legal proceedings and has ensured they have the opportunity to seek protection through the court system.

Another member told us that paid FDV leave sends a powerful message that society and workplaces stand with victim-survivors. Workplace culture has changed significantly as paid FDV leave has opened the door for workers and employers to have conversations about policies and procedures and to discuss factors such as: how do we make our workplace safe? and how do we support workers who are in an abusive relationship? We heard many employers are going above and beyond their family and domestic leave obligations, including providing additional paid leave, options for flexible work arrangements, enhancing employee assistance programs (EAPs) as well as implementing workplace safety measures such as secure parking, improved security, and safety escorts for workers.

¹ News Article: Without money, it takes 30 attempts to leave a violent relationship [Online] <https://au.finance.yahoo.com/news/30-attempts-domestic-violence-relationship-201141802.html>

Case study from a Western Australian Safe at Home Program

Safe at Home provides intensive case management and outreach services to women and families who have experienced or are currently experiencing family and domestic violence. Safe at Home work alongside women to ensure their immediate safety is addressed.

Small business employers have been very supportive of paid FDV leave and workers utilising the Safe at Home program. Employer 1 ensured a worker could take paid FDV leave to attend a risk assessment and home safety audit, as well as safety planning. They also ensured their worker always felt safe in the workplace, including walking her to and from her car.

Employer 2 allowed a worker to work from home, and take paid FDV leave in part-days, to have a home safety assessment conducted as well as attend children's counselling programs. By allowing the victim-survivor to work from home, colleagues remained unaware this leave was being utilised and ensured the privacy and safety of the worker.

Members also reported that victim-survivors are very thankful for the leave, and they often don't use it over a fortnightly period. Rather, they take 1 or 2 days each week to attend appointments, housing inspections, support services etc. and that workers are very conscious of their employer as they don't want to disrupt the workplace or their colleagues and they are trying really hard to ensure this form of leave works for all parties.

Comment from an NSW domestic violence front-line worker

"I have had positive feedback about paid FDV Leave. The women I have spoken with have not had any problem accessing it. One woman told me the hardest thing was talking to her boss because no-one knew about the situation at home. Clients who have talked about the leave have said their bosses were very helpful and they had no problems. Not all clients took the full 2 weeks, one woman took one day a week over multiple weeks to go to meetings and house inspections, and her boss was fine about it."

Whilst 1 in 3 workers had access to paid leave through enterprise agreements prior to this legislation, having this paid entitlement in the National Employment Standards has really affirmed the confidence for workers to apply for and access this leave.

Another member shared a very positive experience from Western Sydney where a client, who was not an Australian citizen, was experiencing domestic violence and felt very afraid they would lose their job because of the abuse but spoke to their employer and was able to access paid FDV leave. The employer was very supportive in assisting the worker to access the leave, and the client was able to leave the violent situation and was able to reestablish themselves.

Case study from a domestic violence service in Western Sydney

Client was a factory hand who is not an Australian citizen (New Zealand citizen). Previously she would have had no support to get out, as she had no Centrelink entitlements and very limited access to Temporary Accommodation or government support (even though she is a long time taxpayer). Her direct manager was very supportive of her applying for paid family and domestic violence leave and said he had had 'a few' requests so was familiar with the process. She applied, was able to take leave from the next day and move house without worrying about interruptions to her income. She told colleagues she was taking leave without going into detail and went back to work without any fuss two weeks later.

10 days paid FDV leave has also helped address the inequities that were being experienced prior to the new legislation. For example, women in well paid and highly qualified professions were more likely to be able access paid FDV leave through their enterprise agreement, whilst those employed in insecure, casual and precarious employment were only entitled to 5 days unpaid leave, so there was a real inequity beforehand.

Finally, the importance of paid FDV leave covering casuals cannot be underestimated, as it has ensured all workers, regardless of their employment status, have access to crucial financial support and the time off needed to address and escape domestic violence situations.

Small business employers

Some industry-representative organisations continue to suggest that small sized employers find it an onerous impost to pay for family and domestic violence leave entitlements or alternatively that this form of leave should be administered through the social security system.

The impact of family and domestic violence does not diminish in a small workplace. On the contrary, in a small workplace where people work closely together, the impact upon other employees and on the workplace itself is likely to be magnified where victim-survivors are taking unpaid leave or sporadic absences or working at lower productivity.

There are several reasons why paid domestic violence should not be administered through the social security system. Firstly, it is already a very complex system to navigate in connecting with services and leaving violence. Having to navigate yet another complex system is not going to be in the interest of the woman experiencing family violence.

Secondly, and most importantly it is paramount there is no disruption to the income in a woman's bank account. If suddenly income is paid by Centrelink and not by her employer, then that will absolutely present a red flag to the perpetrator of violence and put that woman's life in danger.

In terms of cost, the Education and Employment Legislation Committee in its Final Report noted it was “encouraged by evidence that the existing use of paid FDV leave schemes has been modest and the Fair Work Commission’s view that the upper range estimates provided by expert reports were sufficient to conclude that paid FDV leave would not result in significant costs to employers or the economy.”²

Our members who either work in small business or have clients working in small business assert that the cost of providing family and domestic violence leave is far outweighed by the benefits of retaining workers. Where workers become disconnected from their employment, the costs of recruitment, interviewing, checking referees, onboarding, training, losing an experienced worker who is working at a high capacity and needing to bring in a new worker who doesn't have the same capacity level due to limited experience are costs that are borne by the employer, especially small business.

