

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

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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List of acronyms and abbreviations

Term	Explanation
2018 FDVL Act	<i>Fair Work Amendment (Family and Domestic Violence Leave) Act 2018 (Cth)</i>
2018 FDVL Bill	Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018 (Cth)
2021 FDVL review	Fair Work Commission Family and Domestic Violence Leave Review 2021
2022 FDVL Act	<i>Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022 (Cth)</i>
2022 FDVL Bill	Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022 (Cth)
2022 Senate Inquiry	The Senate Education and Employment Legislation Committee Inquiry: Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022 (Cth)
ABS	Australian Bureau of Statistics
ACCI	Australian Chamber of Commerce and Industry
ACT	Australian Capital Territory
ACTU	Australian Council of Trade Unions
ABIC	Aesthetic & Beauty Industry Council
AEU	Australian Education Union
AHC	Australian Hairdressing Council
AIC	Australian Institute of Criminology
Ai Group	Australian Industry Group
AIHW	Australian Institute of Health and Welfare
ARA	Australian Retailers Association
ANMF	Australian Nursing and Midwifery Federation
ANROWS	Australia's National Research Organisation for Women's Safety
ASBFEO	Australian Small Business and Family Enterprise Ombudsman
ASMOF	Australian Salaried Medical Officers Federation
ASU	Australian Services Union
BETA	Behavioural Economics Team of the Australian Government
CALD	Culturally and linguistically diverse
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CFMEU	Construction, Forestry and Maritime Employees Union (Construction & General Division)
COSBOA	Council of Small Business Organisations Australia
CPSU	Community and Public Sector Union
CPSU/CSA	Community and Public Sector Union/Civil Service Association
DEWR	Australian Government Department of Employment and Workplace Relations
DSS	Australian Government Department of Social Services
DV	Domestic violence
EA	Enterprise agreement
EAS	Employer Advisory Service
Fair Work Act	<i>Fair Work Act 2009 (Cth)</i>
Fair Work Regulations	<i>Fair Work Regulations 2009 (Cth)</i>
FDV	Family and domestic violence

FDV leave	Family and domestic violence leave
Full Bench	Full Bench of the Fair Work Commission
FWC	Fair Work Commission
FWO	Fair Work Ombudsman
HIA	Housing Industry Association
HR	Human resource
ILO	International Labour Organisation
ILO Convention No. 190	International Labour Organisation ILO Convention (No.190): Eliminating Violence and Harassment in the World of Work
IWAA	IWA Australia Ltd
LGBTQIA+	Lesbian, gay, bisexual, transgender, queer/questioning, intersex, asexual
MUA	Maritime Union of Australia
National Plan	National Plan to End Violence against Women and Children 2022- 32
NES	National Employment Standards
NFAW	National Foundation for Australian Women
NFF	National Farmers' Federation
NSW	New South Wales
NTWWC	Northern Territory Working Women's Centre
PSS	Personal Safety Survey
PSU	Public Service Union
SA	South Australia
SBAP	Small Business Assistance Package
SDA	Shop, Distributive and Allied Employees' Association
The Committee	Senate Education and Employment Legislation Committee
The Review	Flinders University Independent Review of the <i>Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022</i>
VTHC	Victorian Trades Hall Council
WAD	Workplace Agreements Database
WGEA	Workplace Gender Equality Agency
WLSA	Women's Legal Services Australia
WLSACT	Women's Legal Services ACT
WLSNSW	Women's Legal Services NSW
WLSV	Women's Legal Services Victoria
WWC	Working Women's Centres in Australia
WWQ	Working Women Queensland



Executive Summary

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

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.



leave, and managing compliance in particular, remain a concern for small business, the extent of 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.

1 Introduction

This section outlines the context for the Review, detailing the legislative requirements of the Review and the available data to set what is in and out of scope for the Review.

1.1 The Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022

FDV is widely recognised as a serious and entrenched problem in Australia, as elsewhere, that significantly impacts on women's health, safety and economic security. Equally well recognised is the impact of FDV on women's paid employment, and maintaining ongoing employment is of critical importance to ensure the economic security and physical safety of victim-survivors of FDV.⁴ FDV can thus be understood as, fundamentally, a workplace issue.

In amending the Fair Work Act, the 2022 FDVL Act instituted the entitlement to paid FDV leave for all employees.⁵ The 2022 FDVL Act changed the existing minimum entitlement of 5 days' unpaid FDV leave 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 for small business employees on 1 August 2023 and will extend beyond the National System, to apply to all employees from 9 September 2024. The Act also extended the definition of 'family and domestic violence' to include members of an employee's household, and current or former intimate partners who do not meet the definition of de facto partner or live in the same household. A discussion of the provisions of the 2022 FDVL Act is provided in Sections 2 and 3.

1.1.1 Requirement for Independent Review

The 2022 FDVL Act requires a review of the legislative amendments as soon as practicable one year after their commencement. The requirements for this Review are set out in Section 4 of the 2022 FDVL Act, as follows:

- (1) The Minister must cause an independent review to be conducted of the operation of the amendments made by this Act.
- (2) Without limiting subsection (1), the review must consider the impact of the amendments made by this Act on:
 - (a) small businesses; and
 - (b) sole traders; and
 - (c) people experiencing family and domestic violence.
- (3) The persons who conduct the review must consider both quantitative and qualitative research in conducting the review.
- (4) The review must start as soon as practicable after the end of the period of 12 months after the commencement of Schedule 1.
- (5) The persons who conduct the review must give the Minister a written report of the review within 3 months of the commencement of the review.
- (6) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

4 Aeberhard-Hodges, J and McFerran, L (2018) 'An International Labour Organization instrument on violence against women and men at work: The Australian influence', *Journal of Industrial Relations* 60(2):246-265.

5 See Fair Work Commission, *Who Australia's national workplace relations system covers*. (FWO) [website], n.d. <https://www.fwc.gov.au/apply-or-lodge/who-australias-national-workplace-relations-system-covers>

A key expectation was that the independent reviewer form a view as to whether the operation and impact of the 2022 FDVL Act have helped employees experiencing FDV to remain in work, maintain their financial security, and access relevant services, as consistent with the policy intent. In conducting its 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; and
- submissions and recommendations made through the 2022 Senate Inquiry into the Fair Work Amendment (Family and Domestic Violence Leave) Bill 2022 (2022 FDVL Bill), including about
 - the adequacy of support and guidance available to small business to assist with the 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; and
 - supporting gender equality outcomes.

The Review was undertaken by Flinders University. Review members were:

- Dr Kate Seymour, Senior Lecturer in Social Work, College of Education, Psychology and Social Work
- Dr Marinella Marmo, Professor in Law and Criminology, College of Business, Government and Law
- Dr Andreas Cebulla, Associate Professor in the Future of Work, College of Business, Government and Law
- Dr Nada Ibrahim, Research Fellow, Centre for Social Impact, College of Business, Government and Law
- Dr Hossein Esmaeili, Associate Professor in International Law, College of Business, Government and Law
- Dr Jenny Richards, Lecturer in Law, College of Business, Government and Law
- Dr Elvio Sinopoli (Project Manager), College of Business, Government and Law

1.2 Methods and approach

In line with the legislated terms and key expectations of the Review, the reviewers paid attention to both:

- the *operation* of the Act and its consistency with policy intent, through a focus on the effectiveness and scope of the reforms; and
- the *impact* of the amendment, through analysis of available qualitative and quantitative evidence and by exploring the views of stakeholders (with particular regard to small businesses and people who have experienced FDV).

The Review was thus informed by:

- the submissions and recommendations to the 2022 Senate Inquiry
- quantitative and qualitative research conducted by BETA
- consultation with stakeholders
- background information provided by relevant government and other bodies, and other relevant research and empirical data.

Further detail regarding each is provided below.



1.2.1 The 2022 Senate Inquiry

The 2022 Senate Inquiry into the 2018 FDVL Bill received submissions from 83 stakeholders and heard evidence from 18 witnesses. Stakeholder views, provided through written submissions and records of evidence, helped inform the reviewers on the key themes, issues and concerns present before the paid leave entitlement commenced. These insights were used as a guide for the reviewers in determining whether anticipated outcomes raised through the 2022 Senate Inquiry had been realised, and whether stakeholder positions on the leave entitlement had shifted or remained stable following implementation. The key themes arising out of the 2022 Senate Inquiry that informed our thinking are outlined further in Section 2 of this Report.

While mostly supportive of the proposed amendment, the evidence presented to the 2022 Senate Inquiry raised questions about the costs, administration and scope of the proposed amendment which informed the current review.

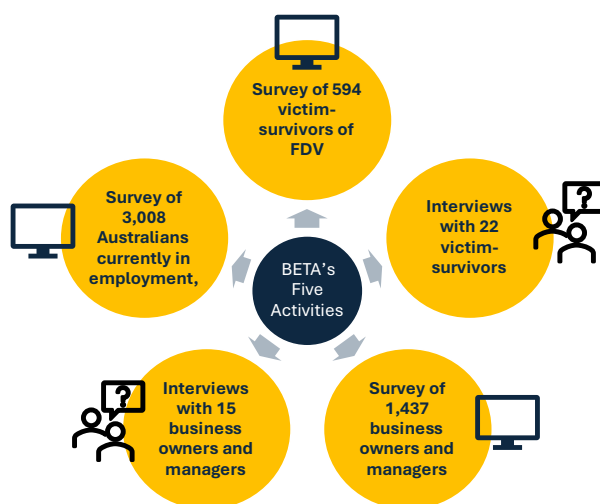
1.2.2 Quantitative and qualitative research conducted by BETA

Research conducted by BETA into the impacts of the 2022 FDVL Act on small business and victim survivors of FDV was a key source of information for the reviewers. This research was commissioned by the Australian Government Department of Employment and Workplace Relations (DEWR), specifically for the purpose of informing the independent statutory Review. The current, targeted and context-specific data provided by BETA, in addition to opportunities for direct consultation, was instrumental to this Review (see Section 4).

BETA's quantitative and qualitative research consisted of five activities, namely:

- a survey of 594 victim-survivors of FDV (self-identified)
- in-depth interviews with 22 victim-survivors
- a national online survey of 1,437 business owners and managers
- in-depth interviews with 15 business owners and managers
- a survey of 3,008 Australians currently in employment, which included a randomised experiment to understand their attitudes and the potential impact of the legislation on stigma in the workplace (Figure 1).⁶

Figure 1: BETA's quantitative and qualitative activities



⁶ BETA, op cit., pp.8-10.

BETA's research activities were conducted independently and conterminously, and the findings were reported towards the end of the consultation period for this Review. Thus, while these findings informed the reviewers' analysis, they did not influence the interactions with stakeholders for consultation purposes. In contributing to the analysis though, BETA's data provided important context and complementary insights from national surveys and conversations with victim-survivors.

1.2.3 Consultation with stakeholders

The Review facilitated opportunities for interested stakeholders, including employer and employee representatives, small business peak bodies, FDV specialists, and the legal services sector, to provide feedback on the operation and impact of the paid leave entitlement as well as initiatives to support ongoing implementation.

Commencement of the Review was announced on the DEWR website⁷ and a dedicated website hosted by Flinders University⁸ was established as a reference point for potential contributors. The identification of relevant stakeholders was informed by previous submissions, including to the 2022 Senate Inquiry, as well as the reviewers' own networks of multicultural, First Nations and other organisations and communities.

Stakeholders were provided with three options for participation:

- involvement in an online 'roundtable' consultation
- response to an online questionnaire and/or
- by written submission.

Stakeholders could participate on more than one occasion, via one or more of these options, and could also request to participate in other ways, such as via individual/one-to-one consultation, if required.

The consultation period was set for three weeks, from 15 May 2024 to 7 June 2024, but was later extended (to 24 June 2024) to allow for additional written submissions and roundtables. This extension meant that the Reviewer was able to reach more key stakeholder groups, who may have found the tight timeframes, driven by the statutory deadline, difficult to accommodate.

1.2.3.1 Questions for consultation

The focus for consultation was informed by themes identified in the 2022 Senate Inquiry submissions (see Section 2) as well as other issues raised in Parliament during the passing of the 2022 FDVL Bill (see Section 3).

A consultation guide for engagement with stakeholders was developed and used across all consultation activities to ensure consistency in approach and focus. Consistent with the requirements of the Review as outlined in 1.1.1, the consultation questions focused on the operation and impact of the 2022 FDVL Act, as well as the utility of support materials from government and other organisations. Stakeholders were also invited to share their perspective on

⁷ Australian Government, Department of Employment and Workplace Relations, *Review of Paid Family and Domestic Leave*. (DEWR) [website], 15 May 2024. <https://www.dewr.gov.au/about-department/announcements/review-paid-family-and-domestic-violence-leave>

⁸ Flinders University, *Independent Review of the Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022 (Cth)*. (Flinders University) [website], n.d. <https://www.flinders.edu.au/college-business-government-law/our-research/fair-work-domestic-violence>



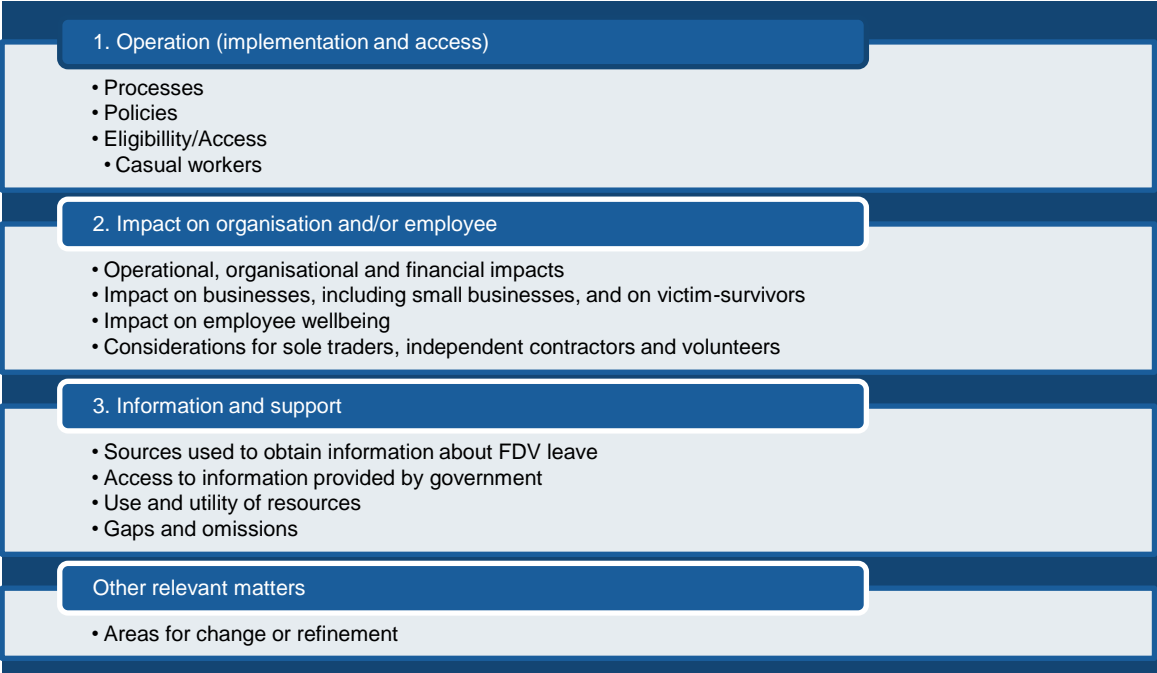
certain issues including the coverage of the entitlement, its impact on sole traders,⁹ as well as any other matters they wished to raise.

As shown in Figure 2, the consultation guide reflected three main themes: operation, impact, and information and support. Questions related to the first of these (operation) sought to identify the perspectives of employers on the implementation of paid FDV leave and the perspectives of employees on access to such leave. The reviewers were also interested in hearing about diverse experiences of FDV leave including those of casual employees, First Nations peoples, CALD people, people living with disability, and members of the lesbian, gay, bisexual, transgender, intersex, queer/questioning, asexual (LGBTQIA+) community.

The aim of the questions about the second theme (impact) was to draw out stakeholders' views on the impacts of paid FDV leave, considered broadly across the organisational, employment and personal realms. A standalone question on sole traders and other workers without an entitlement to paid FDV leave was also included.

The focus of the questions on the third theme (information and support) was on understanding the adequacy of available support and guidance about FDV leave, in particular that developed to support small business with implementation of the entitlement.

Figure 2: Consultation themes



1.2.3.2 Analysis

Stakeholder contributions from all consultation activities were converted into textual form for the purpose of analysis; that is, audio recordings of roundtables were auto-transcribed and responses to questionnaires downloaded. This allowed for independent readings by each of the reviewers, while also providing a foundation for discussion, reflection and validation by the

⁹ For the purposes of the Review, consistent with the Fair Work Ombudsman Glossary and Acronyms, the term 'sole trader' refers to 'an individual who runs his or her own business as an individual, rather than through a partnership or company'. See: <https://www.fairwork.gov.au/taxonomy/term/523>

reviewers. Textual data from the stakeholder contributions was analysed thematically, using the three key themes depicted in Figure 2, to form the basis for the findings outlined in Section 6.

1.2.3.3 Reporting

Stakeholders contributing through written submission and/or the online questionnaire were asked to nominate their attribution preferences, being to remain anonymous or have their contribution attributed to themselves (if an individual) or their organisation.

The roundtable sessions were grouped by category of stakeholders. Roundtable attendees thus self-identified through attendance at the relevant stakeholder group session, i.e. employer organisation, employee organisation, frontline worker organisation, or academics.

In this Report, stakeholder contributions are attributed as follows:

- *written submissions* to their author (that is, to the organisation or the individual making the submission). If the submitter has explicitly asked not to be identified, their submission is marked as 'Name withheld' but may still be cited.
- *online questionnaire responses* to the relevant stakeholder category (employer organisation, employee organisation, frontline worker organisation, or academics).
- attendees at *roundtable consultations* to the relevant stakeholder category ('employer roundtable', 'employee roundtable', 'frontline worker roundtable', or 'academic roundtable'). Contributions from roundtable attendees are de-identified throughout, with no direct citations included.

1.2.4 Background and context

The Review drew on a range of other sources including background information provided by government stakeholders, empirical data and statistics (for example, from the Australian Bureau of Statistics), and other research literature. Reviewers also met with key stakeholders (see Appendix A) who provided insights regarding both the context for the entitlement and its intersection with other government policies and initiatives.

Evidence including current data on the prevalence, impacts and costs of FDV informed the analysis and the development of findings and recommendations, as did relevant policy documents such as the National Plan and the *Aboriginal and Torres Strait Islander Action Plan 2023-2025* (Aboriginal and Torres Strait Islander Action Plan).¹⁰ This was important to ensure the Review captured the context for paid FDV leave in Australia, encompassing the Government's broader commitment to addressing FDV as a 'whole-of-society approach'.¹¹ The 'Alignment to broader reforms' section of the National Plan¹² was a central resource, highlighting existing national strategies as well as those in development.

The latest National Plan, for example, released on 17 October 2022 and including the vision of 'ending violence in one generation', sets out a range of actions to be undertaken across the domains of prevention, early intervention, response and recovery.¹³ The goal of the

10 DSS (2022) op cit.; (DSS) Australian Government Department of Social Services (2023) *Aboriginal and Torres Strait Islander Action Plan to End Violence against Women and Children 2023-2025*, Commonwealth of Australia. <https://www.dss.gov.au/the-national-plan-to-end-violence-against-women-and-children/aboriginal-and-torres-strait-islander-action-plan-2023-2025>

11 *ibid*, p.79.

12 *ibid*, pp.98-99.

13 *ibid*, pp.19, 35.



accompanying Aboriginal and Torres Strait Islander Action Plan is more modest but still ambitious, being to reduce by at least 50% all forms of FDV and abuse against Aboriginal and Torres Strait Islander women and children by 2031.¹⁴ The inaugural National Domestic, Family and Sexual Violence Commission has been established to track progress against the two plans, promoting ‘coordinated and consistent monitoring and evaluation frameworks by all governments’.¹⁵

Importantly, in emphasising the need for cross-government commitment towards eradicating FDV, the National Plan focuses on the crucial role of businesses and workplaces in preventing and responding to FDV, including through cultural change.¹⁶ The provision of leave entitlements for victim-survivors, including paid FDV leave, is one of the three areas of responsibility identified for workplaces, along with preventing gender-based violence through fostering gender equality, and ‘designing products and services that are safe and prevent misuse, while also focusing on perpetrator accountability’.¹⁷ The Government has thus clearly established its position regarding the critical importance of the workplace, and FDV leave in particular, for addressing FDV.

Relevant also is the 2023 workplace relations reform to include subsection to FDV as a protected attribute under the Fair Work Act.¹⁸ This amendment strengthened protections against workplace discrimination by making it unlawful for employers to take adverse action against employees because of their subsection to FDV and was intended to support victim-survivors of FDV in availing themselves of their workplace rights, including (but not limited to) accessing paid FDV leave entitlements.¹⁹

More recently, following a series of FDV-related homicides, a National Cabinet meeting was held to discuss what has been deemed a ‘national crisis of gendered violence’. In addition to a commitment to strengthening prevention efforts and responses to high-risk perpetrators and serial offenders, continuation of the (previously piloted) Leaving Violence Payment was announced. Established to help ‘people experiencing intimate partner violence with the costs of leaving that relationship’, the Leaving Violence Payment, like paid FDV leave, recognises that ‘financial insecurity is closely linked to violence, and can prevent women leaving a violent relationship’.²⁰

1.3 Limitations

It is important to acknowledge the three-month time frame for this Review as a significant limitation impacting on the time available for stakeholders to contribute. While multiple opportunities for participation were offered (including a choice of sessions and modalities), the relatively short consultation period, which ended up being five weeks, may well have presented an obstacle for some stakeholders. The brevity of time available also limited the extent to which the reviewers were able to reach out to stakeholders for follow-up discussions to understand and test views and submissions. Similarly, the timing of the Review not long after the 2022 FDVL Act meant that BETA only had a small window of opportunity to conduct its research and could primarily only capture the initial phase of paid FDV leave availability.²¹

14 DSS (2023), op cit., p.8.

15 DSS (2022), op cit., p.27.

16 *ibid*, p.79.

17 *ibid*, p.105.

18 Fair Work Legislation Amendment (Closing Loopholes) Act 2023 (Cth).

19 The Hon Tony Burke MP, ‘Stronger Workplace Protections Against Family and Domestic Violence’, Media Release 25 August 2023. <https://ministers.dewr.gov.au/burke/stronger-workplace-protections-against-family-and-domestic-violence>

20 The Hon Anthony Albanese MP, ‘Meeting of National Cabinet on gender-based violence’, media release, Prime Minister of Australia, 1 May 2024. <https://www.pm.gov.au/media/meeting-national-cabinet-gender-based-violence>

21 BETA, op cit., p.10.

It is also important to recognise the limitations on obtaining accurate data on paid FDV leave. The need to protect the privacy of victim-survivors, both inside and outside the workplace, requires that any gathering of such information be conducted sensitively and in strict confidence. Moreover, as the *Fair Work Regulations 2009* (Cth) (Fair Work Regulations) provide that paid FDV leave must not be recorded on pay slips, the Review could examine administrative data.

More generally with regard to information about FDV in Australia, the lack of a consistent definition, identification method and counting procedures for FDV makes it difficult to count and compare across different data sets and jurisdictions. Significant gaps in this regard include the lack of reliable data on FDV in specific population groups, difficulties distinguishing between victims and perpetrators, and the lack of data about pathways, impacts and outcomes for victim-survivors and perpetrators.²²

Relatedly, the lack of up-to-date data on the workplace dimensions and impacts of FDV – for example, estimates of the economic, social and health-related ‘costs’ of FDV and their implications for employment²³ – is a further limitation. While the research undertaken by BETA to some extent mitigates this data gap, it remains difficult to accurately represent the costs of FDV leave and comment on the balance between the costs and benefits for employers.²⁴

On 1 May 2024, following a meeting of the National Cabinet, the Prime Minister announced the Commonwealth would undertake an expert led rapid review of evidence-based approaches to prevent gender-based violence. The Rapid Review of Prevention Approaches, led by an expert panel established on 28 May 2024, has run concurrently to this review.

1.4 Structure of this Report

This Report is presented in six sections (including this introduction), as follows:

Section 2 outlines the decisions and events that led to the introduction of the 2022 FDVL Act, including key issues raised in submissions to the 2022 Senate Inquiry on the 2022 FDVL Bill.

