



Flinders University
Australian Industrial
Transformation
Institute

*Independent review of the operation of
the paid family and domestic violence
leave entitlement in the Fair Work Act
2009*



Report to the Australian Government Department of
Employment and Workplace Relations

Executive Summary

Australian Industrial Transformation Institute

August 2024



**Independent review of the
operation of the paid family and
domestic violence leave
entitlement in the *Fair Work Act*
2009**

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Acknowledgement of Country

Flinders University acknowledges the Traditional Owners of the lands on which its campuses are located, these are the Traditional Lands of the Arrernte, Dagoman, First Nations of the South East, First Peoples of the River Murray & Mallee region, Jawoyn, Kurna, Larrakia, Ngadjuri, Ngarrindjeri, Ramindjeri, Warumungu, Wardaman and Yolngu people. We also pay respects to all Aboriginal and Torres Strait Islander peoples across Australia. We honour their past and present Elders and Custodians.

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Support

This report contains information that may be distressing for some readers as it addresses the impacts of family and domestic violence. The authors respectfully acknowledge the loss of those who have died, and the harm experienced by those who are subjected to or affected by violence.

Help is available. If you, or someone you know is experiencing family or domestic violence, you can contact 1800RESPECT (1800 737 732) or visit 1800respect.org.au for support. Lifeline provides 24-hour support in Australia for those experiencing a personal crisis and can be contacted by calling 13 11 14 or visiting lifeline.org.au.

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Purpose

This Independent Review of the operation of the amendments made to the *Fair Work Act 2009* (Cth) (Fair Work Act) by the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022* (Cth) (2022 FDVL Act) is undertaken pursuant to s4 of the 2022 FDVL Act. In conducting the Review, the reviewer is required to consider both qualitative and quantitative research and the impact of the amendments on:

- (a) small businesses
- (b) sole traders
- (c) people experiencing family and domestic violence (FDV).

In conducting the Review, the reviewers have been asked to have specific regard to:

- the effectiveness and scope of the reforms
- the views and voices of people who have experienced FDV
- submissions and recommendations made through the Senate Education and Employment Legislation Committee's inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022 (2022 FDVL Bill), hereafter the 2022 Senate Inquiry, including in relation to:
 - the adequacy of support and guidance available to small business to assist with implementation of the 2022 FDVL Act.
 - the definition of 'family and domestic violence' in the Fair Work Act and any other circumstances that should be captured by the entitlement.
 - supporting gender equality outcomes.

Background

The 2022 FDVL Act changed the existing minimum entitlement of 5 days' unpaid family and domestic violence leave (FDV leave) in the National Employment Standards (NES) to a new entitlement of 10 days' paid leave under the NES. The paid FDV leave entitlement commenced for non-small business employees on 1 February 2023 and small business employees on 1 August 2023 and will extend beyond the national system, to apply to all employees, from 9 September 2024.

The purpose of the amendment, as expressed by the Hon Tony Burke MP, then Minister for Employment and Workplace Relations, was to ensure that no worker ever has to choose between their safety and their income.¹

In addition to the new entitlement of 10 days' paid FDV leave under the NES, available in full at the start of each 12-month period, the 2022 FDVL Act also provides for:

- employees accessing leave to be paid at their full rate of pay, calculated as if the employee had not taken leave.
- restrictions on an employer's use of an employee's information regarding access to FDV leave to ensure employee confidentiality and protect employees accessing the leave from adverse action.

¹ The Hon Tony Burke MP, House of Representatives Official Hansard, Thursday 28 July 2022, p.175.
https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=chamber/hansardr/25919/&sid=0129

- regulations prohibiting employers from including information about paid FDV leave on employee pay slips.
- extension of the paid leave entitlement to casual employees.
- extension of employees' use of the leave to include dealing with the impacts of FDV perpetrated by a close relative, current or former intimate partner, or a member of their household.

Methods

The key methods for conducting the Review included analysis of the available qualitative and quantitative evidence and exploring the views of stakeholders, with particular regard to small businesses and people who have experienced FDV. Quantitative and qualitative research undertaken by the Behavioural Economics Team of the Australian Government (BETA) to support the findings of this independent review provided a key evidence base for the Review. The reviewers drew heavily on this comprehensive data to inform their findings and recommendations.

Stakeholders participating in this Review included employers and their representative bodies, employee representatives, frontline FDV and legal services, academics with a specialist focus on gender reform and/or gendered violence, and individuals. In its engagement with stakeholders, the Review consulted on the following three key themes:

- 1) Operation of the amendments (including implementation and access)
- 2) Impacts of the amendments
- 3) Adequacy of support and guidance (specifically that available to small business).

The Review also drew on stakeholder submissions and records of evidence from the Senate Education and Employment Legislation Committee Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022 (Cth) (2022 Senate Inquiry) to understand the issues and concerns present before the paid FDV leave entitlement commenced. These provided the reviewers with a reference point for determining both whether the anticipated outcomes raised through the 2022 Senate Inquiry had been realised and whether stakeholder positions on the entitlement had shifted or remained unchanged following implementation.

Summary of findings

Operation of the amendments

The Review considers that the paid FDV leave entitlement is operating as intended. Victim-survivors who have used the entitlement largely find it effective in enabling them to take steps to ensure their safety without jeopardising their income or employment, in line with the policy intent. The Review also found strong support for the entitlement across the stakeholder groups, mirroring BETA's finding that the vast majority of the surveyed workforce (including employers and employees) see this as a 'positive step for Australia'.²

The Review found that the current parameters of the leave entitlement are appropriately set but notes that not enough time has passed to enable full understanding of its operation and impacts. For example, while the financial and other costs of implementing and administering paid FDV leave, and managing compliance in particular, remain a concern for small business, the extent of

² Behavioural Economics Team of the Australian Government (BETA) (2024) *Family and domestic violence leave: Research findings for the Independent Review of the Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022* (August 2024), p.11.

these costs are not yet clear. Relatedly, the low utilisation of paid FDV leave, as discussed by stakeholders and confirmed by BETA, also contributes to uncertainty regarding operational costs and implications.