Case study from a domestic violence service in Western Sydney

Client was a clerical worker who had not been in her job long. Her employer is a small business and was supportive, stating they did not wish to lose her skills after the hiring process. She took one week of the leave, which was all she needed, as she had already accessed support services and done a lot

² Australian Government, Education and Employment Legislation Committee, Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022 [Provisions], Final Report [Online https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/DVLBill2022/Report]

of preparation. She was able to get her 3 children to safety in Temporary Accommodation and get support from our service to access a subsidised rental programme.

Our members have also told us that small business have been overwhelmingly supportive of this legislation and have gone above and beyond to help women leave violent relationships. A wonderful example from a member is under the old legislation of 5 days unpaid leave, small business employers would often say to workers “We wish we could help you to access more paid leave, but unfortunately we can’t”. Under the new legislation these same small businesses are truly happy they can provide this leave to their workers.

We understand, the Federal Government’s Small Business Assistance package has assisted small business to have the guidance and relevant materials to understand and administer this leave entitlement.³

Enhancements

Increasing the quantum of leave

10 days paid family and domestic violence leave is often insufficient for victim-survivors to address the multifaceted challenges they face. Escaping an abusive relationship requires significant time to secure safe housing, legal protection, and emotional support. Victim-survivors often need to attend court hearings (which on average takes 5 days), as well as relocate, look for rentals, look for new schools, and seek counselling and support, all of which are time-intensive processes that cannot be adequately managed within a mere ten days.

For many women, especially if they have primary school aged children, 10 days paid FDV leave is a very short period to re-arrange their whole lives, especially where they have multiple appointments with government agencies and organisations.

Increasing the duration of paid leave ensures victim-survivors have the necessary time to make informed decisions and to stabilise their lives without the added stress of worrying about taking off unpaid leave and financial insecurity.

The need for more education and training

Our members have indicated more education and training on the 10 days paid family and domestic violence leave is needed to ensure organisations are fully aware of the legislation, including the new evidentiary requirements. We have heard some employers are not aware of the evidentiary requirements of the legislation and are still demanding very graphic and private documentation before determining if paid leave will be granted. Government must fund education and training sessions, especially for HR departments where they will be receiving requests and reports, so they are up to date with the new legislation and understand how to handle requests sensitively and appropriately.

Our members also indicated there is a critical need for more education among General Practitioners (GPs) about paid FDV leave to ensure they can effectively support their patients. GPs often serve as the first point of contact for individuals experiencing family and domestic violence. A government funded awareness campaign is crucial to ensuring GPs are well informed about the availability and specifics of paid FDV leave.

In addition, several front-line domestic violence services and women’s wraparound services have told us their clients are completely unaware of the 10 days paid family and domestic violence leave

³ Australian Government response to the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022 & <https://smallbusiness.10dayspaidfdvleave.com.au/about/>

entitlement. For example, Women Illawarra told us it is not until a woman approaches their service to seek assistance with a court appearance that they become aware of this form of leave and their entitlement to access the leave.

Another front-line worker told us in their experience women in very insecure employment (labour hire), as well as students and those on Visa's not only have a very limited understanding of their rights but also have a high degree of fear or repercussions to accessing paid FDV leave.

Non-government organisations (NGOs) are often the first point of contact for victim-survivors and these first responders, who are skilled in trauma informed principles and care, are in a unique position to disseminate this crucial information effectively. NGOs include but are not limited to: Rape, domestic and family violence services, refuges for women and children, homelessness, housing and tenancy services, family support services, community legal services, health and mental health services, and specialist women's services.

Like the Small Business Assistance package, Government must fund NGOs to help ensure more victim-survivors are informed about and can utilise this important leave mechanism. This funding would enable NGOs to offer comprehensive guidance on how to navigate the leave process, thus reducing barriers and enhancing the overall support system for victim-survivors so they are able to take the necessary steps to secure their safety and wellbeing.

Sexual violence outside of FDV

Sexual violence that occurs outside the context of family and domestic violence is not typically included under paid FDV leave, highlighting a significant gap. This exclusion means that victims of sexual violence perpetrated by acquaintances, strangers, or others outside the familial or domestic sphere do not have access to the same entitlements for paid leave. As a result, these individuals face additional challenges in taking the necessary time off work to address trauma, seek medical and psychological care, and pursue legal action.

Comment from an NSW domestic violence front-line worker

"It seems inequitable that people who have experienced sexual violence don't have access to the leave for similar things (e.g. court appearances)."

To comprehensively support all victims of sexual violence, there is an urgent need to expand paid FDV leave to encompass all forms of sexual violence.

Definition of immediate family

Section 106B of the Fair Work Act 2009⁴ outlines the entitlement to paid family and domestic violence leave, including a list of who the perpetrator could be to an employee. Whilst the list is extensive and includes a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules, this list is still restrictive and does not consider all cultural kinship relationships. Unfortunately, we have heard from a member that an employer refused to provide paid family and domestic violence leave to a worker due to the fact it was a cultural kinship relationship but not an Aboriginal or Torres Strait Islander kinship.

In many cultures, kinship extends beyond the traditional nuclear family model to include aunts, uncles, cousins and community elders. By not recognising these relationships in legislation, Government fails to address the realities of cultural kinship relationships, which can open the door for employers to

⁴ Fair Work Commission, Resources, NES –Paid family and domestic violence <https://www.fwc.gov.au/documents/resources/nes-family-domestic-violence-leave.pdf>

deny workers access to the leave and can lead to significant exclusions and hardships for workers from diverse cultural backgrounds.

Expanding the definition to include all cultural kinship relationships, and not limiting it to only Aboriginal or Torres Strait Islander, would ensure that all workers have access to this very important leave entitlement.

Finally, the ASU is aware that several other unions and affiliates are making submissions to the Independent Review. The ASU supports those submissions and the recommendations contained within.

Yours faithfully



Robert Potter
NATIONAL SECRETARY