Section 3 explains the amendments that the 2022 FDVL Act made to the Fair Work Act and the intended impacts of the amendments.

Section 4 presents the evidence base used in this Review, including the research conducted by BETA and its key findings²⁵, and the available data on FDV and related harms, costs.

Section 5 presents the perspectives shared by stakeholders through the consultation process, organised thematically.

In *Section 6*, the final section of this Report, the findings and recommendations of the Independent Review are presented.

22 AIHW (2018) *Family, domestic and sexual violence in Australia*, 2018, Cat. no. FDV 2, p.103.

<https://www.aihw.gov.au/reports/domestic-violence/family-domestic-sexual-violence-in-australia-2018/summary>; AIHW

(2019) *Family, domestic and sexual violence in Australia: Continuing the national story 2019*, Cat. no. FDV 3.

<https://www.aihw.gov.au/reports/family-domestic-and-sexual-violence/family-domestic-sexual-violence-australia-2019/contents/summary>

23 For example, UNSW, Social Policy Research Centre (2019) *Researching the economic dimensions of domestic and family violence: Information gaps and data strategies*, <https://www.anrows.org.au/resources/researching-the-economic-dimensions-of-domestic-and-family-violence-information-gaps-and-data-strategies/>

24 BETA, op cit., p.38.

25 ibid, pp.4-5.



2 The introduction of the 2022 FDVL Act

This section discusses the background to the development of the 2022 FDVL Act, focusing on the actions, decisions and events that led to its introduction. This provides important context for the subsequent sections, outlining the concerns raised by stakeholders to the 2022 Senate Inquiry regarding the 2022 FDVL Bill to allow the reviewer to frame and test these issues through consultation and our own analysis.

2.1 Background

Unions in Australia have long campaigned for a paid FDV leave entitlement. The first paid FDV leave entitlements were negotiated by the Australian Services Union (ASU) for inclusion in the Surf Coast Shire Council Enterprise Agreement, approved by the Fair Work Commission (FWC) on 10 December 2010. The national *We Won't Wait* campaign, calling for Federal Government action on paid FDV leave, was launched in 2014 with the tagline, 'It takes paid leave to leave. And we won't wait, because women can't wait'.²⁶ Stakeholders in the FDV sector were also advocating for paid FDV leave before the 2022 FDVL Act was passed. The *Fair Work Amendment (Family and Domestic Violence Leave) Act 2018* (2018 FDVL Act) introduced five days of unpaid FDVL within a 12-month period into the NES.

In December 2014, a statement by the FWC, made after the commencement of the first four-yearly review of modern awards, indicated that the Australian Council of Trade Unions (ACTU) had sought 'variations to all awards in respect of the issue of family and domestic violence leave and the issue of family friendly work arrangements'.²⁷ After determining that the ACTU claims should be dealt with as a separate common issue matter, the FWC called for submissions and held a number of hearings in July 2015.²⁸ In accepting FDV as a 'significant community issue' requiring a workplace response, the Full Bench of the FWC (Full Bench) stated:

... we have formed the preliminary view that it is necessary to meet the modern award objectives for provisions to be inserted in modern awards which would allow for a period of unpaid family and domestic violence leave and which would allow employees who experience family and domestic violence access to personal/carer's leave for the purpose of taking family and domestic violence leave. As set out in [45], such unpaid leave serves to confirm the significance of family and domestic violence leave as a workplace right and provides an employment protection in circumstances where there is a need to access such leave.²⁹

This preliminary view – that all award-covered employees should have access to unpaid FDV leave – was confirmed by the Full Bench on 26 March 2018³⁰ and a draft model term was later released for comment in May 2018. Shortly after, in December 2018 the Australian Parliament passed the 2018 FDVL Act which, similarly to the FWC's model term, provided 5 days of unpaid leave in the NES to all types of employees, including casuals.

26 Australian Unions, *To: Prime Minister. We Won't Wait*. Australian Unions [website], n.d. <https://www.megaphone.org.au/petitions/we-won-t-wait-because-women-can-t-wait>

27 Fair Work Commission, *4 yearly review of modern awards* (AM2014/196) [2014] FWC 8583, 1 December 2014 [24]. <https://www.fwc.gov.au/documents/decisionssigned/html/2014FWC8583.htm>

28 *ibid* [29], [30].

29 Fair Work Commission, *4 yearly review of modern awards – Family and Domestic Violence Leave Clause* (AM2015/1) [2017] FWCFB 3494, 3 July 2017 [119]. <https://www.fwc.gov.au/documents/decisionssigned/html/2017fwcfb3494.htm>

30 Fair Work Commission, *4 yearly review of modern awards – Family and Domestic Violence Leave* (AM2015/1) [2018] FWCFB 1691, 26 March 2018. <https://www.fwc.gov.au/hearings-decisions/major-cases/4-yearly-review/common-issues/family-and-domestic-violence-leave>

Advocacy continued to transition to a 10 days' paid leave entitlement, with the ACTU requesting in 2021 that the FWC reconsider the entitlement in modern awards.³¹ The FWC commenced a review (2021 FDVL Review), reporting its provisional view in May 2022 that an entitlement of 10 days' paid FDV leave be introduced as a model term on the basis that the award minimum safety net was 'not fair and relevant from the perspective of employees experiencing [family and domestic violence], particularly those who are low paid, because it does not address the necessity for income security'.³²

In the 2021 FDVL Review, the FWC determined that based on the evidence, a 'substantial proportion of the Australian workforce' already had access to paid FDV leave and that it was 'relatively common for 10 days' paid leave to be provided'. The FWC found that paid FDV leave was an 'emerging industrial standard in bargaining and over-award arrangements'.³³ In coming to this view, the FWC considered a range of evidence including an Employment Survey, commissioned for the review, which demonstrated that one in 5 organisations surveyed already provided employees with paid FDVL.³⁴

In the lead-up to the May 2022 federal election, paid FDV leave was named as an election commitment by the Australian Labor Party. The introduction to Parliament of the 2022 FDVL Bill was one of its first legislative steps – in the area of workplace relations – as an elected Government.

2.2 Timeline of key events

Figure 3 provides a summary of the key events leading to the introduction and implementation of the 2022 FDVL Act.

31 Australian Council of Trade Unions, request to the Fair Work Commission dated 12 April 2021. <https://www.fwc.gov.au/hearings-decisions/major-cases/previous-major-cases/family-and-domestic-violence-leave-review-2021>

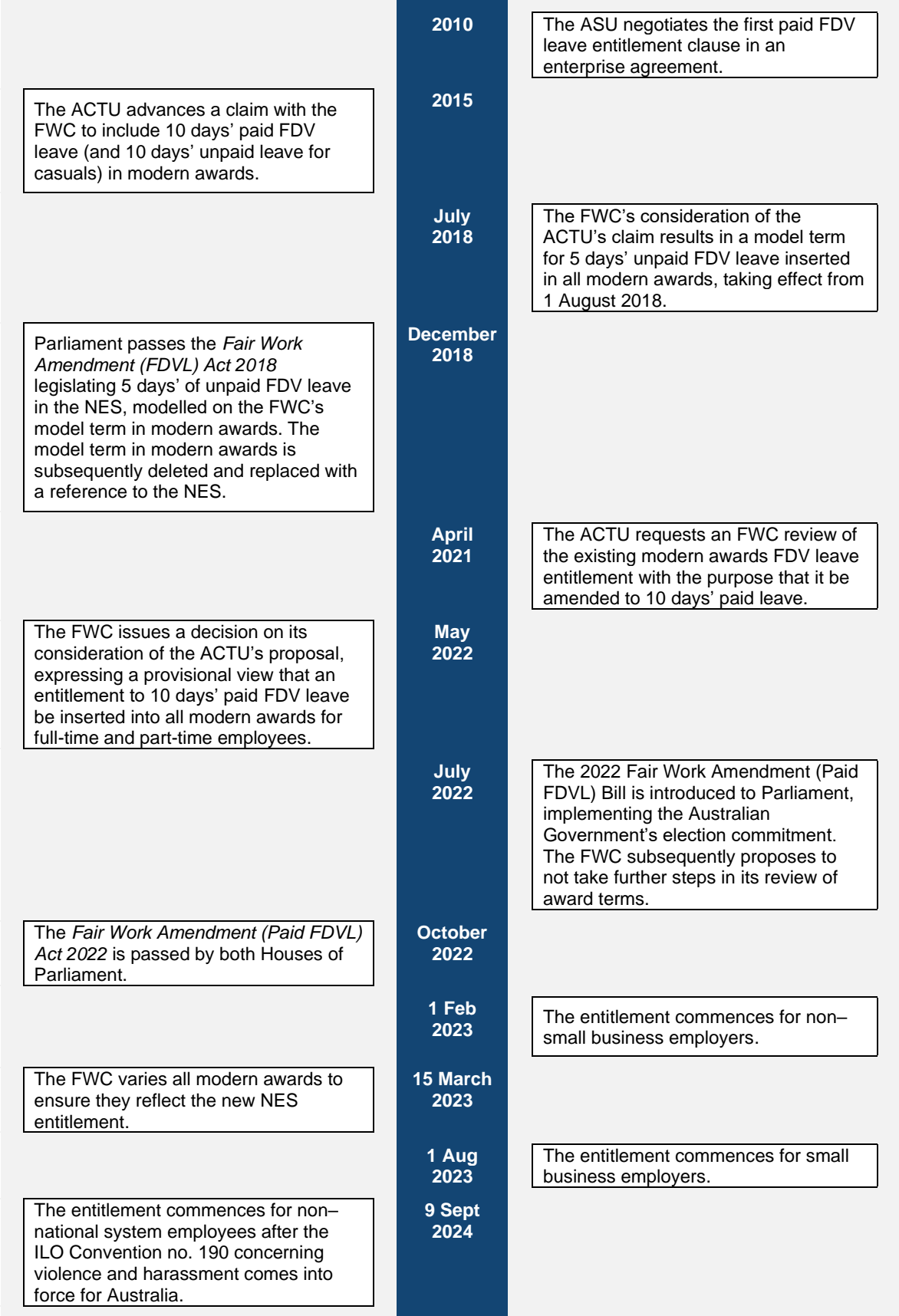
32 Fair Work Commission, *Family and domestic violence leave review 2021* [2022] FWCFB 2001, [678]. <https://www.fwc.gov.au/documents/decisionssigned/html/2022fwcfb2001.htm>

33 [2022] FWCFB 2001, [486].

34 [2022] FWCFB 2001, [959].



Figure 3: Timeline of events leading to the 2022 FDVL Act



2.3 Development of the Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022

The 2022 FDVL Bill was first introduced into the House of Representatives on 28 July 2022, proposing that the (then) NES entitlement of 5 days' unpaid FDV leave be replaced with an entitlement of 10 days' paid leave.

This followed the FWC's review of the FDV leave entitlements in modern awards (2021 FDVL Review), the main findings of which were that:

- Paid FDV leave provided significant assistance to those experiencing FDV, enabling them to maintain their economic security, access relevant services and safely leave violent relationships. Employers were already paying the costs of FDV in the form of increased absenteeism and lost productivity. While it was not possible to accurately quantify the financial implications of providing paid FDV leave, the leave would assist in reducing those costs and 'be of some benefit to employers'.
- Servicing the entitlement would not adversely or significantly impact on 'employment growth, inflation and the sustainability, performance and competitiveness of the national economy'.
- While the costs for some employers might be significant, depending on uptake of the leave, the 'utilisation rate of a 10-day paid FDV leave entitlement [was] likely to be low', suggesting that these costs were 'unlikely to be substantial'.³⁵

Importantly, the proposed amendments in the 2022 FDVL Bill went beyond the FWC's earlier, in-principle, view on the characteristics of a model term, by stating that the 10 days of paid leave should be accessible to all employees including casuals, available 'up front' (non-accrued) and payable at the full rate of pay (Table 1). This meant that both permanent and casual employees would be paid their full rate of pay:

- permanent employees would be paid as if they had not taken the leave; and
- casuals would receive their full rate of pay as if they had worked their rostered hours for that period.

The Bill also proposed an expanded definition of 'family and domestic violence' to include violent, threatening or other abusive behaviour by a current or former intimate partner of an employee, or a member of the employee's household, in addition to a close relative.

On 4 August 2022, the 2022 FDVL Bill was referred to the Senate Education and Employment Legislation Committee (the Committee) for inquiry and report, with the Committee subsequently recommending that the Bill be passed.

³⁵ Fair Work Commission, *Family and domestic violence leave review 2021* (AM2021/55) [2022] FWCFB 2001, 16 May 2022 [77], [622]. <https://www.fwc.gov.au/hearings-decisions/major-cases/previous-major-cases/family-and-domestic-violence-leave-review-2021>



Table 1: Summary of key changes between 2018 FDVL Act and 2022 FDVL Act

Subject	2022 FDVL Act	2018 FDVL Act
Quantum of FDV leave	10 days	5 days
Paid or unpaid	Paid	Unpaid
Extends to casuals	Yes	Yes
Definition of FDV	In addition to those eligible under the 2018 FDVL Act, the definition was expanded to include members of the employee’s household, and current or former intimate partners.	A member of an employee’s immediate family, or someone related according to Aboriginal or Torres Strait Islander kinship rules. Immediate family includes a current or former spouse, current or former de facto partner, child, parent, grandparent, grandchild, or sibling; or a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner.
Extends to non-national system employees	Yes, after ILO Convention No. 190 concerning violence and harassment comes into force for Australia.	No

2.4 Evidence presented to the 2022 Senate Inquiry

The 2022 Senate Inquiry into the FDVL Bill 2022 received submissions from 83 stakeholders and heard evidence from 18 witnesses during its public hearing on 22 August 2022. As the 2022 Senate Inquiry provides the most contemporaneous record of stakeholder views on the key issues and considerations related to paid FDV leave before this Review, the reviewers carefully analysed the perspectives of stakeholders captured by this Inquiry to inform its consultation approach and focus.

Reflecting on the supportive nature of most of the evidence provided to the Inquiry, the Committee noted that they were ‘particularly encouraged by the broad support for the 2022 FDVL Bill from stakeholders’,³⁶ including employer and employee representative groups.

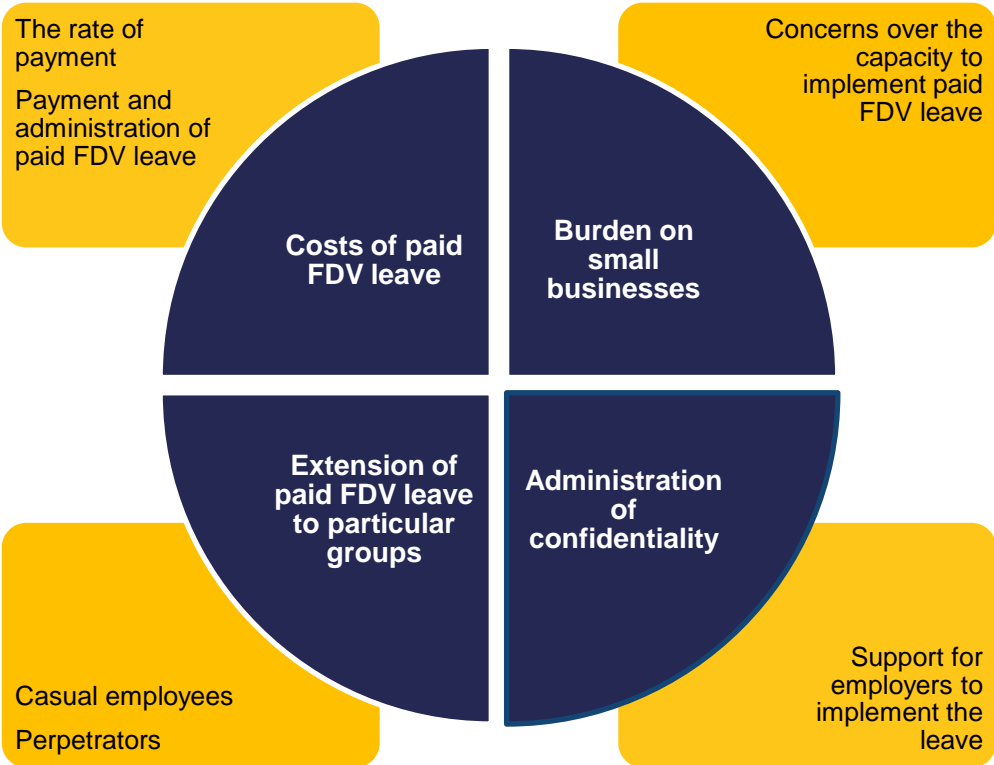
In recommending that the 2022 FDVL Bill be passed, the Senate Committee observed that paid FDV leave represented ‘a significant step towards realising the Government’s women’s safety and economic security agenda’³⁷ and would impact substantially on workplace culture, sending a ‘clear message that family and domestic violence [was] not just a criminal justice issue but an economic and workplace issue’.³⁸

A broad range of stakeholders provided written submissions and appeared before the Inquiry. Stakeholders provided evidence about the prevalence of FDV in the community, why FDV is considered a workplace issue and the importance of victim-survivors maintaining paid employment. For the purposes of this review and to ground the analysis of the 2022 FDVL Act, Figure 4 demonstrates the key areas of concern identified by the reviewers regarding specific

36 Senate Education and Employment Legislation Committee, *Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022*, Chapter 2.86, p.29.
 37 *ibid*, Chapter 2.85, p.29.
 38 *ibid*, Chapter 2.87, p.29.

aspects of the 2018 FDVL Bill, as evidenced by the views of those stakeholders who engaged with the Inquiry.

Figure 4: Summary of stakeholders' areas of concern emerging from the 2022 Senate Inquiry



2.4.1 Costs

A key area of interest from stakeholders during the Inquiry was the potential costs and burdens for employers of providing paid FDV leave. Reference was made to the 'tight margins' and 'lack of profitability' commonly experienced by small businesses. In this regard, the capacity of small and other businesses to bear the costs of implementing the entitlement was questioned, especially in light of the broader economic context including inflationary pressures and the ongoing impacts of the COVID-19 pandemic. The Council of Small Business Organisations Australia (COSBOA) referred to the limitations of arguments based on the anticipated low take-up of the leave, noting that these failed to consider 'the disproportionate cost of this leave when it is accessed'.³⁹

Limited understanding of the financial implications was a particular concern, with the Australian Industry Group (Ai Group) referring to the lack of 'any robust assessment of the cost impact of the proposed new entitlement'.⁴⁰ The reliance on 'cost-modelling presented to the FWC by academic experts commissioned by the ACTU' was critiqued by the Coalition Senators and the Australian Chamber of Commerce and Industry (ACCI),⁴¹ as was the focus on aggregated costs, seen as masking the 'potential disproportionate cost to individual businesses'.⁴²

39 *ibid*, COSBOA Submission, p.3.
40 *ibid*, AIG Submission, p.3.
41 *ibid*, ACCI Submission, p.3.
42 *ibid*, Coalition Senators Additional Comments, 1.15, p.34.



However, the evidence provided to the Inquiry suggested that the financial costs of providing paid FDV leave could be low. For example, in its submission, citing independent research conducted in 2016, the ASU concluded that ‘the cost of a universal entitlement to paid FDV leave, regardless of the size of the employer, would be approximately five cents per worker per day’.⁴³ Evidence provided by the Centre for Future Work at the Australia Institute, updating the research cited by the ASU, indicated that employee utilisation of the paid leave entitlement was likely to be ‘significantly less than the maximum benefit entitlement’.⁴⁴

Some employer stakeholders – who had previously provided paid FDV leave – shared their positive experiences; for example, Thales Australia Ltd commented that this was ‘positive both for employees and the company’.⁴⁵ Stakeholders also emphasised the costs of *not* providing FDV leave, noting that, far from ‘onerous’,⁴⁶ the ‘overall cost of providing paid FDV leave [...] had been minimal, with some of the cost being offset by maintaining the employee and not having to engage in recruitment, training and onboarding’.⁴⁷

2.4.1.1 Rate of payment

Whether FDV leave ought to be paid at the actual pay rate rather than the base pay rate was raised as an issue related to cost and administrative burdens as well as employee confidentiality. Employer stakeholders, including the Housing Industry Association (HIA), COSBOA and the National Farmers’ Federation (NFF), pointed to the complexity that paying FDV leave above the base rate of pay would introduce and the likelihood of confusion about the ‘calculation of loadings, overtime and penalty rates’.⁴⁸ The Coalition Senators further pointed out that the FWC had outlined in its provisional view in 2022 that paid FDV leave should be paid at the employee’s base rate of pay.

The Construction, Forestry and Maritime Employees Union Construction and General Division (CFMEU) and the Newcastle Domestic Violence Committee argued for actual rather than base rates of payment since FDV ‘came ‘at a great cost’’⁴⁹ and ‘no employees should be financially disadvantaged as a result of leaving a violent relationship’⁵⁰.

In additional comment, found in the final report to the 2022 Senate Inquiry, the Australian Greens Senators observed that a change in income may be ‘a flag to an abuser’ and, where income is lower than usual, it may ‘jeopardise applications for housing, eligibility for government support programs, or change the basis of an assessment for Centrelink support’.⁵¹ FDV specialists emphasised the safety concerns associated with changing pay rates, especially during periods of heightened risk commonly faced by victim-survivors immediately after leaving a violent situation. It was noted that a reduction in pay might alert perpetrators who have access to and monitor the victim-survivor’s finances that ‘their victim is preparing to leave’.⁵²

43 *ibid*, ASU Submission, p.20.

44 *ibid*, Centre for Future Work, Australia Institute Submission, p.3.

45 *ibid*, Thales Australia Submission, p.1.

46 *ibid*, Thales Australia Submission, p.1.

47 *ibid*, SYFS Submission, pp.3-4.

48 *ibid*, HIA Submission, p.2. See also *ibid*, COSBOA and NFF Submissions.

49 *ibid*, CFMEU Construction and General Division, Submission 46, p.4.

50 *ibid*, Newcastle Domestic Violence Committee, Submission 5, p.2.

51 *ibid*, Australian Greens Senators’ additional comments, p.39.

52 *ibid*, NDVC Submission, p.2. Senate Education and Employment Legislation Committee, *Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022*, Gateway Family Services, Submission 8, p.2. See also *ibid*, APRCC, Unions NSW and DV West Submissions.

2.4.1.2 Who should pay for and administer FDV leave?

Despite broad support for the need for, and benefits of, FDV leave, the question of who should fund it was raised by several stakeholders. While many stakeholders asserted that FDV is a workplace issue,⁵³ others argued that it is a 'societal issue' and that responsibility for funding paid FDV leave should therefore sit entirely with the government,⁵⁴ or be shared between government and business.⁵⁵

The Coalition Senators indicated, in their comments found in the final report, that they supported paid FDV leave and acknowledged that FDV is a workplace issue. The Coalition expressed support for the FWC's provisional view following the 2021 review and noted that the Government's legislation went beyond the FWC's provisional views. The Coalition Senators' comments detailed some of the views expressed by businesses, noting that most were supportive but there was an 'issue' as to 'who pays' including whether there could be a process for reimbursing businesses.⁵⁶

The responsibility placed on businesses to respond to employee disclosures of FDV was also noted, with the Aesthetic & Beauty Industry Council (ABIC) referring to the 'significant psychological pressure and burden' that this would place on employers.⁵⁷

Other employer stakeholders considered that there would be broader, non-financial benefits of managing the entitlement outside the workplace. COSBOA, for example, pointed out that this could be especially beneficial for women business owners and 'particularly in sensitive situations where an abuser may have control or oversight of shared accounts or access to the business'.⁵⁸ Community Economics suggested that victim-survivors would be more likely to receive 'privacy and professional support' if FDV leave was 'managed by the welfare sector'.⁵⁹ The NFF also considered that employers being responsible for administering FDV leave could 'discourage many victim-survivors from accessing the leave, especially workers in small, close-knit regional communities where the perpetrator and employer might be part of the same social network or, in some cases, even the same person'.⁶⁰ The ACTU, however, argued that a government-funded scheme would be 'counterproductive' in that the time and energy needed to deal with government agencies and processes would present a further barrier to accessing the leave.⁶¹

The NFF made the point that leave entitlements were 'meaningless to the self-employed who make up anywhere from 10% to 17% of Australia's population' suggesting that an employer-managed and -funded system was 'exclusionary by design'.⁶² Given that 'many of the most disadvantaged workers were engaged outside of the traditional industrial relations system', Legal Aid NSW suggested that more could be done to provide 'similar protections for these marginalised workers'.⁶³

53 See, *ibid*, ACTU, Rail Tram and Bus Union, and Working Women's Centres' Submissions.

54 *ibid*, COSBOA submission, pp.2-3. See also *ibid*, AHA, AIG, NFF, ABIC, NRW, Clubs Australia and ICA Submissions.