Despite the relatively low uptake of the new entitlement, BETA's research shows a sizeable increase since the reform, suggesting that legislating the paid FDV leave entitlement has led to an increase in uptake of paid leave. The Review nonetheless considers it likely that low awareness, including uncertainty about evidentiary and other requirements, is contributing to underutilisation of FDV leave. Employee concerns about their privacy and confidentiality, as well as the social stigma that might be associated with disclosing FDV in the workplace, are also likely to play a significant role.

The Review also found that casual employees are less aware of, and less likely to access, paid FDV leave. Awareness of the entitlement is especially important for casual employees given the precarity of casual employment, the overrepresentation of women in casual workforce, and the assumption that casuals are not eligible for paid FDV leave, as is the case for other paid leave types. The Review also highlights the central role of first responders, including frontline FDV and legal services and general practitioners, in building awareness of the entitlement to promote its uptake.

Questions concerning further reforms, such as in relation to the scope and coverage of the entitlement – for example, regarding the quantum of leave, evidentiary requirements, inclusion of non-familial sexual violence, and leave entitlements for perpetrators – were also raised by stakeholders. The Review considers that more time and experience with the existing entitlement are needed to inform a more considered view on the need for further reform.

Impacts of the amendments

The Review heard examples from a range of sources regarding the positive impacts of paid FDV leave for victim-survivors. This was confirmed by BETA, which found that the majority of surveyed victim-survivors who had used the leave felt 'very' to 'extremely' supported by their employer. The Review also found evidence that the entitlement is impacting positively on workplace culture, including in relation to the response to employees experiencing FDV, and awareness of FDV more generally.

While the Review also heard about concerning instances of employers denying requests for paid FDV leave and employees experiencing negative repercussions following leave use, the proportion of these were low. The Review nonetheless considers that access issues for particular groups of employees, including First Nations peoples, workers from culturally and linguistically diverse (CALD) communities, workers living and working with disability, workers from LGBTQIA+ communities, and employees in regional, rural and remote locations, should continue to be monitored.

Paid FDV leave is one of a range of strategies for addressing FDV in Australia, and societal and community attitudes to FDV provide a critical context for perceptions and uptake of FDV leave. The Review considers that integrating paid FDV leave within broader community actions is critical to achieving the objective of ending gender-based violence in a generation, as articulated in the *National Plan to End Violence against Women and Children 2022-2032*³ (National Plan).

³ DSS (Australian Government Department of Social Services) (2022). *National plan to end violence against women and children 2022–2032*. Commonwealth of Australia, <https://www.dss.gov.au/ending-violence>

Adequacy of support and guidance

The Review found that support with implementing the entitlement, specifically in relation to interpreting and applying evidentiary requirements and managing employee confidentiality, remains a concern for small business. While the Government has made substantial investment in dedicated support for small business employers, the Review considers that there is scope for further revision and/or targeting, in addition to efforts to embed paid FDV leave within broader workplace relations messaging.

Conclusion

FDV is a significant problem in Australia with extensive health, welfare and economic consequences. As an expression of gendered and other structural inequalities, FDV is closely connected to women's employment and economic security as well as workplace culture and equity more broadly. While paid FDV leave is just one strategy within the spectrum of approaches needed to address gender inequality and gendered violence, the Review found early indications that it is working well and as intended. In addition to broad support for the entitlement, evidence shows that those victim-survivors who have accessed the leave find it helpful, in enabling them to access relevant services and enact safety while maintaining their income and employment. While there is scope for improvement, as outlined in the following Recommendations, the Review finds that the entitlement is meeting its policy objectives in a range of important and impactful ways.

Recommendations

1. Ongoing evaluation and stakeholder consultation is needed to develop the evidence base on paid FDV leave. As familiarity with the entitlement increases, continued opportunities for stakeholder engagement are important to inform proposals for further reform.
2. Existing resources should be improved and promoted, with a particular focus on small business and resources that speak to employees, including:
 - Re-consider and revise existing government resources with a particular focus on areas of uncertainty including the interpretation of evidentiary requirements, management of confidentiality, and application of the entitlement to casual employees and employees requesting leave to care for others.
 - Relaunch and invest in continuing development of the www.10DaysFDVLeave.com website, the 'one-stop shop' hub for small business.
 - Consider targeting information through identified channels of communication that are regularly accessed by small business owners and the community (such as social media).
 - Consider ways to normalise FDV leave within the context of broader workplace relations messaging.
3. Harness the intelligence and advocacy of unions, employer representatives and small business peak bodies to continue training and awareness-raising initiatives and report back to Government on progress and emerging barriers.
4. Any response by Government to enhance resources should tap into existing distribution networks and focus on priority groups of employees including:
 - casual workers
 - First Nations and CALD workers
 - LGBTQIA+ workers
 - People living and working with disability
 - Workers in regional, rural and remote communities.
5. Initiatives to improve awareness of and access to paid FDV leave must be integrated with broader community efforts to address FDV and gender inequality. For example:
 - Education and training initiatives for first responders (and services that commonly interact with FDV victim-survivors) should include information on workplace entitlements and supports.
 - Community actions to further the objectives of the National Plan should continue to recognise the role of the workplace in addressing and responding to FDV.
 - Attention to issues of national consistency and importance, including a harmonised legislative definition of FDV, should continue to be prioritised.

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