55 *ibid*, ARA Submission, p.2.

56 *ibid*, Coalition Senators' additional comments, p.34.

57 *ibid*, ABIC Submission, p.4.

58 *ibid*, COSBOA Submission, p.4.

59 *ibid*, CE Submission, p.3.

60 *ibid*, NFF Submission, p.6.

61 Erin Keogh, Australian Council of Trade Unions ACTU, Public Hearing, Hansard, 22 August 2022, p.33.

62 Senate Education and Employment Legislation Committee, *Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022*, NFF Submission, p.9.

63 *ibid*, Legal Aid NSW Submission, p.2. The Coalition Senators in their additional comments (1.30) also refer to the need to 'do more to limit the impacts this legislation will have on sole traders and small businesses'.



2.4.2 Burden on small business

The particular challenges faced by small businesses were acknowledged throughout the 2022 Senate Inquiry. Stakeholders spoke of the profound, and continuing, impacts of the COVID-19 pandemic on small businesses, noting that they were ‘stressed, exhausted, time-poor, and experiencing severe financial hardship’.⁶⁴

Data from the Household, Income and Labour Dynamics in Australia (HILDA) Survey shows that casual workers are more likely to be employed by smaller businesses (defined as employing up to 19 people); around 51% of all casual employees were working in small businesses in 2015.⁶⁵ Given this reliance of many small businesses on a casual workforce, the particular challenges associated with the administration of FDV leave were highlighted by stakeholders including the NFF, ABIC, the Australian HR Institute and Independent Cinema Australia. Stakeholders felt that the financial burdens would be compounded by the need to ‘support, document, and if necessary, report what is an incredibly sensitive and delicate situation’.⁶⁶ That many small businesses lack a ‘dedicated HR service’⁶⁷ and/or the necessary ‘resources, staff [and] training’ to support victims of FDV⁶⁸ was also a common concern.⁶⁹

Stakeholders questioned the capacity of employers, particularly small businesses, to bear the costs of implementing the paid FDV leave entitlement, especially given the broader economic context including inflationary pressures and the ongoing impacts of COVID-19. The focus on estimated costs in aggregate terms was ‘not helpful to small employers’, with the Ai Group instead emphasising the need to ‘consider the impact to *individual* businesses’.⁷⁰

The Government presented its position on the issue of burdens for small business in parliamentary debate in the Senate, saying that:

Support for small business is essential. The intention of this Bill is to make clear that family and domestic violence must be addressed in the workplace, not just left to the social and community or criminal justice sectors. As such, it is important to recognise that employers are partners in this process. This is particularly true for small businesses, which have a uniquely close relationship with their employees but which don't have the human resources expertise and resources available to larger businesses.⁷¹

2.4.3 Administering the paid FDV leave entitlement

Managing confidentiality was a particular concern raised by the employer stakeholders, who, as exemplified here by Tanda, a payroll software provider, spoke about ‘protecting their employees’ right to privacy and health and safety’.⁷² Issues of concern raised by the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) included the management of records

64 *ibid*, COSBOA Submission, p.7.

65 Cited in Gilfillan, G (2018) *Characteristics and use of casual employees in Australia*. Parliamentary Library, Research Paper Series, 2017–18, p.11.
https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1718/CasualEmployeesAustralia

66 Senate Education and Employment Legislation Committee, *Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022*, NFF Submission, p.13.

67 *ibid*, NFF Submission, p.13.

68 *ibid*, ABIC Submission, p.3.

69 See also Senate Education and Employment Legislation Committee, *Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022*, AHRI and ICA Submissions.

70 Brent Ferguson, Australian Industry Group, Public Hearing, Hansard, 22 August 2022, p. 20, emphasis added

71 Senate Official Hansard, Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, Senator Carol Brown, Second Reading, 26 October 2022, p.1564.

72 Senate Education and Employment Legislation Committee, *Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022*, Tanda Submission, p.3.

and employee pay slips, and balancing ‘disclosure requirements’ with ‘employee privacy’.⁷³ The need for clarity and guidance around both the evidence required to substantiate an employee’s entitlement to paid FDV leave and the management of employee confidentiality was almost unanimously cited across all stakeholder groups. The ‘potential for victims’ privacy to be compromised’ when victim-survivors and perpetrators were working in the same environment, such as family-owned small businesses,⁷⁴ or living in the same small community, was also emphasised by the Coalition Senators, the Australian Retailers Association (ARA) and the NFF.⁷⁵

While amendments in relation to pay slips were not considered by the 2022 Senate Inquiry, a Government amendment was moved following the introduction of the 2022 FDVL Bill into Parliament regarding pay slip confidentiality obligations. The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) (Secure Jobs, Better Pay Act) added a regulation making power into s 536(2) of the Fair Work Act to enable regulations to be made prohibiting employers from including certain details on a pay slip. Previously, the subsection placed a positive obligation on employers to include certain information on a pay slip but did not support regulations prohibiting employers from including certain details. This regulation making power, as inserted by the 2022 FDVL Act, was intended to address concerns raised by stakeholders around perpetrators identifying that an employee had taken FDV leave. Further details on these provisions are discussed in Section 3 (3.6 and 3.7).

Further amendments were made to confidentiality provisions surrounding paid FDV leave as part of the Secure Jobs, Better Pay Act in response to stakeholder concerns that recording the leave as miscellaneous/other leave might make it identifiable to perpetrators as paid FDV leave. The regulations specify that a period of FDV leave must be recorded as the performance of an employee’s ordinary hours of work or another kind of payment in relation to their work unless the employee requests that it be displayed as another kind of leave. A new ss536(3A) was also inserted into the Fair Work Act to clarify that a pay slip was not false or misleading for complying with the new regulations (see 3.6 and 3.7).

The Women’s Legal Centre ACT (WLSACT) raised concerns about evidentiary requirements related to the ‘scope for employers to make it extremely difficult for people to provide the required evidence’.⁷⁶ The Greens argued that ‘a supportive workplace culture should start from the position of believing an employee who has taken the brave step of asking for family and domestic [violence] leave’.⁷⁷

Stakeholders also noted the potential effect of FDV leave administration on employee-employer relations. ASBFEO, for instance, referred to the unique relationship between small business owners and their employees, emphasising that the ‘nature and closeness’ of this could impact on employers’ ability to support and manage the ‘employee’s distress and trauma’.⁷⁸ The likely implications of this dynamic for ‘small business owners’ own wellbeing and sense of personal security⁷⁹ was further noted.⁸⁰ The Australian Hairdressing Council (AHC) referred to the ‘great mental stress’ for business owners who would be ‘forced to carry the weight of not knowing the

73 *ibid*, ASBFEO Submission, p.2.

74 *ibid*, Coalition Senators’ additional comments, pp.37-38.

75 *ibid*, Submission ARA, p.1. See also NFF Submission.

76 *ibid*, WLSACT Submission, p.6.

77 Senate Education and Employment Legislation Committee, *Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022*, Australian Greens Senators’ additional comments, p.42.

78 *ibid*, ASBFEO Submission, p.2.

79 *ibid*, ASBFEO Submission, p.2.

80 See also *ibid*, AHA and ABIC Submissions.



best way to support a staff member'. This was especially significant, they argued, when considered together with the perceived failure to properly account for the 'cumulative financial burden' on small businesses.⁸¹

2.4.3.1 Support for employers

The importance of employers, small businesses in particular, being supported to implement and administer the paid FDV leave entitlement was raised by multiple stakeholders including COSBOA, the AHC, Thales Australia, Massage & Myotherapy Australia, Women's Legal Service Victoria (WLSV) and Women's Legal Service NSW (WLSNSW). Priority areas for greater clarity and guidance included evidentiary requirements, the recording of leave, the calculation of the entitlement for casual workers⁸² and, as highlighted by the FWC, the 'interaction between existing enterprise agreements and the entitlement under the NES'.⁸³

Stakeholders also stressed the need for a collaborative approach,⁸⁴ between government, employers, unions and specialist FDV services. Both Safe Work Australia and Ms Ludo McFerran argued that this should build on the existing 'depth of knowledge and experience' of 'highly skilled individuals in HR, management, unions and organisations such as Working Women's Centres who have specialised in developing best practices and training'.⁸⁵ Particular emphasis was placed on the importance of 'tailored training and resources'⁸⁶ and 'best practice models and guides'⁸⁷ developed by 'FDV experts', which could be used to help employers – in particular small business owners, as noted by ASBFEO – to 'support their employees whilst minimising the risk of their own emotional injury'.⁸⁸

The importance of a 'strong implementation plan' for the entitlement, comprising 'awareness-raising, training and educational materials', was a common theme raised by stakeholders. WESNET, the Australian Nursing and Midwifery Federation (ANMF) and the National Foundation for Australian Women (NFAW) saw this as 'essential to ensuring the provisions are accessible and administered equitably'.⁸⁹ The ACTU argued that education and awareness-raising campaigns should be funded by the Commonwealth Government and 'rolled out in partnership with employer organisations and unions'.⁹⁰

Multiple stakeholders emphasised the importance of a transitional period; the HIA, for example, argued that this was necessary 'to reduce the burdens on small businesses to a point in time when the arrangements are well understood and settled'.⁹¹

2.4.4 Scope

2.4.4.1 Casual employees

The extension of the paid FDV leave entitlement to cover casual employees was a significant milestone, and one that generated substantial comment. Concerns raised by employers and

81 Senate Education and Employment Legislation Committee, *Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022*, AHA Submission, p.1.

82 *ibid*, COSBOA, Australian Hairdressing Council, Thales Australia, Women's Legal Service Victoria, and Women's Legal Service NSW Submissions.

83 *ibid*, FWC Submission, p.1.

84 *ibid*, NWSA Submission.

85 *ibid*, Ludo McFerran Submission, p.3 and Safe Work Australia Submission.

86 *ibid*, Ludo McFerran Submission, p.4.

87 *ibid*, NWSA Submission, p.2.

88 *ibid*, ASBFEO Submission, p.1.

89 *ibid*, WESNET Submission, p.2. See also NFAW Submission, p.2, and ANMF Submission, p.2.

90 *ibid*, ACTU Submission, p.3. See also ANMF and AWU Submissions.

91 *ibid*, HIA Submission, p.3.

employer representatives were focused on the administrative burden and disproportionate costs for industries and employers, including small businesses, who tend to rely on casual employees. This was also a strong focus of the Coalition Senators' additional comments in the 2022 Senate Inquiry report (1.13–1.24).

The Ai Group noted that the provision of paid FDV leave 'would be inconsistent with the very nature of casual employment', and saw its imposition on employers was 'unfair and inappropriate'.⁹² Stakeholders argued that the costs of providing paid FDV leave to casual employees would go beyond payment of the leave itself. As pointed out by COSBOA, this would include the time spent finding a 'replacement for the employee, wages for the replacement and the potential costs of operating the business with a depleted workforce'.⁹³ It was further claimed, by Lucas Restaurants, that certain business sectors, such as hospitality, 'simply cannot afford to pay casual employees for up to 10 days' leave with loadings, allowances, and penalties in addition to having to pay an additional casual employee the same entitlements to cover the period of FDV leave'.⁹⁴

Employer stakeholders also pointed to the 'significant complexity'⁹⁵ and 'operational difficulties'⁹⁶ that extending the paid entitlement to casual employees would introduce.⁹⁷ These included difficulties related to the calculation of pay and, according to the Australian Foodservice Advocacy Body, the 'practical consequences of providing paid leave 'upfront' [...] particularly for small and medium sized businesses with limited cashflow and cash reserves'.⁹⁸

While identifying the challenges of including casual employees, stakeholders nonetheless acknowledged that women who had experienced FDV were more likely to be employed in casual work.⁹⁹ Stakeholders including the Law Council of Australia, WLSV, WLSNSW and CFMEU argued that excluding casual employees from the entitlement would, therefore, ultimately undermine the Bill's ability to 'ameliorate financial difficulties for workers seeking to manage and exit family violence situations'.¹⁰⁰

The then Minister for Employment and Workplace Relations addressed the Government's position on this in the second reading speech, saying that the inclusion of casuals was central to the core principle of this leave:

'Normally casual employees do not have access to paid leave. But get back to that test – 'getting out shouldn't mean losing pay'. You apply that test, you get to a different conclusion to where you otherwise might get with casuals'.¹⁰¹

92 *ibid*, AIG Submission, Attachment A, p.1.

93 *ibid*, COSBOA Submission, p.2. See also *ibid*, AFAB, ACCI, ARA, and BY Submissions.

94 *ibid*, LUCAS Submission, p.2.

95 *ibid*, HIA Submission, p.1.

96 *ibid*, AFAB Submission, p.3.

97 See also Senate Education and Employment Legislation Committee, *Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022*, COSBOA, AIG, BY and HIA Submissions.

98 *ibid*, AFAB Submission, p.3. See also ARA Submission, p.2.

99 *ibid*, LCA Submission, p.7; APRCC Submission, p.2; Centre for Future Work, Australian Institute Submission, p.5; ANROW Submission, p.2; Women's Legal Service Victoria Submission, p.6 and Women's Legal Service Victoria Submission, p.2.

100 *ibid*, LCA Submission, p.7; CFMEU Submission, pp.1–2; Women's Legal Service Victoria Submission, p.7.

101 Second Reading Speech, Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, House of Representatives 28 July 2022, p.175.



2.4.4.2 Perpetrators

The Coalition Senators raised concern about the ‘ambiguity of the new provision with respect to perpetrators of FDV’.¹⁰² The NFAW considered that clarity was needed about whether perpetrators could apply for the entitlement to do things to deal with the impact of their perpetration (such as engage in behaviour change programs).¹⁰³ While this was discussed by only a few stakeholders, there was division between those who saw merit in extending the entitlement to perpetrators and those – including the Coalition Senators¹⁰⁴ – who stated unequivocally that they would not support this. Relationships Australia, however, argued that allowing perpetrators to access the entitlement would be ‘in the public interest’ insofar as it would ‘remove barriers to help-seeking by people who use violence in their relationship’.¹⁰⁵ In conceding the importance of encouraging perpetrators to engage in behaviour change, the Greens recommended that the 2022 FDVL Bill be amended to ensure that employers have the ‘discretion to accept a request for leave to attend behaviour change programs’.¹⁰⁶

The Coalition’s concerns and Greens’ proposal were addressed by the Government in parliamentary debate in the Senate, when they stated:

There have been some concerns that the bill may also provide leave to perpetrators of family and domestic violence. Others have called for the leave to be expanded so that perpetrators who are seeking professional help can then access this leave. To be entirely clear: an employee will only be able to take this leave if they are experiencing family and domestic violence. An employee cannot take paid family and domestic violence leave provided by the bill for violence that they themselves perpetrate. The government is aware that some jurisdictions and organisations offer leave for perpetrators in certain circumstances. That may assist some perpetrators who are seeking to change their abusive behaviour, but it is not the purpose of this bill, which is intended to aid those experiencing family and domestic violence to seek help and leave. The entitlement does not provide a benefit to those who perpetrate family and domestic violence, and it is the government’s view that providing a universal national entitlement to this benefit would not be in line with community expectations.¹⁰⁷

Supporting stakeholders’ concerns that various aspects of the entitlement require greater clarity,¹⁰⁸ the Senate Committee’s final report included, as Recommendation 1, that the operations and impacts of the 2022 FDVL Bill be reviewed 12 months after its implementation.¹⁰⁹

2.5 The 2022 FDVL Bill’s passage through Parliament

Following parliamentary scrutiny and stakeholder debate, the 2022 FDVL Bill passed with bipartisan support through both Houses of Parliament on 27 October 2022 and received Royal Assent on 9 November 2022. Key elements of the Act are detailed in Section 3.

102 Senate Education and Employment Legislation Committee, *Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022* - Coalition Senators’ additional comments, 1.26, p.37.

103 *ibid*, NFAW Submission.

104 *ibid*, Coalition Senators’ additional comments, 1.26, p.37.

105 *ibid*, RA Submission, pp.5–6.

106 *ibid*, Australian Greens Senators’ additional comments, 1.26.

107 Senate Official Hansard, Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, Senator Carol Brown, Second Reading, Wednesday 26 October 2022, p.1564-5.

108 Senate Education and Employment Legislation Committee, *Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022*, COSBOA Submission, p.3; ARA Submission, p.3.

109 The Senate Education and Employment Legislation Committee, 2022, p.30 –2.92.

2.5.1 Amendments passed in the Senate

Senate amendments to the 2022 FDVL Bill, passed by Parliament during the legislation's passage through the Senate, are detailed below.

Review of the legislation

Recommendation 1 of the Senate Committee's final report sought a review of the operation and impacts of the Bill 12 months after its implementation. This was supported by the Coalition Senators who also recommended a review.

During parliamentary debate, the Government agreed to Senate amendments requiring the Minister to commission an independent review of the operation of the paid FDV leave provisions, as detailed in s4 of the 2022 FDVL Act.

Confidentiality and adverse action protections

During Senate debate the Government agreed to Senate amendments to s106C(2). While this amendment did not materially change the operation of this provision, the amendment was moved by the Jacqui Lambie Network to address the concerns held about ensuring that an employee's access to the leave was kept confidential.

Interaction of the NES entitlement with enterprise agreements

The Government amended subclause 53(1) of the 2022 FDVL Bill to allow the FWC to resolve uncertainties about the interaction between a pre-commencement enterprise agreement and the paid FDV leave entitlement in the NES.

This amendment responded to the FWC's submission to the 2022 Senate Inquiry into the 2018 FDVL Bill, which noted that subclause 53(1) of the Bill may not produce the result described in the note to that subclause.

This amendment was needed to ensure that the provisions operate as intended.

Employer obligations in relation to pay slips

A further Government amendment was made to insert a regulation-making power at ss536(2) of the Fair Work Act (see 2.4.3). As already discussed, this enabled regulations to be made preventing an employer from recording paid FDV leave on an employee's pay slip and thereby addressed concerns raised during the 2022 Senate inquiry, that the inclusion of information about an employee's paid FDV leave entitlement on a pay slip could present a danger to employees.

This amendment provides a clear prohibition on the inclusion of certain prescribed information relating to paid FDV leave in pay slips. This prevents perpetrators from accessing this sensitive information and avoids the associated risks for victim-survivors (see 3.6 and 3.7).

2.6 Government actions to support implementation

To support small business in implementing and administering the new leave entitlement, the Government delayed commencement of the entitlement for employees of small businesses until 1 August 2023, six months later than the commencement date for employees of non-small businesses. After the legislation's passage, the Government also introduced a range of supports and measures to enable small businesses to implement and administer the paid FDV leave entitlement. This was in recognition of the concerns raised by small business stakeholders, including over the fact that small businesses often do not have the same human resources capability and capacity as larger businesses.



In response to concerns about education, costs and the challenges for employers in understanding their obligations, in the October 2022 Budget the Government allocated \$3.4 million to support small business employers to implement the 2022 FDVL Act. Providing funding over four years, the Small Business Assistance Package (SBAP) was designed to deliver new and updated resources and targeted workplace relations advice and education (developed by the Fair Work Ombudsman (FWO)) and tailored workplace relations guidance and support to small businesses. The release of these FWO resources, including an updated *Employer Guide to Family and Domestic Violence* and a Small Business Helpline, was timed to coincide with the commencement of the 2022 FDVL Act.

In addition, DEWR has funded a standalone website, as a 'one-stop shop' tailored for small business. The website www.10dayspaidfdvleave.com.au (10dayspaidfdvleave), developed by independent provider Transitioning Well in collaboration with small business and FDV sector representatives, was launched on 24 July 2023.

The Department of Social Services (DSS) also delivered a 10-episode podcast, titled 'Small business, big impact: How to support employees experiencing family and domestic violence'. This was developed with input from small business peak bodies, the FDV sector and union representatives and was launched in August 2023.

3 Understanding the amendments: Intended impact of new legislative provisions

The 2022 FDVL Act amended the entitlement to FDV leave in the NES under the Fair Work Act. This section builds on Section 2 to focus on the amendments, outlining the provisions of the paid FDV leave entitlement and their intended impacts.

The section will consider in detail the four main purposes of the entitlement, which are:

- To provide 10 days of paid FDV leave in a 12-month period for full-time, part-time and casual employees
- To provide for employees to access paid FDV leave at their full rate of pay for the hours they would have worked had they not taken the leave, to minimise the financial impact of FDV
- To extend the definition of FDV to include the conduct of a current or former intimate partner of an employee, or a member of an employee's household
- To extend the full paid entitlement to all employees when the ILO Convention (No. 190) concerning violence and harassment comes into force for Australia.¹¹⁰

3.1 Extension to 10 days' paid leave (106A)

106A Entitlement to paid family and domestic violence leave

- (1) An employee is entitled to 10 days of paid family and domestic violence leave in a 12-month period.
- (2) Paid family and domestic violence leave:
 - (a) is available in full at the start of each 12-month period of the employee's employment; and
 - (b) does not accumulate from year to year; and
 - (c) is available in full to part-time and casual employees.
- (3) For the purposes of subsection (2), if an employee is employed by a particular employer:
 - (a) as a casual employee; or
 - (b) for a specified period of time, for a specified task or for the duration of a specified season; the start of the employee's employment is taken to be the start of the employee's first employment with that employer.
- (4) The employee may take paid family and domestic violence leave as:
 - (a) a single continuous 10-day period; or
 - (b) separate periods of one or more days each; or
 - (c) any separate periods to which the employee and the employer agree, including periods of less than one day.
- (5) To avoid doubt, this section does not prevent the employee and the employer agreeing that the employee may take paid or unpaid leave in addition to the entitlement in subsection (1) to deal with the impact of family and domestic violence.

The 2022 FDVL Act amended the FDV leave entitlement from 5 days of unpaid leave to 10 days of paid leave, thus enhancing the existing NES entitlement. The intent was to 'assist employees affected by family and domestic violence to be paid and remain in continuous employment which

110 Explanatory Memorandum, Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, p.1.



provides financial security, independence, social networks and support, and increased self-esteem'.¹¹¹

3.1.1 NES entitlements are minimum standards

The NES are the minimum employment entitlements that apply across the national workplace relations system. Contained in Part 2-2 of the Fair Work Act, the NES form a set of 12 minimum standards that apply to all national system employees. Any amendment to the NES therefore changes the minimum standards that govern the employment of employees in the national system. Other industrial instruments, such as enterprise agreements, cannot provide conditions that are less favourable than what is contained in the NES, but they can provide more favourable employment conditions.

The entitlement to paid FDV leave applies to all employees in the national system whose employment is governed by a modern award.¹¹² Subsection 55(1) of the Fair Work Act expressly provides that a modern award must not exclude the NES; thus, any employee within the national system, who is covered by a modern award, must have access to the paid FDV leave entitlement in accordance with the terms of the 2022 FDVL Act.

A modern award can also include a term that supplements an entitlement contained in the NES but only to the extent that the effect of that term is not detrimental to an employee when compared to what is contained in the NES (Fair Work Act s55(4)). For example, a modern award may contain an ancillary term providing for more than 10 days of paid FDV leave or other benefits.

Although the paid FDV leave entitlement does not currently apply to employees outside the national system, it will come into effect for these employees from 9 September 2024, three months after the ILO Convention No. 190 comes into force for Australia.

3.1.2 How 10 days is defined and accrues (s106E)

106E Entitlement to days of leave

What constitutes a day of leave for the purposes of this Subdivision is taken to be the same as what constitutes a day of leave for the purposes of sections 72A and 85 and Subdivisions B and C.

As outlined in s106E, the entitlement adopts the same interpretation of a day of leave as parental leave and unpaid pre-adoption leave as contained in the Fair Work Act, and as clarified by the common law.¹¹³

S106A(2) of the Fair Work Act sets out that the entitlement to 10 days of paid FDV leave is available in full at the start of each 12-month period. The leave is not applied on a pro-rata basis; therefore, all employees, including part-time and casual employees, are entitled to the full 10 days of leave in each 12-month period. It also does not accrue from year to year, meaning that 10 days of leave is the maximum available within a 12-month period (s106A(2)(b)).

An employee can take the leave as a single, continuous 10-day period, separate periods of one or more days each, or any separate periods to which an employee and employer agree, including

¹¹¹ *ibid*, p.2.

¹¹² A modern award is a document which sets out the minimum terms and conditions of employment on top of the NES, for an industry or occupation, as determined by the Fair Work Commission.

¹¹³ *Mondelez Australia Pty Ltd v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union Known as the Australian Manufacturing Workers Union (AMWU)* [2020] HCA 29.

periods of less than one day (s106A(4)).

The definition of a 'day' of paid FDV leave reflects a calendar day, which means it can be granted for any period of time over a 24-hour period reflecting hours that otherwise would have been worked by an employee.¹¹⁴ The provision of the full pay level and immediate availability of the full 10 days upon commencement of employment were intended to maximise the effectiveness of the leave for all employees.¹¹⁵

3.2 First paid leave entitlement for casuals (s106A)

The introduction of paid FDV leave represents the first time a paid leave entitlement has been extended to casual employees in the NES in the Fair Work Act; s106A(3) provides that both casual employees and those employed for a particular time, task or season are entitled to the leave. This recognises that casual employees are 'already dealing with the consequences of being in insecure work and are unable to access other forms of paid leave, making them more vulnerable when they're dealing with the impact of domestic violence'.¹¹⁶ It also reflects the FWC finding, in its 2018 decision, that, given the high proportion of women in casual employment, excluding casual employees from (then, unpaid) FDV leave would mean that those most likely to need the leave would not be able to access it.¹¹⁷

S106BA sets out the FDV leave payment provisions for employees, including casuals. Casual employees are to be paid FDV leave at their full rate of pay (s106BA(1(b))). This rate of pay is calculated as if the employee has been 'rostered', which can occur when the employee accepts an offer from their employer to work those hours.

3.3 Paid FDV leave is designed to deal with the impact of FDV (s106B)

106B Taking paid family and domestic violence leave

- (1) The employee may take paid 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
 - (c) it is impractical for the employee to do that thing outside the employee's work hours.

Note 1: Examples of actions, by an employee who is experiencing family and domestic violence, that could be covered by paragraph (b) include arranging for the safety of the employee or a close relative (including relocation), attending court hearings, accessing police services, attending counselling and attending appointments with medical, financial or legal professionals.

Note 2: The notice and evidence requirements of section 107 must be complied with.

Under s106B, an employee may take paid FDV leave if they are experiencing FDV, need to do something to deal with the impact of the FDV, *and* it is impractical for them to do this outside their working hours. The 2022 FDVL Act added circumstances to Note 1 for s106B, providing a non-exhaustive list of examples of actions an employee may take to deal with the impacts of FDV.

114 Mondelez Australia Pty Ltd v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union Known as the Australian Manufacturing Workers Union (AMWU) [2020] HCA 29.

115 Second Reading Speech, Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, House of Representatives 28 July 2022, p.176.

https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=chamber/hansardr/25919/&sid=0010

116 *ibid*, p.177.

117 Fair Work Commission, *op cit.*, pp. 246-248.



3.4 Definition of FDV expanded (s106B)

106B Taking paid family and domestic violence leave

- (2) **Family and domestic violence** is violent, threatening or other abusive behaviour by a close relative of a person, a member of a person's household, or a current or former intimate partner of a person, that:
- (a) seeks to coerce or control the person; and
 - (b) causes the person harm or to be fearful.
- (3) A 'close relative' of a person is another person who:
- (a) is a member of the first person's immediate family; or
 - (b) is related to the first person according to Aboriginal or Torres Strait Islander kinship rules.

Note: *Immediate family* is defined in s 12.

The 2022 FDVL Act expanded the definition of FDV established by the 2018 FDV Act to also include members of an employee's household and current or former intimate partners. This extended the range of circumstances in which an employee could access the entitlement,¹¹⁸ to encompass, for example, non-cohabiting relationships. The Explanatory Memorandum to the amendments clarifies that an intimate partner relationship could include an 'ongoing sexual relationship, regardless of whether the employee is co-habiting with the violent person'.¹¹⁹

Subsequent amendments were also made to the definition of FDV in s106B(2) of the Fair Work Act as part of the Secure Jobs, Better Pay Act, to refer to 'a person' rather than 'an employee', allowing the definition to be used in the amended flexible working arrangement provisions. These provisions give employees a right to request a flexible work arrangement to assist members of an employee's immediate family or household to deal with the impacts of FDV.¹²⁰

Section 106B(3) further defines 'close relative' to include a member of the person's immediate family, or someone related to the person according to Aboriginal or Torres Strait Islander kinship rules. The term 'immediate family', as defined in s12 of the Fair Work Act, covers many family relationships including an employee's spouse, de facto partner, children, parents, siblings, grandparents or grandchildren as well as the immediate family of the employee's spouse or de facto partner.

3.5 Paid at full rate of pay on working, not ordinary, hours (s106BA)

106BA Payment for paid family and domestic violence leave

- (1) If, in accordance with this Subdivision, an employee takes a period of paid family and domestic violence leave, the employer must pay the employee, in relation to the period:
- (a) for an employee other than a casual employee—at the employee's full rate of pay, worked out as if the employee had not taken the period of leave; or
 - (b) for a casual employee—at the employee's full rate of pay, worked out as if the employee had worked the hours in the period for which the employee was rostered.
- (2) Without limiting paragraph (1)(b), an employee is taken to have been rostered to work hours in a period if the employee has accepted an offer by the employer of work for those hours.
- (3) Paragraph (1)(b) does not prevent a casual employee from taking a period of paid family and domestic violence leave that does not include hours for which the employee is rostered to work. However, the employer is not required to pay the employee in relation to such a period.

118 Explanatory Memorandum, Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, Item 18, p.7.

119 *ibid.*

120 Revised Explanatory Memorandum (Senate), Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022, p.108.

The 2022 FDVL Act amended s106B and s106BA of the Fair Work Act to clarify the circumstances in which an employee can access paid FDV leave. Prior to the 2022 FDVL Act, ss106B(1) provided that an employee experiencing FDV could take unpaid FDV leave if they needed to do something to deal with the impact of that violence and it was impractical for them to do that thing outside their 'ordinary hours of work'. This was amended by the 2022 FDVL Act to provide that an employee may take the paid FDV leave if it is impractical for them to do something to deal with the FDV during their 'work hours', some of which may be outside their ordinary hours.

The 2022 FDVL Act also inserted a new s106BA into the Fair Work Act. This subsection established the payment arrangements for the new paid entitlement. The purpose of s106BA is to provide a mechanism for employees who access the leave entitlement to be paid at their full rate of pay worked out as if the employee had not taken the period of leave.¹²¹

The term 'full rate of pay' is defined in s18 of the Fair Work Act and this definition applies to the amendments made by the 2022 FDVL Act in the same way it does to other provisions under the Fair Work Act. Casual employees accessing paid FDVL are to be paid at the employee's full rate of pay worked out as if they had 'worked the hours in the period for which the employee was rostered'.¹²²

The words 'hours in the period for which the employee was rostered' are intended to take their ordinary meaning. This would include any situation where the employer makes available a list of shifts to be undertaken by a casual employee in advance. To avoid doubt in less formal rostering scenarios, new ss106BA(2) clarifies that, without limiting the ordinary meaning of rostered hours, an employee is taken to have been rostered to work hours in a period if the employee has accepted an offer by the employer of work for those hours. The offer and/or acceptance can, but need not be, made in writing.¹²³

3.6 Evidence requirements consistent with other leave types (s107)

The existing evidence requirements contained in s107 of the Fair Work Act apply to employees accessing paid FDV leave. The evidence requirements for paid FDV leave are thus consistent with other leave entitlements including the previous 5 days of unpaid leave entitlement. These include that an employee must give their employer notice that they are taking paid FDV leave as soon as is practicable, which can be after the leave has started; and that an employer can require that the employee provide evidence that they have met the requirements for taking the leave.

The provision of evidence by an employee is therefore discretionary – that is, only required if the employer requests this – rather than mandatory. If required, evidence must be such that it would 'satisfy a reasonable person' that the employee is experiencing FDV, that the employee needs to do something to deal with the impact of the FDV, and that it is impractical for the employee to do that thing outside their work hours (s106B(1)).

The FWO website provides examples of the kinds of evidence that could be requested by

¹²¹ Fair Work Act 2009, s 106BA(1)(a).

¹²² Fair Work Act 2009, s 106BA(1)(b).

¹²³ Explanatory Memorandum, Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, [48].



employers,¹²⁴ including statutory declarations and/or documents issued by the police, a court or an FDV support service.

3.7 Emphasis on confidentiality, including in pay slips (s106C and Fair Work Regulations)

106C Confidentiality

- (1) Employers must take steps to ensure information concerning any notice or evidence an employee has given under section 107 of the employee taking leave under this Subdivision is treated confidentially, as far as it is reasonably practicable to do so.
- (2) An employer must not, other than with the consent of the employee, use such information for a purpose other than satisfying itself in relation to the employee's entitlement to leave under this Subdivision. In particular, an employer must not use such information to take adverse action against an employee.
- (4) Subsection (2) has effect subject to subsection (4).
- (5) Nothing in this Subdivision prevents an employer from dealing with information provided by an employee if doing so is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.

Note: Information covered by this section that is personal information may also be regulated under the *Privacy Act 1988*.

In acknowledgement of the uniquely sensitive nature of this entitlement, specific legislative protections were included to ensure employee confidentiality and that employees accessing the leave are protected from adverse action (see 3.8.1). S106C(1) of the Fair Work Act provides that an employer must take steps to ensure that information regarding an employee taking leave is 'treated confidentially, as far as it is reasonably practicable to do so'. Under ss106C(2), employers 'can only use this information to satisfy themselves that the employee is entitled to family and domestic violence leave'.¹²⁵ The restrictions on an employer's use of an employee's information regarding their access to FDV leave do not, however, prevent an employer from using the information without the consent of the employee if they are required to by Australian law, or if it is necessary to protect the life, health or safety of the employee or another person (s106C(4)).

Subsection 536(2) sets out an employer's obligations in relation to pay slips and regulations; 3.47 and 3.48 of the Fair Work Regulations (see below) prohibit employers from including information about paid FDV leave on employees' pay slips. This is to ensure employee confidentiality, particularly in relation to employees who are experiencing FDV and may be subject to close surveillance by the perpetrator of that violence.

3.47 Pay slips—information about paid family and domestic violence leave not to be included in pay slips

For the purposes of paragraph 536(2)(c) of the Act, the information in relation to paid family and domestic violence leave that must not be included in a pay slip is:

- (a) a statement that an amount paid to an employee is a payment in respect of the employee's entitlement to paid family and domestic violence leave; and
- (b) a statement that a period of leave taken by the employee has been taken as a period of paid family and domestic violence leave; and
- (c) the balance of an employee's entitlement to paid family and domestic violence leave.

124 Australian Government, Fair Work Ombudsman, *Notice and Evidence for Family and Domestic Violence Leave*. (FWO) [website], n.d. <https://www.fairwork.gov.au/leave/family-and-domestic-violence-leave/notice-and-evidence-for-family-domestic-violence-leave>

125 Australian Government, Fair Work Ombudsman, *Family and Domestic Violence Leave*. (FWO) [website], n.d. <https://www.fairwork.gov.au/tools-and-resources/fact-sheets/minimum-workplace-entitlements/family-and-domestic-violence-leave>

3.48 Pay slips—requirements for reporting paid family and domestic violence leave

- (1) This regulation is made for the purposes of paragraph 536(2)(d) of the Act.
- (2) Subject to subregulation (3), an amount paid to an employee for taking a period of paid family and domestic violence leave:
 - (a) must not be reported on a pay slip as an amount paid to the employee for taking a period of leave; and
 - (b) must instead be reported on the pay slip as an amount paid to the employee:
 - (i) for the performance of the employee's ordinary hours of work; or
 - (ii) as another kind of payment made in relation to the performance of the employee's work, including (but not limited to) an allowance, bonus or a payment of overtime.
- (3) If the employee has requested the employer to report the amount on the pay slip as an amount paid for taking a period of a particular kind of leave (other than a period of paid family and domestic violence leave), the amount may be reported on the pay slip as an amount paid to the employee for taking a period of that kind of leave.

Note 1: A pay slip is not false or misleading merely because it complies with this regulation: see subsection 536(3A) of the Act.

Note 2: During the grace period of 4 months, this regulation is subject to regulation 7.06.

3.8 The entitlement complements other protections and flexibilities in the Fair Work Act

3.8.1 FDV is a protected attribute under general protections

In December 2023, the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Cth) (Closing Loopholes Act) made 'subjection to family and domestic violence' a protected attribute under ss351(1) of the Fair Work Act. This change strengthened the Fair Work Act anti-discrimination framework to protect employees who have been, or are being, subjected to FDV from discrimination in the workplace. It is now unlawful for an employer to take adverse action against an employee or potential employee (for example, by dismissing them or refusing to hire them) because they have been, or are being, subjected to FDV.

The Closing Loopholes Act also amended the Fair Work Act to prohibit terms that discriminate against a person on the basis of subjection to FDV from being included in enterprise agreements (ss195(1)) and modern awards (ss153(1)). The FWC must also consider the need to prevent and eliminate discrimination on the basis of subjection to FDV when performing functions or exercising its powers under the Act (s578).

3.8.2 Employees experiencing FDV can request flexible work

The right to request flexible working arrangements is an entitlement for certain employees under the NES (s65). Since 2013, national system employees have been eligible to request flexible working arrangements from their employer after 12 months of continuous employment if they are experiencing violence from a family member or if they provide care or support to a member of their immediate family or household who is experiencing violence from a family member.

Employers can only refuse such requests on reasonable business grounds. Flexible working arrangements can support continuity of employment for employees experiencing FDV. Such arrangements can include changes to an employee's start and finish times, split shifts or job sharing, modified duties or alternative work locations; and they can be short or long term.

The Secure Jobs, Better Pay Act amended the Fair Work Act to strengthen the right to request flexible working arrangements to assist eligible employees to negotiate workplace arrangements that suit both them and their employer. The amendments also



changed the circumstances in which an employee may request flexible working arrangements to align with the definition of FDV as provided by the paid FDV leave entitlement in s106B(2) of the Fair Work Act.

3.9 Ratification of ILO Convention No. 190 extends entitlement to all employees

106D Operation of paid family and domestic violence leave and leave for victims of crime

- (1) This Subdivision does not exclude or limit the operation of a law of a State or Territory to the extent that it provides for leave for victims of crime.

Note: Leave for victims of crime is a non-excluded matter under paragraph 27(2)(h).

- (2) If an employee who is entitled, under a law of a State or Territory, to leave for victims of crime is also entitled to leave under this Subdivision, that law applies in addition to this Subdivision.

- (3) A person who is a national system employee only because of section 30C or 30M is entitled to leave under this Subdivision only to the extent that the leave would not constitute leave for victims of crime.

Note: To the extent that leave would constitute leave for victims of crime, the entitlement to paid family and domestic violence leave is extended to the persons mentioned in subsection (3) by Division 2A of Part 6-3 (see subsection 757B(2)).

Schedule 2 of the 2022 FDVL Act provides for the extension of the entitlement to 10 days paid FDV leave to all employees, not just those covered by the national system. Specifically, it extends the new entitlement to non-national system employees.

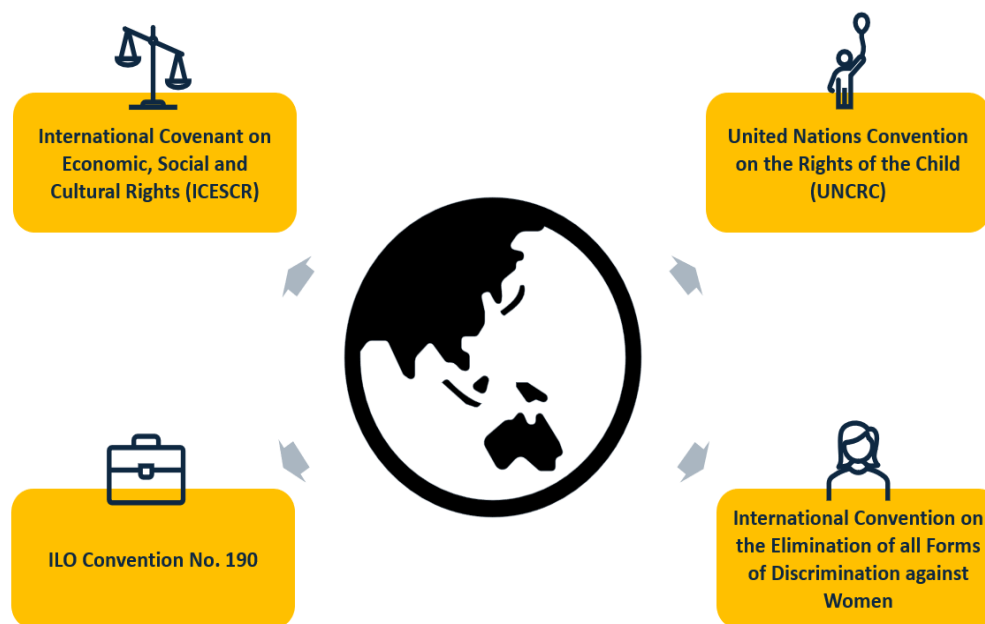
It also extends the full entitlement to paid FDV leave to state referral employees, that is, employees who are national system employees only because of the state referrals of workplace relations powers to the Commonwealth. Currently those powers only allow state referral employees to access the entitlement to paid FDV leave to the extent that it does not also constitute leave for victims of crime in their relevant state or territory (s 106D(3)). This will bring state referral employees in line with national system employees who are entitled to access both the NES entitlement and a State or Territory leave entitlement for victims of crime separately and in full to the extent that they overlap (ss 106D (1)-(2)).

The extension of the entitlement to paid FDV leave in full to state referral employees and non-national system employees will commence from 9 September 2024 and is supported by the external affairs power now that the ILO (No. 190) concerning Violence and Harassment has been ratified and is in force for Australia.

3.10 Australia's international obligations as the context for paid FDV leave

Australia has obligations under several international treaties that are of relevance to the paid FDV leave entitlement (see Figure 5).

Figure 5: Australia’s international obligations influencing the paid FDV leave entitlement



In addition to ILO Convention No. 190, Australia has ratified the International Covenant on Economic, Social and Cultural Rights, the obligations of which include regular reporting on its actions concerning the protection and advancement of human rights. The amendments to the Fair Work Act to provide access to 10 days of paid FDV leave were reported in the most recent report, submitted by the Department of Foreign Affairs and Trade (DFAT) on 17 October 2023.¹²⁶ As a party to the International Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), Australia has undertaken to take ‘all appropriate measures, including legislation, to ensure the full development and advancement of women’.¹²⁷ In the Concluding Observations of its review of the Australian Government’s report, the CEDAW Committee – the body responsible for monitoring progress in implementation of the Convention -noted that:

The Committee urges the State party to take concrete measures to eliminate occupational segregation including by removing barriers to women in all sectors and to ensure equal opportunities for, and equal treatment of, women and men in the labour market.¹²⁸

The 2022 FDVL Act thus sits within the broader context of actions – both global and national – to address gendered and other forms of inequality, most notably in the area of employment and workplace relations.

126 (DFAT) Australian Government Department of Foreign Affairs and Trade (2023) *Australia’s Sixth Report under the International Covenant on Economic, Social and Cultural Rights 2017-2022*, p.18. <https://www.dfat.gov.au/about-us/publications/reporting-under-the-international-covenant-on-economic-social-and-cultural-rights>

127 See Australian Human Rights Commission, *The Convention on the elimination of all forms of discrimination against women (CEDAW): Sex discrimination – International activities*, (Australian Human Rights Commission). [website] <https://humanrights.gov.au/our-work/sex-discrimination/convention-elimination-all-forms-discrimination-against-women-cedaw-sex>

128 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding observations of the Committee on the Elimination of Discrimination against Women: Australia*, CEDAW/C/AUL/CO/7, 30 July 2010. <https://www.refworld.org/policy/polrec/cedaw/2010/en/96536>



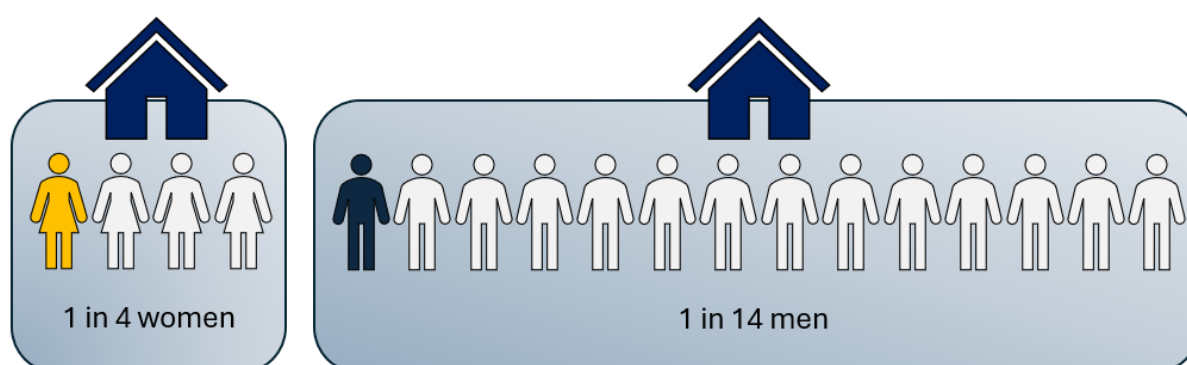
4 Data inputs and evidence-based results

This section presents the evidence base for the Review. It starts by providing an overview of the relevant research on FDV in Australia, including prevalence and related harms, as well as its impacts on employment and workplaces. The significance of employment and the role of the workplace in both responding to FDV and supporting broader cultural change is also considered. The key findings and implications of the quantitative and qualitative research conducted by BETA are considered in depth and the insights gained from other sources of information, including those provided by relevant government stakeholders, are also outlined.

4.1 FDV in Australia

Patterns and experiences of violence in Australia are distinctly gendered: while men are more likely than women to experience violence by a stranger (30% of men compared with 11% of women), women are more likely than men to experience violence by a known person (35% of women compared with 25% of men).¹²⁹ Data focusing on interpersonal violence in particular, shows that 1 in 4 women and 1 in 14 men have experienced violence, including physical, sexual, emotional and/or economic abuse, by a cohabiting partner since the age of 15 (see Figure 6).¹³⁰

Figure 6: Lifetime experience of FDV for women and men



FDV is a widespread problem in Australia that has significant health, welfare and economic consequences. FDV is, for example, a leading contributing factor in preventable disease in Australia,¹³¹ contributing more to the burden of disease for women aged 18–44 years than any other risk factor.¹³² In 2021–22, 3 in 10 (32%, or 6,500) assault hospitalisations were due to FDV, with the overall rate of FDV hospitalisations almost three times as high for women than to men.¹³³

Importantly, FDV hospitalisations were highest in areas with the greatest socioeconomic disadvantage and increased with geographical remoteness, being highest in the Northern Territory (see Figure 7).¹³⁴

129 ABS (Australian Bureau of Statistics) (2023a) *Personal Safety, Australia (2021-22)* [Key findings: violence prevalence and changes over time], <https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release#key-findings-violence-prevalence-and-changes-over-time>

130 *ibid.*, *Cohabiting partner violence, emotional abuse, and economic abuse*, <https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release#cohabiting-partner-violence-emotional-abuse-and-economic-abuse>

131 AIHW (2018), *op cit.*

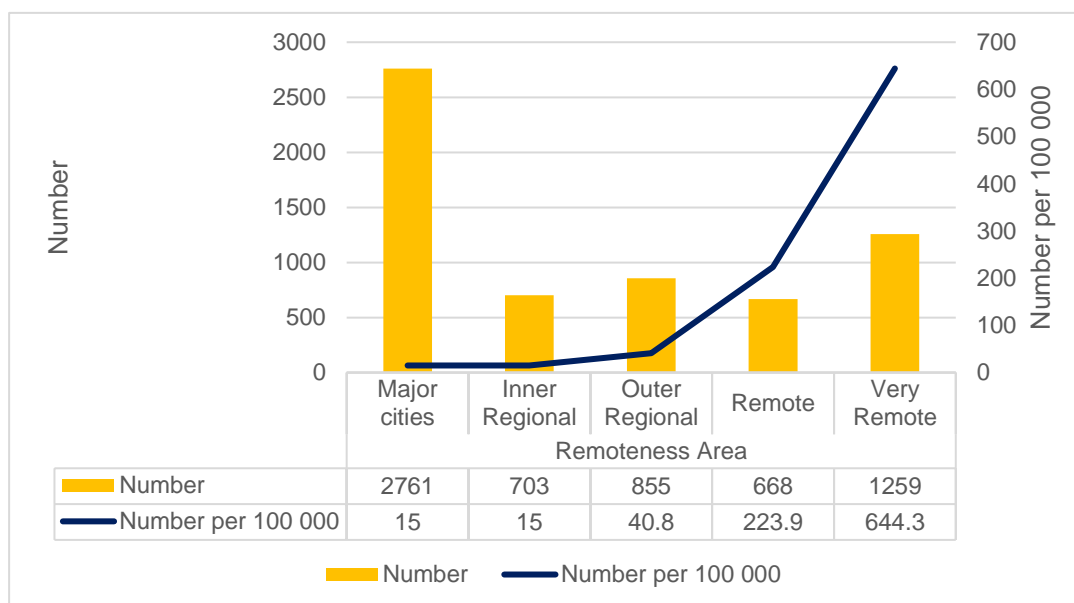
132 AIHW (2019), *op cit.*

133 AIHW (Australian Institute of Health and Welfare) (2024a) *Family, domestic and sexual violence: Health services*.

<https://www.aihw.gov.au/family-domestic-and-sexual-violence/responses-and-outcomes/health-services#hospitalisations>

134 AIHW (2024), *op cit.*

Figure 7: FDV hospitalisations, by geographical remoteness, 2021–22



Source: AIHW, 2024b

Recent data from the Australian Institute of Criminology (AIC) shows that the number of women, aged 18 years and over, killed by their partners rose between 2021–22 (0.25 per 100,000 female population) and 2022–23 (0.32 per 100,000).¹³⁵ Over the period 2022–23, one woman was killed every 11 days, with 3 in 4 women victims of homicide killed by an intimate partner.¹³⁶ Critically, research also confirms the increased risk to women during or after separation, for example, about 3 in 5 (58%) of FDV-related homicides examined by the Australian Domestic and Family Violence Death Review Network occurred during a period of intended or actual separation (2018–19).¹³⁷

Inequalities associated with a range of factors including socioeconomic status, cultural background and disability, expose certain groups of people to ‘overlapping and/or increased sources of discrimination and marginalisation, which can lead to increased risk and severity of family violence’.¹³⁸ This means that vulnerability and risk are closely linked; First Nations women, young women, pregnant women, women living outside major cities and women living with disability are particularly at risk of FDV.

The rates of FDV in **First Nations** communities are disproportionately high. First Nations women are 33 times more likely to be hospitalised due to FDV than non-Indigenous women.¹³⁹ FDV also more frequently goes unreported by Indigenous women due, in part, to the continuing impacts of

135 Miles, H and Bricknell, S (2024) *Homicide in Australia 2022–23*, Statistical Report no.46, Australian Institute of Criminology, <https://doi.org/10.52922/sr77420>

136 *ibid.*

137 ADFVDRB and ANROWS (Australian Domestic and Family Violence Death Review Network and Australia’s National Research Organisation for Women’s Safety) (2022) *Australian Domestic and Family Violence Death Review Network Data Report: Intimate partner violence homicides 2010–2018*, 2nd ed, Research report 03/2022). <https://www.anrows.org.au/publication/australian-domestic-and-family-violence-death-review-network-data-report-intimate-partner-violence-homicides-2010-2018/>

138 AIHW (Australian Institute of Health and Welfare) (2024b) *Family, domestic and sexual violence*. <https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups>; also: Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023) *Final Report, Volume 3*. <https://disability.royalcommission.gov.au/publications/final-report>

139 AIHW (Australian Institute of Health and Welfare) (2024c) *Family, domestic and sexual violence: Aboriginal and Torres Strait Islander People*. <https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/aboriginal-and-torres-strait-islander-people>



colonisation and the background of harm related to policing and government interventions.¹⁴⁰ Community, cultural safety and intergenerational trauma are of central importance for understanding risk and safety for First Nations people.

Prevalence rates of FDV in **CALD** communities are also significant. A 2020 survey of 1,400 migrant and refugee women found that 1 in 3 (33%) had experienced FDV by a current or previous partner, other family member and/or in-law over the preceding five years. Importantly, FDV was more common among migrant and refugee women on temporary visas (40%) than those who were Australian citizens (32%) or permanent visa holders (28%).¹⁴¹

Women living with **disability** or a long-term health condition are twice as likely as women without disability to experience physical and/or sexual violence by a cohabiting partner. Women living with disability, in particular, are about three times (30%) as likely as men with disability (11%) to have experienced intimate partner violence since the age of 15.¹⁴² Moreover, women with an intellectual/psychological disability are nearly three times more likely than women with a physical disability to experience violence.

FDV, thus, impacts differently on different people in terms of both prevalence and effects. In other words, recognising diverse vulnerabilities requires understanding the ways in which social inequalities shape the risk, experience and impacts of FDV. For example, the experience of FDV for First Nations women is not only shaped by the cumulative impacts of colonisation and trauma but also intersects with gender, racism and rurality, among other factors. Further, the higher risk associated with FDV in rural and remote locations¹⁴³ is also related to factors such as greater access to firearms and difficulties in accessing support and other services.¹⁴⁴

A note on FDV data

The Review recognises the difficulties associated with obtaining accurate prevalence data on FDV. Much FDV is not reported to or acted on by police¹⁴⁵ and is therefore not reflected in official statistics. Complexities relating to the range of both familial and non-familial relationships in which FDV occurs, and to the 'practices or behaviours outside the common understanding of physical, sexual and emotional violence',¹⁴⁶ further complicate the collection and reporting of FDV data.

The most prominent and comprehensive quantitative data concerning the prevalence of FDV in Australia is derived from the Personal Safety Survey (PSS), administered four-yearly by the ABS. While FDV statistics are commonly drawn from the PSS data, other data sources exist and may contribute to a more comprehensive picture of FDV in Australia. The Australian Institute of Health & Welfare (AIHW), for example, draws on a wide range of national data sources, in addition to the

140 Nancarrow, H (2019) *Unintended consequences of domestic violence law: Gendered aspirations and racialised realities*, Springer Nature. See also: Buxton-Namisnyk, E (2022) 'Domestic violence policing of First Nations women in Australia: "Settler" frameworks, consequential harms and the promise of meaningful self-determination', *The British Journal of Criminology* 62(6):1323-1340.

141 Segrave, M, Wickes, R and Keel, C (2021) *Migrant and refugee women in Australia: The safety and security survey*, Monash University report. https://bridges.monash.edu/articles/report/Migrant_and_refugee_women_in_Australia_The_safety_and_security_study/14863872

142 ABS (Australian Bureau of Statistics (2017) *Personal Safety, Australia, 2016*. <https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/2016>. Note: Disaggregated by disability results of the most recent PSS (2021-2022) are not currently available.

143 AIHW (2019), op cit.

144 *ibid*.

145 According to the 2016 PSS, most women (82%) who have experienced current FDV have never contacted the police and, of those women who do contact the police, approximately half (55%) report that their partner was not charged: ABS (2017), op cit.

146 AIHW (2019), op cit.

ABS, in its own reporting, including data collected by health, corrections, workplace and social welfare organisations.¹⁴⁷

Significant gaps in FDV data nonetheless persist, relating to, for example:

- the lack of a consistent definition, identification method and counting procedures for FDV across Australia, hindering the ability to capture and count incidents across different data sets and jurisdictions¹⁴⁸
- the lack of reliable data regarding FDV in specific population groups
- difficulties distinguishing between victim-survivors and perpetrators in some data sources and in practice.¹⁴⁹

Thus, there are limitations on what it is possible to know about various aspects of FDV including prevalence and estimated costs. Data sources such as the PSS commonly ask about actions taken in response to the violence, but do not specifically ask whether paid FDV leave was utilised.

4.2 Costs of FDV to the Australian economy

The economic costs of FDV for society as a whole are estimated to be significant, encompassing 'direct cost of the health system, counselling and other related services, the justice system, and child and welfare support, as well as indirect costs, such as lost wages, productivity and potential earnings'.¹⁵⁰ A number of Australian studies have sought to assess the aggregate cost of FDV. One study of the costs of FDV to Australian society, conducted in 2016 (for the period 2015–16), estimated the total societal costs to be around \$26 billion per year.¹⁵¹ The annual health system cost of treating women impacted by FDV has been estimated to be at least \$1.4 billion.¹⁵² Another attempt to calculate the cost of FDV focused solely on the state of Victoria. Commissioned by the Victorian Government for the Royal Commission into Family Violence, this research estimated the total cost of FDV in Victoria alone at \$5.3 billion in 2015–16.¹⁵³

While not specific to FDV, a recent estimate of \$128 billion as the value to the Australian economy that could be realised by 'purposefully removing the persistent and pervasive barriers to women's full and equal participation in economic activity',¹⁵⁴ provides critical context concerning the significance of FDV leave.

147 *ibid*, p.6.

148 AIHW (2018), *op cit*.

149 Nancarrow, H, Thomas, K, Ringland, V and Modini, T (2020) *Accurately identifying the "person most in need of protection" in domestic and family violence law*. Research Report. Issue 23. Sydney: ANROWS.
<https://www.anrows.org.au/project/accurately-identifying-the-person-most-in-need-of-protection-in-domestic-and-family-violence-law/>

150 AIHW (Australian Institute of Health and Welfare) (2024d) *Economic and financial impacts - What do the data tell us?*.
<https://www.aihw.gov.au/family-domestic-and-sexual-violence/responses-and-outcomes/economic-financial-impacts>

151 KPMG (2016) *The cost of violence against women and their children in Australia*, Department of Social Services.
<https://www.dss.gov.au/women/publications-articles/reducing-violence/the-cost-of-violence-against-women-and-their-children-in-australia-may-2016>

152 *ibid*.

153 KPMG (2017) *The cost of family violence in Victoria*: Summary report prepared for the Department of Premier and Cabinet in Victoria. <https://www.vic.gov.au/about-royal-commission-family-violence>

154 PM&C (2023) *A 10-year plan to unleash the full capacity and contribution of women to the Australian economy*, Women's Economic Equality Taskforce, Department of the Prime Minister and Cabinet.



4.3 Economic impacts of FDV for victim-survivors

Little is known about the specific economic costs of DFV for individual victim-survivors. While currently under-researched, it is recognised that FDV contributes to economic harm in a range of ways; there are ‘many trajectories of economic loss for different groups of women’,¹⁵⁵ of which the impacts on women’s employment are of particular concern. The broader context of gender inequality in Australia is also critical in terms of the intersection of gender, employment and economic security. For example, the current gender pay gap, while lower than it has ever been, is nonetheless significant, sitting at 11.5%, with a woman earning 89 cents for every dollar earned by a man.¹⁵⁶ Women experiencing ‘multiple sources of disadvantage’ also tend to have higher rates of unemployment and lower rates of workforce participation than the national average.¹⁵⁷ Hence, while women’s social and economic disadvantage, relative to men, is important in its own right, the impact of FDV on women’s employment further exacerbates this inequality.¹⁵⁸

The relationship between economic security and FDV is complex. Economic insecurity is recognised as an outcome of experiencing FDV, however, victim-survivors ‘who are living with financial insecurity’ are more likely than those who are not to experience violence.¹⁵⁹ Moreover, government policies, including those relating to social security, can be a significant factor contributing to, both, women’s ability to leave violent relationships, and poverty for those who do leave.¹⁶⁰ Women’s workforce participation is recognised as playing an important role in women’s economic security.¹⁶¹

Current data regarding victim-survivors and employment is limited; the most recent data indicates that 62% of women,¹⁶² and 60% of single mothers,¹⁶³ who have experienced FDV are in paid employment. A 2019 Australian study (n = 658) found that 55–70% of women who had experienced FDV were employed on a full-time basis but earned relatively low incomes¹⁶⁴, largely due to their overrepresentation in part-time or casual paid work and/or full-time caring roles.¹⁶⁵ Importantly, while participants in the study did not change their occupation after experiencing FDV, they did report significant changes to their employment conditions and work hours, job classification, patterns of participation, and work trajectories. A significant proportion (67%) of women had moved to a different employer for reasons including safety (30%), difficulty performing at work (27%), and/or embarrassment about their situation (30%).

Other research has found that women employees who experience FDV report feeling distracted, fatigued, unwell and/or fearful at work, leading to absences, leave-taking and, subsequently,

155 UNSW, Social Policy Research Centre (2019), op cit., p.2.

156 WGEA (Workplace Gender Equality Agency) (2023) *The ABS data gender pay gap*. <https://www.wgea.gov.au/data-statistics/ABS-gender-pay-gap-data>

157 Payne, M, Ruston, A and Hume, J (2022) *Women’s budget statement 2022–23*, Commonwealth of Australia, p. 32, https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fbudget%2F2022_05%22

158 Cortis, N and Bullen, J (2016) *Domestic violence and women’s economic security: Building Australia’s capacity for prevention and redress*: Final report.

159 ANROWS (Australia’s National Research Organisation for Women’s Safety) (2022) *Economic security and intimate partner violence: Research synthesis*, p.2. <https://www.anrows.org.au/publication/economic-security-and-intimate-partner-violence/>

160 See Summers, A (2022) *The Choice: Violence or Poverty*, University of Technology Sydney, <https://doi.org/10.26195/3s1r-4977>.

161 ANROWS (2022), op cit., p.2.

162 ANROWS (Australia’s National Research Organisation for Women’s Safety) (2019) *Paid domestic and family violence (FDV) leave: Summary of the evidence*. <https://www.anrows.org.au/resource/summary-of-the-evidence-paid-domestic-and-family-violence-FDV-leave/>

163 Summers, A (2022) op. cit.

164 See also Summers’ (ibid, p.11) finding that the earnings of single mothers who have experienced FDV were ‘insufficient to support themselves and their children and they experienced considerable financial stress’.

165 Franzway, S, Moulding, N, Wendt, S, Zufferey, C and Chung, D (2019) *The sexual politics of gendered violence and women’s citizenship*, Policy Press, Bristol.

reduced income and disrupted work histories.¹⁶⁶ For example, according to the ABS in 2020, 15% of women employees took time off work due to experiencing violence from their current partner; this figure rises to 29% in relation to FDV from a previous partner.¹⁶⁷

It is also recognised that the costs of leaving a violent relationship are substantial – and a burden that is disproportionately borne by women. Many women (64%, or 2 in 3) who leave a violent relationship move away from their home and, of these women, 69% leave behind property and assets.¹⁶⁸ The costs associated with leaving have been estimated to average \$18,000 per person,¹⁶⁹ with out-of-pocket expenses including access to medical treatment, police support, legal advice, counselling and judicial support¹⁷⁰ as well as housing-related costs.

4.4 Economic impacts of FDV on employers

The impacts of FDV on victim-survivors who are employed translate directly into costs to the economy, considering reduced productivity associated with personal and health impacts and related absences and/or resignations. Many of these costs, including those relating to staff turnover, recruitment and training replacement staff,¹⁷¹ are likely to be borne directly by employers and have been estimated at up to \$2 billion a year.¹⁷²

4.5 FDV leave

4.5.1 Measuring the impacts of paid FDV leave

Research evaluating the impacts of paid FDV leave and other industrial supports is a key data gap in Australia.¹⁷³ While a range of Australian publications have focused on FDV leave, few of these are recent and many tend to draw on older research and commentary undertaken before paid FDV leave was implemented. There is also a lack of comparative research, both in Australia and internationally, that systematically identifies the different impacts of paid and unpaid FDV leave.

In addition to the limitations of FDV data discussed earlier, confidentiality and safety concerns complicate the collection and recording of data regarding FDV leave. Further, data on leave utilisation has not yet been incorporated into nationally representative surveys such as the ABS PSS, and disaggregation of FDV leave reporting is not currently possible through the ATO's single-touch payroll. While the Workplace Gender Equality Agency (WGEA) responded quickly to the introduction of the new entitlement by including relevant questions in its 2024 employer survey to measure the utilisation of the entitlement since commencement in 2023, analysis and reporting of this information are not yet available.

166 Aeberhard-Hodges and McFerran (2018), op cit.; Eftekhar, S (2019) *Breaking the cycle of domestic violence: A case for paid domestic leave policies and legislation in British Columbia*, LEVEL: Vancouver Foundation. <https://levelvf.ca/project/breaking-the-cycle-of-domestic-violence-a-case-for-paid-domestic-leave-policies-and-legislation-in-british-columbia/>; Franzway et al. (2019), op cit.

167 ABS (Australian Bureau of Statistics) (2020) *Partner violence – In focus: Crime and justice statistics*, www.abs.gov.au/statistics/people/crime-and-justice/focus-crime-and-justice-statistics/partner-violence-january-2020

168 AIHW (2024d), op cit.

169 Bluett-Boyd, N (2018) *Changing the rules for working women* (ACTU Commissioned Report, 2018), https://www.actu.org.au/media/1034054/a4_ctr_systematic-change-for-women.pdf

170 Aeberhard-Hodges and McFerran (2018), op cit.

171 McFerran L (2011) *Safe at home, safe at work? National domestic violence and the workplace survey*, Australian Domestic and Family Violence Clearinghouse. <https://apo.org.au/node/27394>

172 ANROWS (2019), op cit. See also KPMG (2016), op cit.

173 UNSW, Social Policy Research Centre (2019), op cit.



4.5.2 Impacts of FDV leave for the workplace

By enabling workers to maintain their employment, FDV leave can contribute to reduced staff turnover and, hence, less disruption for the workplace while also avoiding the costs associated with the recruitment and training of new staff.¹⁷⁴ FDV leave entitlements may also contribute to a more positive work environment that is characterised by increased awareness of FDV and reduced stigma for those experiencing it.¹⁷⁵ This may lead, in turn, to stronger employee morale linked to reduced social isolation and increased self-worth,¹⁷⁶ and, thereby, greater workplace commitment and loyalty. It has also been argued that demonstrating a commitment to worker wellbeing, including through the provision of FDV leave, is likely to enhance the ‘overall reputation and status’ of an organisation.¹⁷⁷

4.5.3 Costs of paid FDV leave

Research commissioned by the ACTU in 2021 provides the only estimate to date of the cost to employers of providing 10 days of paid FDV leave. It estimated the costs to be \$13.1 million, increasing to \$13.4 million when considering the estimated costs of the 2.5% increase in wages as per the FWC’s Annual Wage Review 2021.¹⁷⁸ Estimates accounting for more recent wage increases are not available. While this research acknowledged that small and medium businesses would likely face a larger cost burden ‘given that they employ the largest share of workers on the modern award wage’, it also noted that, because many employers are already providing paid FDV leave, the ‘additional cost [of] the proposed provision may be less than the estimated value’.¹⁷⁹

Although the Review notes reference in research studies to the costs of FDV leave provision being outweighed, or at least ‘significantly offset’,¹⁸⁰ by the benefits,¹⁸¹ it also acknowledges the concerns raised by employers regarding the disproportionate costs and impacts associated with administering FDV leave for small business, particularly as a result of the inclusion of casual employees. The Productivity Commission has commented on the ‘considerable resources’ routinely expended by employers on regulatory compliance activities such as those relating to FDV leave and related obligations. Emphasising the proportionally higher impact for small and medium-sized businesses, the Productivity Commission referred to a survey finding that a quarter of small and medium-sized businesses spent 11 hours or more per week on compliance. For over 20% of businesses, this equated to a cost of between \$10,000 and \$50,000 per year to ensure compliance.¹⁸²

174 Aeberhard-Hodges and McFerran (2018), op cit.; de Jong, A (2018) ‘Corporate social responsibility through a feminist lens: Domestic violence and the workplace in the 21st Century’, *Journal of Business Ethics* 148:471–487; ANROWS (2019), op cit.

175 Aeberhard-Hodges and McFerran (2018), op cit.; Eftekhar (2019), op cit.; Guthrie, R and Babic, A (2021) ‘Employers’ potential liability for family and domestic violence: An Australian overview’, *The Economic and Labour Relations Review* 1–21.

176 Eftekhar (2019), op cit.; Wilcox T, Greenwood, M, Pullen, A, O’Leary Kelly, K and Jones, D (2021) ‘Interfaces of domestic violence and organization: Gendered violence and inequality’, *Gender, Work and Organization*, 28(2):701-721.

177 ANROWS (2019), op cit.; Aeberhard-Hodges and McFerran (2018), op cit., p.258.

178 Bankwest Curtin Economics Centre (2021) *Family and Domestic Violence Leave Review*, report prepared for the Australian Council of Trade Unions, p.16: <https://bcec.edu.au/publications/family-and-domestic-violence-leave-review/>

179 *ibid*, p.18.

180 ANROWS (2019), op cit., Summary of the evidence, p.2.

181 See also Bankwest Curtin Economics Centre (2021), op cit.

182 PC (Productivity Commission) (2020) *Regulatory Technology. Information paper*, p.8. <https://www.pc.gov.au/research/completed/regulatory-technology>

In its 2024 Small Business Conditions Survey, the ACCI similarly noted that for some small businesses the ‘cost of compliance may be equivalent to an additional full-time worker on the minimum wage’¹⁸³ and may be adversely affecting their profitability.¹⁸⁴

4.6 Workplace agreements

The Workplace Agreements Database (WAD) provides important information to this Review as it highlights the emerging workplace standards for FDV responses. While the NES, containing the entitlement for paid FDVL, provides the minimum standards of employment, employees can bargain for more generous conditions in their enterprise agreements (EA), as outlined in 3.1.1. The WAD, maintained by DEWR, contains details of the conditions found in EAs to allow analysis of the changes in employment conditions as bargained in Australian workplaces.

Analysis of the WAD provides the opportunity to identify the characteristics of EAs that offer employees some type of FDV clause or provision, including but not limited to paid FDV leave. Other FDV-related provisions might include access to unpaid FDV leave and/or other leave types (such as personal or compassionate leave, annual and long service leave, time off in lieu and accrued flexi time); non-leave supports such as safety precautions, counselling, access to an Employee Assistance Program; and provisions for carers/supporters of FDV victim-survivors.

Analysis of the WAD provides important information for this Review. For example, data concerning agreements that included paid FDV leave provisions prior to introduction of the entitlement, and comparison over time, can inform the Review by highlighting emerging workplace standards for FDV responses. As depicted in Table 2, WAD analyses for June 2021 and September 2023 show an increase in the proportion of current (not expired) agreements containing a paid or unpaid FDV leave entitlement, from 53.7% to 65.2%, encompassing a rise, from 20.3% in 2021 to 24.2% in 2023, in EAs containing paid FDV leave. This indicates a shift towards recognising and responding to FDV as a workplace issue.

Table 2: Percentage of workplace agreements with FDV leave provisions, 2021, 2023

		June 2021	September 2023
Any paid or unpaid FDV leave		53.7	65.2
	Paid FDV leave only	20.3	24.2
	Paid and unpaid FDV leave	6.1	7.7
	Unpaid FDV leave only	27.4	33.3
Total current (not expired) workplace agreements (N)		10,184	9,831

Source: Adapted from DEWR Workplace Agreements Database, 2024

Data concerning workplace gender equality performance in private sector employers with 100 or more employees, provided by the WGEA, also offers useful context regarding employer policies and changes over time. For example, the overall proportion of such large employers who have a policy to support employees experiencing FDV increased from 70% for the period 2020–21, to

183 ACCI (Australian Chamber of Commerce and Industry) (2024) *2024 Small Business Conditions Survey*, p.12. <https://www.australianchamber.com.au/publications/16400/>
 184 *ibid*, p.14.



81% for the period 2022–23. Over the same period, the number of these employers with a policy on flexible working arrangements grew from 79% to 84%.¹⁸⁵

4.7 Impacts of the new entitlement to paid FDV leave: BETA's findings

Acknowledging the challenges in the data landscape, as discussed above, targeted and timely qualitative and quantitative research was procured to specifically inform this Review. Conducted by BETA between December 2023 and April 2024 and commissioned by DEWR, this research examined the impacts of the new entitlement to 10 days of paid FDV leave for all NES employees and comprised the following activities:

- a national survey of 594 victim-survivors (self-identifying and recruited via an online research panel), all of whom reported having experienced FDV in the last five years while in paid employment
- in-depth interviews with 22 victim-survivors (recruited via the survey) who had experienced FDV in the last two years while in paid employment
- a national survey of 1,437 business owners and managers (recruited via an online panel with quotas applied for age, gender, state, region, and mix of micro, medium and large businesses)
- in-depth interviews with 15 business owners and managers
- a national survey of 3,008 Australians currently in employment (incorporating an online, randomised experiment).

Based on these activities, BETA reported 10 key findings, concluding that the 'entitlement was performing as intended, delivering significant benefits to those accessing it' and that it was 'remarkably well-supported by victim-survivors and employers alike'.¹⁸⁶ The level of agreement expressed by employers and employees¹⁸⁷ that the entitlement is a 'positive step for Australia', constituted their first finding.¹⁸⁸ This finding is consistent with other research, as BETA observes, conducted before the legislation came into effect. The Review further notes its consistency with the findings of the 2022 Senate Inquiry, as discussed in Section 2.

BETA's second and third key findings related to whether the entitlement is being used for its intended purposes and, relatedly, whether it is meeting its objectives in terms of supporting economic security for victim-survivors.

BETA found that victim-survivors' use of paid FDV leave was consistent with its intended purposes, that is, to support victim-survivors so that they do not have to choose between their pay and safety and are able to make the necessary arrangements to ensure their safety. Leave users surveyed by BETA reported using the leave to make arrangements for their own (41%) or their children's (43%) safety, as well as to access services including police (39%), medical (22%) and legal (24%). Thus, the leave enabled victim-survivors both to 'complete practical tasks that could not be done outside work hours', such as seeking legal protection and moving house, and to do so 'during work hours without the perpetrator knowing'.¹⁸⁹ Importantly, BETA also observed

¹⁸⁵ WGEA (Workplace Gender Equality Agency) (2023) *WGEA Data Explorer*. www.wgea.gov.au/data-statistics/data-explorer

¹⁸⁶ BETA, *op cit.*, p.4.

¹⁸⁷ *ibid.*, p.11: 77% of surveyed employers were supportive of the new legislation, and the 'vast majority' of surveyed victim-survivors (79% of males and 90% of females) agreed that that the paid FDV leave entitlement is a positive step for Australia.

¹⁸⁸ *ibid.*

¹⁸⁹ *ibid.*, p.33.

that the leave contributed to a ‘sense of social and emotional support’ for victim-survivors, with 9 out of 10 leave users reporting that their employer supported them in ways beyond FDV leave.¹⁹⁰

BETA further found that the objectives of promoting employment security and preserving income for victim-survivors were being met. Nearly all surveyed leave users reported that paid FDV leave had helped them to maintain their *income* (95%, or 19 out of 20 female victim-survivors and 88% or 22 out of 25 male victim-survivors) or their *employment* (85%, or 17 out of 20 female victim-survivors, and 92%, or 23 out of 25 male victim-survivors).¹⁹¹

Each of the remaining key findings (4–10) is discussed below.

4.7.1 The potential to reduce stigma experienced by victim-survivors of FDV

BETA’s research revealed that victim-survivors had mixed, though primarily positive experiences of taking FDV leave, feeling both supported by their workplace (42 out of 46 leave takers) and, simultaneously, judged (33 out of 46) and shamed (31 out of 46). Moreover, while many leave users (10 out of 20 females and 7 out of 25 males) said that they had not experienced any negative consequences of taking the leave, others reported experiencing exclusion (13 out of 46), discrimination (11 out of 46) and/or reduced trust from management (8 out of 46).¹⁹²

An important component of BETA’s research was, therefore, the use of an experimental survey design to explore whether the entitlement has the potential to reduce stigma and discrimination experienced by victim-survivors. The online survey experiment involved respondents being randomly assigned to one of two groups: the ‘treatment group’ or the ‘control group’. Both groups were presented with a fictitious case of an employee who had taken leave because they had experienced FDV and asked to evaluate that employee’s competence, specifically in relation to whether they should receive a ‘bonus’ payment and be considered for a management position. While the treatment group was presented with information about paid FDV leave, including its anti-discrimination provisions, *before* evaluating the fictional employee, the control group did not receive this information until *after* their evaluation.

BETA based its research design on similar studies focused on exploring the impacts of legislation on community attitudes. It hypothesised that, if the reforms have the potential to reduce stigma and discrimination, the treatment group of respondents would assign a larger bonus and be more likely to recommend the fictional employee for management than the control group of respondents. In line with this hypothesis, BETA found that respondents who received information about the entitlement before evaluating the fictional employee allocated a higher bonus and rated the employee as ‘significantly more competent’¹⁹³ than those in the control group.

On this basis, BETA concluded that the entitlement has the potential to ‘reduce stigma and discrimination’ towards those who take leave due to experiencing FDV, whilst noting that any ‘real-world’ reduction in either would depend on ‘the clarity in which the legislative entitlement, including the anti-discriminatory provisions, are communicated to members of the Australian working population’.¹⁹⁴

¹⁹⁰ *ibid.*

¹⁹¹ *ibid.*, p.32.

¹⁹² *ibid.*, pp.34-35.

¹⁹³ *ibid.*, p.31.

¹⁹⁴ *ibid.*, p.60.



4.7.2 Awareness of the entitlement and its implications for uptake

The BETA research found that, at the time of its surveys, awareness of the entitlement was ‘relatively low’ among employers (58%) - and ‘even lower among victim-survivors’ (39%), with corresponding low uptake since the new legislation came into effect¹⁹⁵. Lack of awareness was identified as a significant barrier to both providing and accessing the leave.¹⁹⁶

BETA's results suggested that the proportion of victim-survivors accessing paid FDV leave had increased from 6% (30 out of 446) of victim-survivors who had experienced FDV in 2018–22 to 13% (16 out of 128) of victim-survivors who had experienced FDV in 2023–24 (that is, since the introduction of the paid FDV entitlement). Similarly, the proportion accessing unpaid FDV leave had decreased from 116 out of 420 (28%) to 22 out of 109 (20%) among the two populations of victim-survivors answering the survey questions.¹⁹⁷

While acknowledging the limitations of its research in relation to population-level estimates, BETA found that low awareness is likely to be driving low uptake. Uptake of paid FDV leave is increasing though, as is the number of businesses that provide paid FDV leave, reflected in BETA's finding that only 23% of employers provided paid FDV leave before it was made a NES entitlement.¹⁹⁸

Significant among BETA's findings is that **casual staff have lower awareness and uptake of the leave** (Finding 6). Casual employees, for example, were half as likely to be aware of the paid FDV leave entitlement (13 out of 64, or 20%) than to part-time (38%) or full-time employees (42%).¹⁹⁹ There was also substantial confusion regarding the eligibility of casual staff, with less than half (47%) of victim-survivors aware that casual staff are eligible for the leave.²⁰⁰ Confusion was also evident in understanding of the ‘logistics of FDV leave work for casual staff’ (such as whether FDV leave is accumulated on a pro-rata basis). Low uptake of leave among casual employees is supported by BETA's finding that, of the 19 casual staff respondents in its victim-survivor survey who had experienced FDV in 2023–24, only 1 had accessed paid FDV leave. Moreover, only 22% of employers who had granted leave had granted it to casuals, compared with 75% who had granted it to full-time employees and 34% who had granted it to part-time employees.²⁰¹

4.7.3 Privacy and trust key concerns for employees

BETA found that having to tell a manager/employer about their experience of FDV was a key barrier to victim-survivors accessing the leave. About one-third of victim-survivors chose not to tell anybody at their workplace about the FDV they were experiencing, and less than 2 in 5 opted to tell their manager. Privacy was also a major concern, with victim-survivors expressing concern and uncertainty about the process and their employers' ability to maintain privacy and anonymity, especially where trust in management was low. Victim-survivors were also concerned that disclosing FDV and/or accessing FDV leave might negatively affect their career.²⁰²

BETA's findings included that the initial conversation between employee and manager presents a key challenge, for both victim-survivors and employers. Of the employers who had provided

195 *ibid*, p.13.

196 *ibid*, p.14.

197 *ibid*, p.16.

198 *ibid*, p.38-39.

199 *ibid*, p.14.

200 *ibid*, p.46.

201 *ibid*, p.17.

202 *ibid*, p.54.

leave, for example, 37% said that they felt ill-equipped to have conversations about FDV.²⁰³ Noting a ‘correlation between victim-survivors’ rating of trust in their manager and uptake of FDV leave’, BETA thus emphasised the critical importance of the relationship between victim-survivor and manager for facilitating access to FDV leave.²⁰⁴

4.7.4 Challenges associated with evidentiary requirements

BETA found that evidentiary requirements were a challenge, and a source of discomfort,²⁰⁵ for both victim-survivors and employers. Misconceptions concerning whether evidence is required or discretionary and what constitutes acceptable evidence were also a complicating factor.

Among leave users, 8 out of 10 provided evidence to their employer in support of their request for FDV leave; for half of all leave users, this evidence was required by their employer while about a third provided the evidence voluntarily. Just over half of leave takers said that they faced difficulties gathering this evidence.²⁰⁶ Observing that some victim-survivors had not taken the leave because they ‘anticipated challenges with gathering evidence’, BETA noted the potential for evidentiary requirements to discourage uptake of FDV leave. It is nonetheless the case that the challenges of gathering evidence did not prevent all victim-survivors from taking the leave, perhaps reflecting the inherent complexity of decision-making on this issue.

BETA also found that some employers were concerned about potential misuse of the entitlement, with 17% of those who had received leave requests saying that they had encountered misuse. Of the employers surveyed, 14% reported denying FDV leave requests, most commonly due to concerns about misuse.²⁰⁷

4.7.5 Differential impacts on small business

BETA found that financial costs and staffing implications were a concern for some employers but were seen as more significant by employers who had not yet provided FDV leave; 30% of employers who had not provided leave identified financial costs as a barrier, compared to 18% of those who had.²⁰⁸ Concern about financial costs was especially high among micro businesses (28%) and small businesses (30%).²⁰⁹ While observing that financial costs and staffing shortages ‘may be more significant in anticipation than in reality’, BETA found that small and micro businesses felt the impacts of paid FDV leave more than large businesses.²¹⁰

4.7.6 Guidance and support

BETA’s last key finding relates to the support needs of employers. In finding that employers who had granted FDV leave to staff were looking for more guidance, BETA noted that 40% of surveyed employers who had provided leave (and hence, were already aware of the entitlement) reported difficulties finding clear guidance and 24% did not understand their obligations.²¹¹ Relatedly, BETA found that just over a third of employers (36%) had communicated the change in

203 *ibid*, p.29.

204 *ibid*, p.21.

205 *ibid*, p.29-30.

206 *ibid*, p.23.

207 *ibid*, p.30.

208 *ibid*, p.27; p.39.

209 *ibid*, p.39-40.

210 *ibid*, p.26.

211 *ibid*, p.5.



entitlement to all of their employees and, of these, less than a third had added FDV leave to their employee handbooks or policies (28%) or covered it in employee training (29%).²¹²

BETA's findings regarding the sources of information used by employers are interesting in that, despite the relative recency of the entitlement being introduced, official guidelines and support materials (such as those provided by the FWO), while accessed, were not the most commonly used sources. Instead, social media was the main source of information for employers who had granted FDV leave (42%), while news or media coverage was the main source of information for employers who had not provided leave (36%).

Overall, however, a third (34%) of surveyed employers had sought information via the FWO website and a quarter (23%) had visited the government-funded 10DaysPaidFDVLeave website. BETA also found that employers who visited government websites (72%) were slightly more likely than those using other information sources (68%) to feel equipped to support employees experiencing FDV.²¹³

4.8 Government support for small business

4.8.1 FWO education, communications and advice

As mentioned in Section 2, in the October 2022-23 Budget the Government allocated \$3.4 million to support small business employers to implement the 2022 FDVL Act. Providing funding over four years, the Small Business Assistance Package included \$2.2 million for the FWO to deliver new and updated resources and targeted workplace relations advice and education for small business.

The FWO released and promoted a range of educational resources and information on the changes to the paid family domestic violence leave entitlements including dedicated website content (with professionally translated information), a small business guide (*Small Business Employer Guide to Family and Domestic Violence*), a new fact sheet and updates to the FWO's online learning courses.

The FWO's existing services were also ready to respond to enquiries about paid FDV leave, including through the FWO's Infoline (which includes a Small Business Helpline) and the Employer Advisory Service (EAS). The EAS is a bespoke service for small business that provides free tailored written advice to small businesses when they need it.

The FWO has promoted its paid FDV leave resources at community and stakeholder forums, and through presentations, workshops, webinars, emails to subscribers and both paid and unpaid activities through social media and digital channels, including translated activities. The FWO has posted information about the new entitlement across all its social media channels since November 2022.

Between 23 January and 14 February 2023, the FWO ran a paid communications campaign targeting larger businesses, including communications in five languages other than English. This campaign generated 13.6 million views of campaign messages including 1.4 million views of in-language messages.

A further paid communications campaign targeting small business employers and employees was undertaken between 18 July and 15 August 2023, to support the 1 August 2023 effective

²¹² *ibid*, p.39.

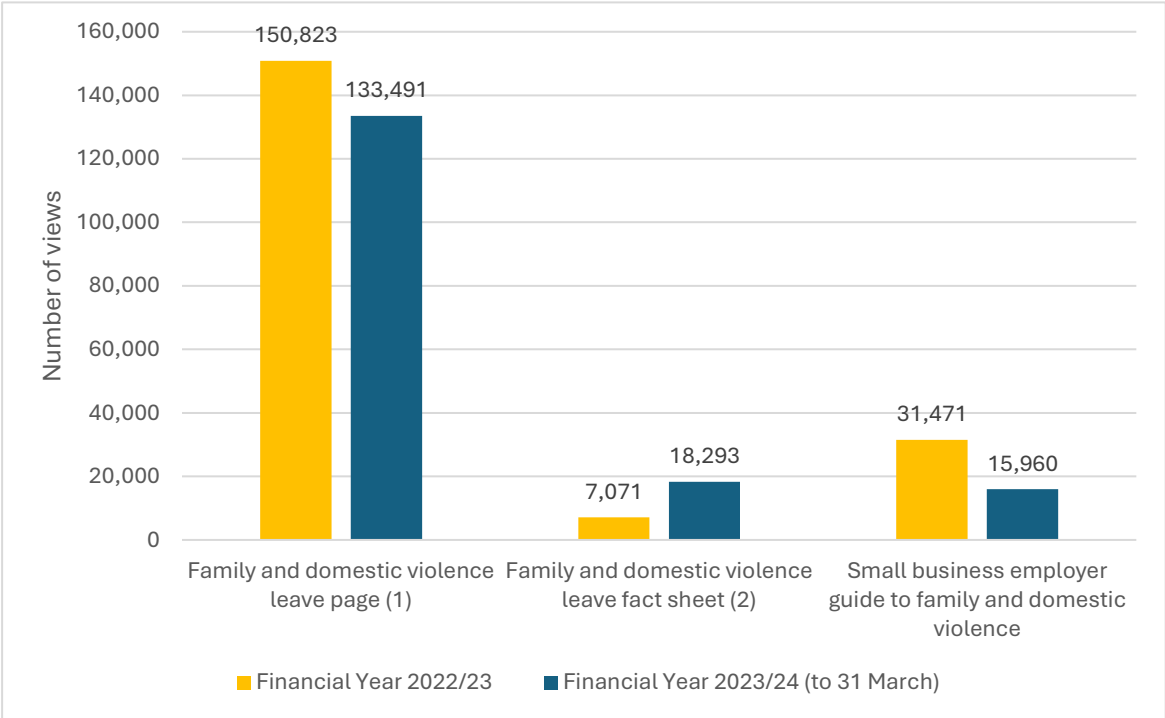
²¹³ *ibid*, p.28.

implementation date for small businesses. The communications were again translated into five key languages other than English. Campaign messages were seen 17.8 million times including 9.1 million views of in-language messages.

The EAS received 14 enquiries relating to paid FDV leave between 1 July 2023 and 31 March 2024. This included 5 enquiries of a general nature (such as how the leave is accrued and paid), with the remainder concerning specific enquiries relating to the customer’s circumstances, including on evidentiary requirements, how leave can be taken, and how it applies to casuals.

Access to the FWO website content and downloadable resources, in the form of page views, is depicted in Figure 8, illustrating the popularity of the FWO website as a source of information about paid FDV leave. Compared with the general paid FDV leave landing webpage, page views for the FDV leave fact sheet and the *Small Business Employer Guide to Family and Domestic Violence* were lower over this period.

Figure 8: FWO website and resource page views



Note: FWO webpage containing information about paid FDV leave from 1 February 2023 (date that FWO updated paid FDV leave factsheet).
 Source: Adapted from FWO’s submission of data to the Independent Review²¹⁴

The information comes with the caveat that the statistics for 2023–24, unlike those for 2022–23, do not capture the full financial year. Moreover, prior to 31 January 2023, the FWO webpage provided information about *unpaid* FDV leave before being republished to cover primarily *paid* FDV leave as the FDV leave reforms were taking effect on 1 February 2023. The existing information on unpaid FDV leave, which at that time still targeted small businesses and their employees not covered by paid FDV leave legislation until later that year, was moved into a

214 FWO (unpublished) *Response to the Review of the Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022 Data Request*, 12 June 2024.



separate section on the FWO website. Page views for 2022–23 would have included views of the unpaid FDV leave content for seven of the nine months in the financial year 2023–24.

Likewise, the FWO FDV leave fact sheet was updated to cover paid FDV leave and published on 1 February 2023. The statistics presented in Figure 8 are thus indicative of the continued (and in the case of the FWO fact sheet, increasing) level of access to FWO information but do not distinguish between information about paid and unpaid FDV leave.

The FWO has also advised that page view data may be a conservative estimate of total engagement with its resources as the data does not capture downloads of resources or when links to resources are shared outside the FWO’s website (for example via links provided in electronic direct mail of resources downloaded from generic web searches).

4.8.2 Dedicated website for small business

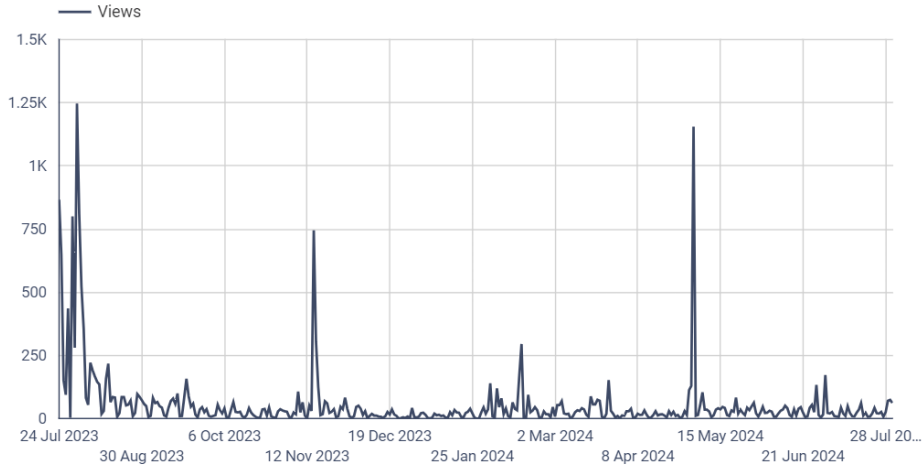
The Government’s SBAP also included funding for the procurement of tailored workplace relations guidance and support for small business. An independent provider, Transitioning Well, was engaged for this purpose and developed a standalone website as a ‘one-stop shop’ targeting small business, launched on 24 July 2023. The website, 10DaysPaidFDVLeave, was developed in partnership with small business and FDV sector representatives including COSBOA, Small Business Australia, the AHC, the Australian Women’s Legal Service Australia (WLSA), and consultants with lived experience of FDV.

The 10DaysPaidFDVLeave website was designed for a select audience, that is, small business employers rather than the general public. Almost 50 websites link to the site, and it has been promoted by prominent small business peak bodies including COSBOA and the AHC.

Since its launch on 24 July 2023, the 10DaysPaidFDVLeave website has recorded 20,765 views, with a total of 7,808 unique users (until 31 July 2024), as depicted in Figure 9.

Figure 9: Cumulative data, 10DaysPaidFDVLeave website traffic July 2023–2024

Total users	Views	Sessions	Sessions per user	Engagement rate	User engagement
7,808	20,765	10,652	1.36	48.10%	133:33:18



Source: Transitioning Well (unpublished)

According to Transitioning Well, the top five pages, by number of users who have visited the page to date, are:

- The www.10dayspaidfdvleave.com.au home page (43% of users)
- 'What you need to do to meet your FDV leave obligations' (9% of users)
- 'Understanding the changes to family and domestic violence leave entitlements' (5.5% of users)
- Leave and payment processes (4.3% of users)
- 'Create a family and domestic violence policy' (3.8% of users).²¹⁵

In addition, there have been 253 downloads, including 107 downloads of the FDV leave policy template; 18 downloads of 'Respecting privacy and confidentiality'; and 17 downloads of the 'Small business family and domestic violence leave overview'.²¹⁶

In terms of traffic sources – or sites that refer users to the 10DaysPaidFDVLeave website – Transitioning Well identifies Google (25%) and fairwork.gov.au (9%) as the top referrers, followed by LinkedIn, Transitioning Well's newsletter (*The Well Informed*), 1800Respect and DEWR. It is also noted that users who access the site from the FWO, DSS, DEWR or 1800Respect websites 'are the most engaged', meaning that they stay on the site for more than a minute. As observed by Transitioning Well, this suggests that users prefer to 'find us through a trusted source' and validates the worth of time spent liaising with 'reputable organisations'.²¹⁷

The Review notes, however, even considering the shorter timeframe in which it has been 'live', that engagement with the 10DaysPaidFDVLeave website has been considerably lower than that with the FWO resources.

4.9 Concluding comment

As discussed in this section, 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 findings of BETA's research provide early indications that it is working well and as intended. In addition to the high level of support for the entitlement among employers, employees and victim-survivors, BETA's findings highlight that those victim-survivors who have accessed the leave find it helpful, enabling them to access relevant services and enact safety while maintaining their income and employment. Concerns about employers denying requests for FDV leave (with BETA noting that 14% of employers reported denying such request²¹⁸) may thus reflect the early stage of implementation; the 'flipside' of such statistics – that the remaining employers reported no instances of refusing leave – is also worth noting. While there is considerable scope for improvement – in relation to, for example, understanding the details and parameters of the leave and concerns about privacy,²¹⁹ – BETA's research, in its entirety, suggests that the entitlement is meeting its policy objectives in a range of important and impactful ways.

²¹⁵ Transitioning Well (unpublished) *10 Days Paid FDV Leave Digital Report*, 1 May to 31 July 2024, p.3.

²¹⁶ *ibid.*, p.4.

²¹⁷ *ibid.*

²¹⁸ BETA, *op cit.*, p.30.

²¹⁹ *ibid.*, p.44.



5 Stakeholder views

The Review facilitated opportunities for interested stakeholders, including employer and employee representatives, small business peak bodies, FDV specialists, and the legal services sector, to provide feedback on the operation and impact of the paid FDV leave entitlement as well as initiatives to support ongoing implementation. This section summarises the feedback provided by stakeholders in relation to the themes for consultation introduced in Section 1.

5.1 Background

The focus for consultation was informed by the themes identified in the 2022 Senate Inquiry submissions (see Section 2) and the key features of the 2022 FDVL Act (see Section 3). As outlined in Section 1 (1.2 Methods and approach), a single consultation guide for engagement with stakeholders was developed and used across all consultation activities to ensure consistency in approach and focus. The questions for consultation are shown in Figure 10.

5.1.1 Timeframe of Review

Due to the 3-month timeframe for this Review, the consultation period was relatively short, limiting the time available for stakeholders to contribute. The brevity of time available also limited the extent to which the reviewers were able to reach out to stakeholders for follow-up discussions and, in particular, to further understand and test views put forward in consultations.

Stakeholder views are presented here according to four key themes: operation (5.2), impacts (5.3), scope and coverage (5.4) and support and guidance (5.5) – and are cross-referenced with the specific positions and actions put forward by stakeholders (see Appendix B).

5.2 Operation of the entitlement

5.2.1 Broad support for continuation of current paid FDV leave legislation

'A legislative framework which provides for (paid) family and domestic violence leave is a necessary first step as part of the responsibility of Australian workplaces to address the impact of domestic violence in the world of work.'

Gavin & Weatherall²²⁰, written submission, 6 July 2024, p 2

'DV West wholeheartedly supports this legislation to be continued in its current form in its entirety'.

DV West, written submission, 5 June 2024, p 2

'...small business have been overwhelmingly supportive of this legislation [and] are truly happy they can provide this leave to their workers.'

ASU, written submission, 13 June 2024, p 5

A shared understanding of the importance of addressing FDV in the workplace was common across all of the stakeholder consultations, with strong support, overall, for the entitlement to continue. This is evident in stakeholder positions and actions (hereon positions/actions) (see Appendix B:1) and exemplified in comments that the entitlement is 'appropriate and sufficient',²²¹

220 Mihajla Gavin & Ruth Weatherall are academics specialising in human resources and industrial relations, and gender equality at the University of Technology Sydney.

221 ARA, Written submission to the Independent Review, 6 July 2024, p.3.

and ‘must, at the very least, be maintained’²²² given its potential to save lives.²²³ Case studies provided by stakeholders also highlighted instances in which the support of employers enabled FDV leave to be used in accordance with its intended purpose.

Case study: Employer support enabled access

A mental health nurse working at a hospital accessed the full 10 days which enabled her to leave an abusive relationship. The member picked up an overtime shift at the hospital [and] made a call on her break to organise crisis accommodation where she went after her shift finished. The member was able to talk with her [manager] about it and that she would be taking 10 days’ paid FDV leave starting the next day. The paid leave enabled her to access a \$5000 leaving violence grant and get set up in a new home.

ACTU, written submission, 24 Jun 24, p 13

Case Study: Employer support enabled access

Client was a factory hand who is not an Australian citizen. As a non-citizen, she is not entitled to Centrelink payments and has very limited access to temporary accommodation or other government support. Previously she would have had no support to get out. Her direct manager was very supportive of her applying for paid family and domestic violence leave and, because he had already dealt with ‘a few’ requests, said that he 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.

Adapted from ASU, written submission, 13 June 2024, p 3

The critical importance of retailers ‘car[ing] about their employees and their well-being’ was emphasised by the ARA, which also noted that ‘these reforms have spurred great beneficial enterprise process and culture changes for employees’.²²⁴

That ‘all forms of FDV [are] unacceptable’²²⁵ was uniformly expressed. COSBOA further pointed to the level of support for victim-survivors that has routinely been provided by many employers, noting that ‘small businesses have been known to deal with cases of FDV quite generously and compassionately’.²²⁶

Case study: Use of FDV leave to escape violence

‘I supported an older woman client (who) said she wished the leave had been around years ago and she would not have had to wait until she is 75 to leave her violent husband.’

DV West, written submission, 5 June 2024, p 2

222 SA Unions, Written submission to the Independent Review, 7 June 2024, p.6.

223 CPSU, Written submission to the Independent Review, June 2024, p.2; SA Unions, Written submission to the Independent Review, 7 June 2024, p.9; ACTU, Written submission to the Independent Review, 24 June 2024, pp.2, 27.

224 ARA, Written submission to the Independent Review, 6 July 2024, pp.1, 4.

225 COSBOA, Written submission to the Independent Review, 12 June 2024.

226 *ibid.*



5.2.2 Limited evidence from stakeholders regarding utilisation

'Since the commencement of 10 days' paid FDV leave for all employees, COSBOA has heard of very little incidences with the FDVL system.'

COSBOA, written submission, 12 June 2024, p 1

'[R]etailers report minimal instances of employee utilisation of this entitlement despite organisational education and engagement on the legislative reforms.'

ARA, written submission, 6 July 2024, p 1

The Review recognises that despite hearing broad support from stakeholders for paid FDV leave, the relatively short time span since the passage of the legislation limited the feedback that stakeholders were able to provide regarding access and utilisation of paid FDV leave. Combined with the limited availability of FDV data and relatively low take-up of paid FDV leave, this meant that, overall, stakeholders felt that they lacked sufficient experience with the entitlement to express their views on its operation and impacts.

A specialist FDV organisation in remote Australia, for example, considered that it would be another 6–12 months before it could meaningfully comment on implementation of the amendment.²²⁷ An employer organisation expressed a similar view, observing that, since it is quite early in the process, take-up of the leave would probably change over the next 12 months.²²⁸

Several stakeholders, including both employer organisations and trade unions, noted that many organisations had paid FDV leave in place prior to the 2022 FDVL Act, either under collective agreements²²⁹ or as required by state and territory legislation (for public sector employees),²³⁰ which made implementation of the entitlement less challenging. In some cases, these existing paid FDV leave arrangements were more generous than the legislated provisions. These organisations were thus already familiar with both the concept of FDV leave and the procedural requirements for administering paid FDV leave, prior to the 2022 FDVL Act.²³¹

Low utilisation of paid FDV leave was also a consistent theme across the consultations. One employer organisation commented that take-up of FDV leave had also been low under the previous unpaid FDV leave arrangement. This organisation also observed that paid FDV leave was the one leave entitlement on which its members were least likely to seek advice.²³²

Employees and representatives of frontline FDV services similarly referred to only a small number of cases of which they were aware of employees using paid FDV leave.²³³

²²⁷ Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.

²²⁸ Employer Roundtable, Oral submission made to the Independent Review, June 2024.

²²⁹ Employer Roundtable, Oral submission made to the Independent Review, May 2024; Employee Roundtable, Oral submission made to the Independent Review, June 2024; Employee Roundtable, Oral submission made to the Independent Review, May 2024.

²³⁰ Employee Roundtable, Oral submission made to the Independent Review, May 2024; Employee Roundtable, Oral submission made to the Independent Review, May 2024; Online submission, NSW Premiers Department, 2 July 2024.

²³¹ Employee Roundtable, Oral submission made to the Independent Review, May 2024.

²³² Employer Roundtable, Oral submission made to the Independent Review, May 2024.

²³³ Employer Roundtable, Oral submission made to the Independent Review, May 2024; Frontline Worker Roundtable, Oral submission made to the Independent Review, June 2024.

5.3 Impacts of the entitlement

The impacts of the entitlement discussed by stakeholders included the costs for business, barriers to access and recognition of the broader socio-cultural context for FDV. The positive impacts of FDV leave were also a significant focus, as discussed next.

5.3.1 Positive impacts

'[R]etailers have reported positive impacts on the workplace practice and culture surrounding employees that have faced family or domestic violence.'

ARA, written submission, 6 July 2024, pp 2-3

'[P]aid FDV leave sends a powerful message that society and workplaces stand with victim-survivors, and that the entitlement is changing workplace culture as workers and employers start to have conversations about the entitlement, about policy and procedure, and about how to support workers who are in abusive relationships and make the workplace safe.'

ACTU, written submission, 24 June 2024, p 9

'Encouraging employers to foster a workplace culture that supports employees experiencing FDV is vital. This includes reducing stigma, encouraging open communication, and providing resources and support for employers to create safe and supportive environments for all employees, including those from diverse backgrounds.'

IWAA, written submission, 12 July 2024, p 2

The Review heard evidence concerning the positive impacts of paid FDV leave, as illustrated in the case studies provided, including the 'security, independence and safety' that it represents for women employees.²³⁴

'I think that we need to care for our people and support them however we can. I think this is a really great support tool for businesses to support their people.'

Employer interview #5, HR employee, 6000 employees, has provided paid FDV leave before 2023²³⁵

The Maritime Union of Australia (MUA) also contributed the view that paid FDV leave was contributing to a 'safe and equal society'.²³⁶ SA Unions and the ASU particularly emphasised the importance of ensuring that victim-survivors can retain their employment and income from work, and 'the safety that workplaces often provide, [which] gives [victim-survivors] a far greater chance of being able to leave an unsafe relationship'²³⁷. DV West commented that:

'For several women who were assisted through our services, paid FDV leave assisted them in leaving their abusive partners while maintaining some financial security and stability. This is especially important when women have children. It also helps addressing the taboos around FDV and creating more awareness and understanding amongst employers'.²³⁸

234 Victorian Trades Hall Council, Written submission to the Independent Review, 4 June 2024, p.1.

235 BETA, op cit., p.11.

236 Maritime Union of Australia, Written submission to the Independent Review, 14 June 2024, p.3.

237 SA Unions, Written submission to the Independent Review, 7 June 2024, p.1. See also Australian Service Union (ASU) Written submission to the Independent Review, 13 June 2024.

238 DV West, Written submission to the Independent Review, 5 June 2024, p.1.



Employee representatives provided examples of victim-survivors using their time at work to plan a way out; the workplace could provide a place of safety, away from the perpetrators' constant monitoring, in which to make such plans.²³⁹ The potential for paid FDV leave to generate positive impacts for not only the victim-survivor but also their immediate family was also noted.

Case study: FDV leave supports attendance at appointments

A CPSU member was able to access paid FDV leave on two separate occasions to support her partner in seeking legal advice and attending Family Court to obtain orders for the care of children (the member's partner had an adult daughter who had threatened and caused harm to him and to the adult daughter's own children.) The leave allowed the member to consult with Legal Aid, go through an intake assessment for Family Dispute Resolution mediation, attend meetings with Legal Aid, review and sign documentation, and attend a Family Court hearing, Case Assessment Conference and Directions Hearing. The employer was highly supportive and facilitated access to the leave, as well as acting to ensure the member's safety and safety of her colleagues when there was a risk of the situation intruding into the workplace.

ACTU, written submission, 24 Jun 24, p 12

Significantly positive impacts highlighted by employee and employer organisations also related to the implications of the introduction of paid FDV leave for workplace management and its broader socio-cultural impacts.

Case study: Impacts of FDV leave on workplace culture

A 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.

ASU, written submission, 13 June 2024, p 2

An example of the positive implications for workplace culture and practice was also provided by the ARA, based on feedback from one of their member organisations:

'one retailer reported providing "greater support resources for counselling, [the development of] EAP services that are more specialised and skilled for this specific need" as a result of the reform'.²⁴⁰

'They are employed by us. They spend a lot of time in the workforce and... work is part of their lives. They need to feel that they can be supported at work. I think that by providing the support as an employer, that's one less thing that they've got to worry about, so they can focus more on getting the support that they need to deal with this issue'.

Employer interview #11, business owner, 14 employees (provided paid FDV leave before 2023)²⁴¹

239 Employee Roundtable, Oral submission made to the Independent Review, May 2024; Employee Roundtable Oral submission made to the Independent Review, May 2024.

240 ARA, Written submission to the Independent Review, 6 July 2024, p.3.

241 BETA, op cit., p.11.

5.3.2 Costs for small business

'Small businesses are concerned that they may additionally be negatively impacted by the required financial support of employees through the FDVL requirements. We remain of the view that the cost of FDV leave should be covered by Government.'

COSBOA, written submission, 12 June 2024, p 2

'[The] entitlement is a 'financial burden' that represents not just an 'expense' but also a loss in revenue for every single day taken.'

Employer organisation, questionnaire, 4 June 2024

'...earlier concerns regarding the unmanageable financial pressure [and] nefarious claims and absences by employees have not been realised.'

ANMF, written submission, 14 June 2024, p 10

The financial costs of implementing and administering paid FDV leave were emphasised by COSBOA, noting the particular impacts on small business (see also positions/actions in Appendix B:15):

Over the last few years, small businesses have struggled with the cost of doing business amidst increasing regulatory burden, complex industrial relations laws to navigate and general market conditions coming out of the pandemic.²⁴²

It was also suggested that financial impacts could be a specific concern for First Nations–owned, and other, small businesses in remote areas, for whom the obligation to provide paid FDV leave was likely to deplete already narrow profit margins.²⁴³

On the whole, however, it was agreed that it was too early to tell; employer organisations observed that the costs of administering paid FDV leave are not yet known due to both the early stage of implementation and the limited uptake of the entitlement, as discussed in 5.2.2. For instance, while the ARA identified 'little or no direct impact', they spoke of the difficulty of 'discern[ing] or predict[ing] the negative impact on businesses and equally, the benefit for employees'.²⁴⁴ Another employer organisation regarded the paid FDV leave entitlement as more of a 'compliance burden' than a financial cost per se.²⁴⁵

A number of employee representatives considered that the costs were likely to be 'far outweighed' by the benefits of retaining workers²⁴⁶ and 'positively offset by the attraction, retention and wellbeing benefits'.²⁴⁷ The ASU provided an example of a member who was working for a small business and needed to access FDV leave; even though she had not been in the job for long, the business did not want to lose her skills and supported her request for leave.²⁴⁸ The Australian Salaried Medical Officers Federation (ASMOF) rejected 'claims that the

242 COSBOA, Written submission to the Independent Review, 12 June 2024, p.1.

243 Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.

244 ARA, Written submission to the Independent Review, 6 July 2024, p.2.

245 Employer Roundtable, Oral submission made to the Independent Review, May 2024.

246 ASU, Written submission to the Independent Review, 13 June 2024, p.4.

247 ANMF, Written submission to the Independent Review, 14 June 2024, p.10.

248 ASU, Written submission to the Independent Review, 13 June 2024, pp.4-5.



reporting requirements, business costs, or administration of leave entitlements are too burdensome'.²⁴⁹

5.3.3 Barriers to access

A range of possible barriers to accessing paid FDV leave were considered by stakeholders, including low awareness, availability of appropriate support services, stigma around FDV, and reluctance to disclose, as discussed below.

Limited awareness

'Awareness ... was a huge challenge in aspect in messaging and how we created awareness around Family and Domestic Violence, how we gave consideration in how employees apply and generally talk about Family & DV feeds into the culture of our businesses.'

Employer organisation, questionnaire, 4 June 2024

'...unless there are active efforts by government to raise awareness of paid FDV leave through an awareness raising campaign, we expect that there will continue to be a low level of awareness of paid FDV leave.'

WLSA, written submission, 6 July 2024, p 6

'...more education and training is required to ensure employers are fully aware of the new entitlement and their obligations [...] Many workers do not know they have an entitlement to paid FDV leave, especially those in insecure employment, students and workers on visas.'

ACTU, written submission, 24 June 2024, p 26

Limited awareness among both employers, regarding their obligations as providers of paid FDV leave, and employees, as potential leave users, was a consistent theme across consultations. Stakeholders also emphasised the necessity for broader community awareness in relation to employer obligations and employee rights.

Employer organisations acknowledged the challenges faced, especially by small businesses, in keeping up to date with legislation and ensuring appropriate implementation in the workplace.²⁵⁰ They noted, however, that their members were working diligently to understand and implement the entitlement, despite this being a much larger task than they had anticipated.²⁵¹

Employers also talked about their own efforts to improve awareness through information and advice.²⁵² The ARA, for example, had ensured that its members had 'access to education, training and support related to these entitlements'²⁵³ and intended to develop a 'communication plan' for 'leaders and managers [to] communicate the expansion of this entitlement to employees'.²⁵⁴

Emphasising the work being done by employers, the ASU also observed that:

many employers are going above and beyond their family and domestic leave obligations, including providing additional paid leave, options for flexible work arrangements, enhancing

249 ASMOF, Written submission to the Independent Review, 14 June 2024, p.1.

250 Employer Roundtable, Oral submission made to the Independent Review, May 2024; Employer Roundtable, Oral submission made to the Independent Review, May 2024.

251 Employer Roundtable, Oral submission made to the Independent Review, May 2024.

252 Employer Roundtable, Oral submission made to the Independent Review, May 2024.

253 ARA, Written submission to the Independent Review, 6 July 2024, p.4.

254 ARA, Written submission to the Independent Review 6 July 2024, p.2.

employee assistance programs (EAPs) as well as implementing workplace safety measures such as secure parking, improved security, and safety escorts for workers.²⁵⁵

Employee organisations noted the particular awareness barriers for women in very insecure employment, as well as students and employees on international visas, who might have a limited understanding of their FDV leave entitlement.²⁵⁶

Case study: Limited awareness of FDV leave

‘An employee who worked casually for 6 years for a state public sector employer experienced domestic violence from her partner. She worked regular shifts, generally at least twice a week. In 2023, she left her partner and had to spend significant time to relocate, attend court and other appointments. When she left the relationship, she was homeless for about 6 months, having to couch surf and stay with friends. As a result of this situation, she had to cancel some work shifts, and at other times was unavailable to accept shifts. During this time, she let three managers know she would not be able to work due to her experiencing domestic violence. No one provided her with any information about the employer’s FDV policy, or her entitlement to FDV leave. She only found out about her employer’s FDV policy later, when she tried to update her address with her employer. By that time, she was told her employment ID number had been terminated as she hadn’t been able to do a shift for 6 months and had not provided a reason for her unavailability (despite having advised 3 managers of the situation). She was heartbroken by this news, and devastated that none of the managers had advised her of the support available under the FDV policy, or that she could access FDV leave to attend court, attend appointments and to relocate. Because her employment had been terminated, she was unable to access EAP services. [...] Had her managers informed her about the FDV policy and provided her with the support and leave she was entitled to, her experience of leaving domestic violence would have been very different’.

ACTU written submission, 24 June 2024, p 21

Limited support services

Stakeholders in regional and rural areas, and FDV specialist service-providers in particular, spoke of the limited availability of support services which can undermine employees’ access to paid FDV leave, most notably as a result of the requirement for evidence.²⁵⁷ Frontline FDV workers also noted that in First Nations communities and remote areas, 10 days’ leave might not be sufficient to allow victim-survivors to reach the necessary services, particularly where they needed to take air transportation to do so.²⁵⁸

The role of first responders was also a strong theme, with employee representatives and FDV specialists providing examples of their work providing support and legal advice to victim-survivors as well as directly advocating for employees in the workplace.²⁵⁹

²⁵⁵ ASU, Written submission to the Independent Review, 13 June 2024, p.2.

²⁵⁶ ASU, Written submission to the Independent Review, 13 June 2024, p.5. See also WWQ, Written submission to the Independent Review, 7 June 2024, p.5.

²⁵⁷ Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024; Frontline Worker Roundtable, Oral submission made to the Independent Review, June 2024.

²⁵⁸ Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.

²⁵⁹ Employee Roundtable, Oral submission made to the Independent Review, May 2024; Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.



Case study – Importance of accurate information

I did hear from a colleague that one of her clients had been reluctant to approach her manager to access the leave. This woman is not an Australian citizen and is working casually in seasonal employment. She felt that if she 'made waves' her employment might not be continued. Because she did not approach her employer, we cannot know how they would have reacted, but this does shine a light on the need for further accurate education about the nature of the leave and individual entitlements.

Christine Smith²⁶⁰, written submission, 7 June 2024, p 3

Stigma and culture inhibiting uptake

The significance of social stigma was highlighted by numerous stakeholders. The ANMF, for example, pointed out that 'persistent social stigma' was a primary cause of both the underreporting of FDV and underutilisation of FDV leave.²⁶¹ It was also suggested that the impact of stigma could be a factor in the lower take-up of paid FDV leave among women in same-sex relationships.²⁶²

Stigma was recognised as a particular issue for certain groups, including those living in rural and remote areas²⁶³ and First Nations and CALD communities. Participants representing First Nations employees, for example, talked about cultural norms and the significance of shame in encouraging victim-survivors to keep FDV private, discouraging disclosure, and preventing First Nations women from accessing FDV leave.²⁶⁴ It was further considered that the representation of FDV as 'women's business' in First Nations communities might provide the victim-survivor with 'cultural safety', yet, at the same time, it perpetuates FDV in the workplace.²⁶⁵

Similarly, the Review heard that stigma in CALD communities was an obstacle to 'individuals ... openly disclosing their experiences or seeking support due to fears of judgment or social repercussions'.²⁶⁶ Employee organisations reported that the CALD cohort may struggle to speak up about these issues due to cultural and linguistic barriers.²⁶⁷

A participant in the academic roundtable also pointed out that intergenerational and ongoing trauma in First Nations communities has contributed to mistrust of justice systems and, hence, underreporting of FDV. Child protection and mandatory reporting regimes could also act as a barrier to the disclosure of FDV.²⁶⁸

Reluctance to disclose

The willingness of victim-survivors to disclose FDV within the workplace was identified as a significant issue driving low utilisation of FDV leave. Emphasising the impacts of social stigma,²⁶⁹ stakeholders noted that employees may use up all of their other leave in order to avoid disclosing

260 Christine Smith contributed as an individual stakeholder. She currently works with victim-survivors of FDV in the not-for-profit sector in NSW.

261 ANMF, Written submission to the Independent Review, 14 June 2024, p.4.

262 Employee Roundtable, Oral submission made to the Independent Review, May 2024.

263 Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024; Frontline Worker Roundtable, Oral submission made to the Independent Review, June 2024.

264 Employee Roundtable, Oral submission made to the Independent Review, June 2024.

265 Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.

266 IWAA, written submission, 12 July 2024, p.3.

267 Employee Roundtable, Oral submission made to the Independent Review, May 2024.

268 Academic Roundtable, Oral submission made to the Independent Review, May 2024.

269 ANMF, Written submission to the Independent Review, 14 June 2024, p.4.

FDV, with many choosing never to disclose at all.²⁷⁰ This could lead to FDV leave becoming a leave of ‘last resort’,²⁷¹ or being taken only ‘at a crisis point’.²⁷²

Highlighting the tensions associated with disclosure of FDV in the workplace, COSBOA observed that:

‘Employees suffering from FDV often do not want to involve their workplace given the[y] want to keep information private, especially where the perpetrator may work in the same environment’.²⁷³

Several employee representatives²⁷⁴ talked about fear of repercussions as a significant factor deterring workers from both disclosing FDV and accessing leave:

‘Owing to social stigma and fear of retribution from unsympathetic management or colleagues, there is a view that employees will delay or entirely avoid accessing the entitlement’.²⁷⁵

The ACTU noted that this could be expressed through victim-survivors opting not to ask for further leave to manage an FDV situation over a longer period of time, for ‘fear of frustrating the manager’.²⁷⁶

The specific concern that FDV disclosure might lead to termination of employment was emphasised by stakeholders working with remote First Nations communities.²⁷⁷ Specialist FDV organisations asserted that First Nations employees who disclosed FDV in these settings risked being seen as a liability in the workplace. In addition, the community and cultural implications of situations in which victim-survivors and perpetrators, as well as other family members, might be working together, were also discussed.²⁷⁸

Reluctance to disclose was closely linked with concerns about evidentiary requirements and employee confidentiality,²⁷⁹ discussed below and referenced in positions/actions of Appendix B:10-11.

²⁷⁰ ANMF, Written submission to the Independent Review, 14 June 2024) p.6; Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.

²⁷¹ ANMF, Written submission to the Independent Review, 14 June 2024, p.6.; Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.

²⁷² ACTU Written submission to the Independent Review 24 June 2024, p.13.

²⁷³ COSBOA, Written submission to the Independent Review, 12 June 2024, p.2.

²⁷⁴ Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.

²⁷⁵ ANMF, Written submission to the Independent Review, 14 June 2024, p.6.

²⁷⁶ ACTU, Written submission to the Independent Review, 24 June 2024, p.22.

²⁷⁷ Employee Roundtable, Oral submission made to the Independent Review, May 2024; Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024; Frontline Worker Roundtable, Oral submission made to the Independent Review, June 2024.

²⁷⁸ Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024; Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.

²⁷⁹ Employer Roundtable, Oral submission made to the Independent Review, May 2024; Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.



Evidentiary requirements

'Both employers and employees report challenges in determining what is a legitimate request and specifically what evidence is deemed appropriate.'

COSBOA, written submission, 12 June 2024, p 2

'Some employers [...] don't require evidence, and others now simply sight the evidence but do not retain a copy. This reduces risks in relation to worker privacy and confidentiality by not requiring the employer to handle and store the evidence.'

ACTU, written submission, 24 June 2024, pp 17-18

'Workers can face unreasonable or onerous requests for supporting evidence, e.g., managers may ask for certain types of supporting evidence which can be difficult for a worker to access.'

CPSU, written submission, 14 June 2024, pp 3, 7

Concerns regarding evidentiary requirements, raised by employers, employees and frontline workers, related to both *practices*, in the context of employer requests for evidence and management of employee confidentiality, and *challenges* in interpreting, determining the need for and appropriate forms of evidence.

In relation to the first of these – *practices* – unions and legal services discussed instances of concerning employer practices, including asking for 'too much' information, asking 'intrusive' questions, and making 'unreasonable, onerous' requests for supporting evidence.²⁸⁰ The WLSA talked about its experiences of working with employers who were unwilling to grant FDV leave without evidence but, then, once evidence was provided, subjected the employee to 'intrusive requests for further detailed and highly sensitive information'.²⁸¹ Stakeholders, including employers, employees and specialist FDV services, thus recognised that evidentiary requirements could present a barrier for victim-survivors who might otherwise access and benefit from paid FDV leave.²⁸²

Case study: Employer evidence requirements as barriers to access

'Daisy' tried to access FDV leave and provided her employer with a support letter from the Women's Legal Centre ACT. The support letter had been written by her family lawyer which explained that she was being assisted by a WLSA service, which is a FDV specialist service. Daisy provided this to her employer in an attempt to access the leave while she attended court events and did safety planning with one of our social workers. She was told that her employer would not accept the evidence she had provided as it did not have particular dates that she would require the leave. Daisy provided a support letter from the Domestic Violence Crisis Service and her employer requested further information on what the leave was being used to do, and what dates specifically she would be doing those things. This client decided to transfer to another team rather than dealing with the managers who had decided not to approve her paid FDV leave.

WLSA written submission, 6 July 2024, p 10

Emphasising the practical *challenges* of navigating evidentiary issues, COSBOA talked about their members' difficulties in determining what 'constitutes a legitimate request and specifically

280 ACTU, Written submission to the Independent Review, 24 June 2024, p.18; SA Unions, Written submission to the Independent Review, 7 June 2024, p.6.

281 WLSA, Written submission to the Independent Review, 6 July 2024, pp.5, 9.

282 Employer Roundtable, Oral submission made to the Independent Review, June 2024; Employee Roundtable, Oral submission made to the Independent Review, May 2024; Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.

what evidence is appropriate'.²⁸³ Specialist FDV workers also observed that this could be a particular challenge for small businesses given that they often lack relevant administrative supports and processes.²⁸⁴

Unions and legal services raised questions regarding the need for evidence. Unions NSW and the WLSA, for instance, argued that a verbal statement from the employee should suffice as evidence, and a person's 'word' should be the only evidence required.²⁸⁵ Unions NSW considered the requirement to 'satisfy a reasonable person' to be unnecessarily 'onerous and detrimental to the support [provided] to valued employees during a difficult time in their life'.²⁸⁶ Some stakeholders therefore called for evidentiary requirements to be either removed or amended (see positions/actions in Appendix B:10).

Case study: Request for paid FDV leave not granted

'Sophie' was employed by a large government department. She was experiencing family and domestic violence and getting family law and social work support from a Women's Legal Service. The employment team gave Sophie advice about accessing FDV leave. She approached her manager and requested the leave and was told that she was not eligible for this kind of leave because she had not accessed the 'Escaping Violence Payment' from Centrelink. Sophie decided not to challenge this decision and had to access unpaid leave for future FDV related appointments and court events. She was later transferred onto the crisis line operated by the employer due to her 'lived experience' of violence.

WLSA, written submission, 6 July 2024, p 7

Various stakeholders including COSBOA, SA Unions, the CPSU and the WLSA noted the assumption often made by employers and employees that written evidence was required,²⁸⁷ rather than at the discretion of the employer. While requiring evidence of the need for paid FDV leave can be a means for employers to manage the risk of misuse, SA Unions emphasised the importance of discouraging employers from 'making onerous evidential requests'.²⁸⁸

Employer understanding of the evidentiary requirements was identified as a significant and pressing issue. Stakeholders pointed to the need for clearer guidelines on evidentiary requirements, as well as dedicated education and training, including for HR staff,²⁸⁹ most notably with respect to the 'type and scope of evidence that can be reasonably required'.²⁹⁰ Stakeholders also advocated for clear guidelines on storage and retention of confidential information.²⁹¹

283 COSBOA, Written submission to the Independent Review, 12 June 24, p.2.

284 Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.

285 Unions NSW, Written submission to the Independent Review, 7 June 2024, points/actions in Appendix B:10. Also Women's Legal Services Australia, Written submission to the Independent Review, 6 July 2024.

286 Unions NSW, Written submission to the Independent Review, 7 June 2024.

287 COSBOA, Written submission to the Independent Review, 12 June 2024; SA Unions, Written submission to the Independent Review, 7 June 2024; CPSU, Written submission to the Independent Review, 14 June 2024; WLSA, Written submission to the Independent Review, 6 July 2024. Also: Employer Roundtable, Oral submission made to the Independent Review, June 2024.

288 SA Unions, Written submission to the Independent Review, 7 June 2024, s 28.1.

289 WLSA, Written submission to the Independent Review, 6 July 2024; ASU, Written submission to the Independent Review, 13 June 2024, p.5; ACTU, Written submission to the Independent Review, 24 June 2024.

290 SA Unions, Written submission to the Independent Review, 7 June 2024, p.6.

291 Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024; ACTU, Written submission to the Independent Review, 24 June 2024, pp.17-18.



Case study: Challenges in administration and management of FDV leave

A mental health nurse in the public sector accessed 10 days' paid FDV leave to leave an abusive relationship. Her manager did not handle the situation well, especially when it came to asking the member for evidence that she needed to access the leave. The manager demanded that she provide a letter from Safe Steps, her crisis accommodation, and that it should state that she needed Family and Domestic Violence services. It was only after the member provided this letter that her leave was approved by her manager. The member's view is that there should be training for managers and pay roll about how to handle such a sensitive topic with safety implications. The employer's payroll also initially processed her FDV as annual leave – 40.52 hours over 2 pay periods. Due to the fact that it was processed as annual leave, this meant that the payment attracted the 17.5% loading as per her entitlement under her Enterprise Agreement.

The member told payroll that her leave was not annual leave and had to repeat the fact that she needed to access to FDV leave, even though she was assured by her manager that this information had already been passed onto payroll. The following week, payroll adjusted her leave to reflect that she had taken FDV leave and not Annual Leave. The Annual Leave loading was deducted by payroll from her pay in one pay period (an amount of \$707) without consultation with her, which had a significant effect on the member financially. At this point, she had just come out of crisis housing which had been provided by Safe Steps and was trying to rebuild her life. Given she received next to no money during this pay period, she really struggled during that fortnight to eat and pay for accommodation. The member believes there should be a process that employers need to follow when an employee is accessing FDV leave. There should not be the confusion as to what leave an employee is taking, and then having the employee having to themselves tell payroll that they are taking FDV leave, retraumatising themselves by having to identify this fact, as well as answer questions such as 'how long', 'what for', 'why', and so on. If the wrong leave entitlements have been used, there should be consultation as to why any monies owing is paid back, and the availability of support such as a payment plan.

ACTU, written submission, 24 June 2024, p 18

Maintaining employee confidentiality

'Confidentiality is a key element to how paid FDV leave is managed well in workplaces.'

WWQ, written submission, 7 June 2024, p 5

'We have been clear in our policies and guidelines about the importance of maintaining confidentiality. We limit the information about a team member accessing the entitlement to only a few key and required personnel.'

Employer organisation, questionnaire, 2 June 2024

'[W]orkplace policies would be altered to afford employees accessing this leave entitlement confidentiality and privacy. Some retailers would also record the leave as 'special leave' on employee systems to maintain privacy for employees. [...] We limit the information about a team member accessing the entitlement to only a few key and required personnel. We have created a process for leave to be input without breaching confidentiality, and we do not disclose the leave type on a team member's payslip.'

ARA, written submission, 6 July 2024, p 3

The challenges of managing and maintaining confidentiality were emphasised across the stakeholder consultations. Any reference to FDV leave taken, most notably in the form of pay slips, was said to be a particular risk given the potential for pay slips to be monitored by perpetrators. In that context, the requirement that pay slips not contain information that might flag an employee's use of paid FDV leave was welcomed and described as 'excellent'²⁹² and a 'game changer'.²⁹³ Employer organisations explicitly acknowledged the importance of, and their

292 Questionnaire submission, individual organisation, not further described, 4 June 2024.

293 Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.

commitment to, maintaining employee confidentiality.²⁹⁴ That employers are taking positive steps to support their staff to 'access this leave, working with them to make it flexible, and maintaining confidentiality with other staff' was also noted.²⁹⁵

However, the Review also heard concerns from the ACTU, SA Unions and FDV specialist organisations about issues related to record-keeping, pay slips and storage of evidence.²⁹⁶ References were made to the importance of educating employers regarding confidentiality obligations as well as the need for 'stronger and easier enforcement' of employers' confidentiality obligations,²⁹⁷ and penalties for employers in this regard were considered to be 'negligent'²⁹⁸ (see positions/actions in Appendix B:11). That non-compliance could reflect an employer's lack of understanding of their obligations,²⁹⁹ rather than any malintent, was also acknowledged.

Case study: Challenges in management of privacy and confidentiality

'Tracy' is an Aboriginal woman who contacted WWQ for assistance because she experienced significant stress and risk when her employer handled her paid FDV leave poorly.

Tracy works in a primary school in regional Queensland. The leave was requested through her manager and was approved and recorded as special leave specifically to minimise the amount of people in her organisation who knew about the FDV and to ensure discretion on her payslip. Later the same day Tracy noticed a manilla folder on her desk, which she shared with a colleague in an open staffroom accessible to anyone in the school. It contained a printed copy of email correspondence between her manager and payroll, with all details of the FDV leave request, hours of work and payment. These emails containing confidential details were sent to HR as well as payroll and included the FDV leave type instead of special leave as advised. The HR person was known to Tracy and her violent partner, who had made serious threats to her, 'if anyone finds out I will kill you.'

WWQ, written submission, 7 June 2024, p 4

The particular challenges faced by smaller businesses in ensuring confidentiality, given their lack of dedicated HR personnel, infrastructure and systems needed to appropriately manage these issues, were also acknowledged. In addition, reference was made to the complexities of managing confidentiality in a small business given the close personal relationships between employers and employees that might exist in this context,³⁰⁰ including between the employer and perpetrator of FDV.³⁰¹

Stakeholders reported that maintaining FDV confidentiality was more challenging in regional and rural locations and in CALD and First Nations communities due to the relative isolation, close proximity and smaller social networks of those involved:

294 ARA, Written submission to the Independent Review, 6 July 2024; Employer Roundtable, Oral submission made to the Independent Review, May 2024; Employer Roundtable, Oral submission made to the Independent Review, June 2024; Employer Roundtable, Oral submission made to the Independent Review, June 2024; Employee Roundtable, Oral submission made to the Independent Review, May 2024.

295 Christine Smith, Written submission to the Independent Review, 7 June 2024, p.2.

296 ACTU, Written submission to the Independent Review, 24 June 2024; SA Unions, Written submission to the Independent Review, 7 June 2024; Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.

297 SA Unions Written submission to the Independent Review, 7 June 2024, s 28.1.

298 Unions NSW, Written submission to the Independent Review, 7 June 2024.

299 Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.

300 Employer Roundtable, Oral submission made to the Independent Review, June 2024.

301 Employer Roundtable, Oral submission made to the Independent Review, June 2024.



'In a community where information can spread quickly, maintaining strict confidentiality around sensitive matters such as FDV leave is challenging'.³⁰²

Specialist FDV workers also emphasised the greater likelihood of victim-survivors and perpetrators, and/or their family members, working in the same organisation in rural and remote communities.³⁰³ '[A]cute resistance to the entitlement' was also considered to be more likely among health and care services in rural and remote areas due to the financial and social implications of 'close and unavoidable connections' in small communities.³⁰⁴

Case study: Perpetrator and victim-survivor working in same workplace

A Women's Legal Service client was employed as a bookkeeper by her partner who owned a small business. He was arrested for an act of family violence that he committed against her. She emailed him using her work account and requested ten days of FDV leave, which he approved; however, he terminated her employment as soon as she returned from leave. She attempted to take action in the Fair Work Commission, however the employer did not choose to engage, and she did not wish to pursue proceedings against him. Other clients who have been employed by family businesses have not been able to access this kind of leave due to safety concerns or because their employment relationship is so informal that their employer likely would not recognise any leave entitlement they may have.

WLSA, written submission, 6 July 2024, p 14

The visibility of employee absence³⁰⁵ was named as a particular issue in remote and rural Aboriginal and Torres Strait Islander communities given the difficulty of taking leave discreetly. Strategies to maintain confidentiality were seen as especially critical in this context, such as ensuring that pay slips leave no trail.³⁰⁶

Further challenges identified by stakeholders related to the situation for 'women in very insecure employment' and women on temporary, working or student visas who may fear the consequences of disclosing FDV. For example, victim-survivors may fear that their confidentiality will not be maintained and, thus, that disclosure might jeopardise their visa status or that of other family members. This could also be compounded by 'a very limited understanding of their rights'.³⁰⁷ Relatedly, given the likelihood that migrants or non-citizens may have had traumatic experiences in their country of origin, they equally might not trust – and hence may choose not to access – welfare and support services.³⁰⁸

5.3.4 Cultural and systemic solutions required

Recognition that the problem of FDV is complex, multifaceted and intertwined with broader gender and other inequalities in Australia was evident, to a greater or lesser degree, across the stakeholder consultations. That FDV is rooted in social, cultural and systemic factors and, hence, there is a need for multiple strategies and interventions, is captured in stakeholder positions/actions (see Appendix B:8). Stakeholders therefore acknowledged that paid FDV leave is one of a range of interlinked strategies needed to address FDV.

The potential for paid FDV leave to positively influence workplace culture and, in turn, contribute to greater gender equality was also highlighted by multiple stakeholders. Here, stakeholders

302 IWA Australia Ltd, written submission, 12 July 2024, p.2.

303 Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.

304 ANMF, Written submission to the Independent Review, 14 June 2024, p.11.

305 Employee Roundtable, Oral submission made to the Independent Review, June 2024.

306 Employee Roundtable, Oral submission made to the Independent Review, June 2024.

307 ASU, Written submission to the Independent Review, 13 June 2024, p.6.

308 Academic Roundtable, Oral submission made to the Independent Review, May 2024.

representing both small and larger businesses shared the view that paid FDV leave is supporting gender diversity and inclusivity in the workplace.³⁰⁹ Employee representatives also explicitly recognised the connection between the workplace and broader socio-cultural efforts to address FDV, as exemplified in the VTHC’s assertion that ‘family violence [must] be seen as a workplace issue’³¹⁰ and the WWQ’s affirmation of the vital role that workplaces ‘play in making society safer for women and their children’.³¹¹

‘[W]orkplaces have an important role as a source of significant support, certainty and confidence for their employees affected by FDV. FDV is not just a criminal justice or social justice issue, it is an economic and workplace issue’
CPSU, written submission, 14 June 2024, p 2

The significant potential for paid FDV leave to shift workplace culture and practices is specifically reflected in stakeholders’ positions/actions in Appendix B:9.

5.4 Scope and Coverage

‘[There is a] general consensus [among retailers] that the current leave entitlements were appropriate and sufficient. One retailer noted a belief that the ‘the scope is appropriately broad and it covers all employees’ while another noted a belief that the current scope is “reasonable”.’
ARA, written submission, 6 July 2024, p 3

‘The universal nature of the entitlement such that any affected worker, whether permanent or casual, will be able to access the entitlement is an important reform that is not only changing lives but saving them.’
CPSU, written submission, 14 June 2024, p 2

Stakeholders commented on particular elements of the entitlement, including the considerations for casual employees, quantum of leave, eligibility and definitional issues, as discussed below.

5.4.1 Move to a paid entitlement

There was broad consensus across the stakeholder consultations that the introduction of a paid FDV leave entitlement was appropriate and necessary (as discussed in Section 5.2.1). Stakeholders made suggestions for other dimensions of the current leave that should be given closer consideration; these are outlined in Sections 5.4.2 – 5.4.5.

309 Employer Roundtable, Oral submission made to the Independent Review, May 2024; Employer Roundtable, Oral submission made to the Independent Review, June 2024.

310 VTHC, Written submission to the Independent Review, 4 June 2024, p.1.

311 WWQ, Written submission to the Independent Review, 7 June 2024, p.2.



5.4.2 Specific considerations for casuals

'[T]he 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.'

ASU, written submission, 13 June 2024, p 4

'The inclusion of casual workers is crucial and acknowledges the compounded impact of insecure work and the need to access absences from the workplace when managing the impact of FDV.'

WWQ, written submission, 7 June 2024, p 2

Many stakeholders were positive about the extension of the paid entitlement to casual employees, noting the link between FDV and precarious employment. The ARA, for example, considered that the availability of paid FDV leave to casuals 'would allow those who may be more financially vulnerable to benefit from the entitlement and access help and support'.³¹²

Similarly, SA Unions framed the decision to include casual employees in the scope of the FDV leave provision as 'significantly positive'.³¹³ The ACTU argued that this was particularly so for women, given that:

'women are overrepresented in casual employment, and people who experience FDV are also disproportionately represented in casual employment due to the disruptions in employment that violence can cause, making it difficult for someone to maintain permanent employment.'³¹⁴

Employee organisations noted the importance of paid FDV leave for casual employees in the context of the increasing casualisation in some sectors.³¹⁵

Case study: Impact of FDV leave for casual employee

An SDA member working as a casual at a discount department store accessed FDV leave to leave a relationship, and again when her ex-partner tried to re-enter her life. She was able to use the leave to organise temporary accommodation, find care for her children and pay her bills.

ACTU, written submission, 24 June 2024, p 11

Stakeholders observed that casual employees faced particular challenges in accessing the leave. It was pointed out, first, that casual employees tended to have low awareness regarding their entitlement to paid FDV leave.³¹⁶ Some stakeholders were themselves unaware of the eligibility of casuals to the entitlement; one frontline organisation that annually services hundreds of FDV victim-survivors of CALD backgrounds, for example, expressed considerable uncertainty in this regard.³¹⁷

Second, it was noted that the fear of adverse repercussions was more acute among casual rostered employees and complicated by variability in their hours of work. The ACTU observed

312 ARA, Written submission to the Independent Review, 6 July 2024, p.3.

313 SA Unions, Written submission to the Independent Review, 7 June 2024, p.2.

314 ACTU, Written submission to the Independent Review, 24 June 2024, p.6.

315 Employee Roundtable, Oral submission made to the Independent Review, June 2024.

316 For example, one employee stakeholder noted that casual employees may assume that the entitlement does not apply to them, and that employee organisations could assist by making its availability clear (Employee Roundtable, Oral submission made to the Independent Review, June 2024). This point was also mentioned in Employee Roundtable, Oral submission made to the Independent Review, May 2024.

317 Frontline Worker Roundtable, Oral submission made to the Independent Review, July 2024.

that the ‘unpredictable hours’ of work³¹⁸ made it difficult to establish a ‘case’ for paid FDV leave, such that casual employees could struggle to access it³¹⁹ (see positions/actions in Appendix B:5).

‘Casual and part-time employees who work irregular and unpredictable hours do not have the same ability to access FDV leave as employees who have regular hours. They effectively lose their entitlement due to their hours constantly changing. The drafting of the provision needs to be reconsidered to accommodate this reality.’

ACTU, written submission, 24 June 2024, p 29

‘Part-time and casual workers are in effect losing their entitlement to FDV leave because their roster gets reshuffled if they are part-time or if they are casual their day gets listed as not available.’

SDA, written submission, 7 June 2024, p 4

Stakeholders felt these challenges are likely to be heightened in First Nations and remote communities where job opportunities are limited and more likely to be casualised.³²⁰ It was considered that this would also apply to many CALD communities in which migrants and non-citizens are overrepresented in casual employment.³²¹

The complexities of administering the entitlement with casual employees could also be a challenge for employers. As one stakeholder pointed out:

‘It is difficult for employers to properly assess how the paid family and domestic violence leave entitlement applies to casual employees, particularly those who do not work regular shifts/hours. If the roster hasn't been released, how do they attribute the leave once requested? Is it by average hours? Or is it paid in a ‘lump sum’ of 10 days, despite the employer only working (for example) four-hour shifts every few days?’³²²

Widespread ‘uncertainty’ regarding the application of the entitlement to casuals, according to this stakeholder, also made it difficult for employers to access accurate legal advice, thus highlighting the need for employers to have clear guidance in this area to enable them ‘to properly prepare, budget and respond quickly when the leave is required’.³²³

Positions/actions (see Appendix B:5) relates specifically to implementation of the entitlement for casual employees.

5.4.3 Quantum of leave

10 days not enough

Multiple stakeholders advocated for an increase in the quantum of paid leave (see position/actions in Appendix B:3). The ASU, for instance, claimed that ‘10 days’ paid family and domestic violence leave was often insufficient for victim-survivors to address the multifaceted

318 ACTU, Written submission to the Independent Review, 24 June 2024, p.29.

319 SDA, Written submission to the Independent Review, 7 June 2024, p.3; ACTU, Written submission to the Independent Review, 24 June 2024, p.29; Frontline Worker Roundtable, Oral Submission made to the Independent Review, May 2024.

320 Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.

321 Individual Stakeholder, Oral submission made to the Independent Review, July 2024.

322 Employer representative, Questionnaire submission, 6 June 2024.

323 Employer representative, Questionnaire submission, 6 June 2024.



challenges they face’,³²⁴ while the WWQ noted that ‘[w]e now need to consider best practice [in relation to paid leave] and provide 20 days in the NES’.³²⁵

The ANMF pointed out that its branches had already ‘bargain[ed] for additional days and conditions above the NES’, and that its Victorian branch had secured a minimum of 15 days’ paid FDV leave, ‘with most agreements providing for 20 days’ paid FDV leave’.³²⁶

5.4.4 Eligibility to access the leave

Expansion of access to include time for recovery

Suggestions to increase the quantum of leave were closely aligned with the argument that paid FDV leave should be accessible for the purpose of supporting recovery, rather than just providing a crisis response. While SA Unions, for example, considered that the legislative provisions were effective in supporting victim-survivors, they questioned whether 10 days of paid FDV leave was sufficient to enable recovery for victim-survivors.³²⁷ They also indicated that they were aware of ‘a desire to see an expansion of the reasons for access, including to explicitly include time for recovery’, recognising that victim-survivors are likely to require the support associated with paid FDV leave ‘across the entirety of their journey – including their recovery’ and that the ‘legislation itself tends to support this proposition’.³²⁸

Increasing the duration of paid leave, as observed by the ASU, would ensure that:

‘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’.³²⁹

Expansion of examples

Some stakeholders considered that the examples provided of actions that may be taken by an employee to deal with FDV (Note 1 at s106B of the Fair Work Act), should be modified or expanded to better reflect the legislative provisions. The ACTU and SA Unions, for example, highlighted the lack of a direct reference to ‘time taken to recover’ in the examples provided, thereby limiting the breadth of the entitlement.³³⁰ In addition, the AEU pointed out that the existing examples failed to reflect the broad range of informal, non-mainstream supports that people experiencing FDV may rely on.³³¹ The AEU further argued that a reference to a ‘non-formalistic, non-legalistic, and culturally appropriate example of a relevant action’ should be included.

The inclusion of more ‘scenario-based examples’³³² in relation to casual employees in particular was also seen as important to simplify the requirements and relevant steps.

324 ASU, Written submission to the Independent Review, 13 June 2024, p.5.

325 WWQ, Written submission to the Independent Review, 7 June 2024, p.4.

326 ANMF, Written submission to the Independent Review, 14 June 2024, p.11.

327 SA Unions, Written submission to the Independent Review, 7 June 2024, p.7.

328 SA Unions, Written submission to the Independent Review, 7 June 2024, pp.6-7.

329 ASU, Written submission to the Independent Review, 13 June 2024, p.5.

330 SA Unions, Written submission to the Independent Review, 7 June 2024, pp.6-9; ACTU, Written submission to the Independent Review, 24 June 2024, pp.28-29.

331 AEU, Online submission to the Independent Review, 13 June 2024.

332 Employer, Questionnaire submission, 2 June 2024.

Perpetrators

The question of whether perpetrators of FDV should be entitled to paid FDV leave, for the purpose of attending behaviour change or related programs, was discussed by stakeholders including FDV specialist workers and employee representatives.³³³ While some considered that this would support broader efforts to prevent and reduce FDV, others felt that this would be impractical, as it would not only require employees to disclose their perpetration but also contribute to the implementation burden for employers.³³⁴ Given that coercive control is characteristic of perpetrators and evident in their attempts to manipulate legal and other systems, FDV specialist workers considered that extending FDV leave to perpetrators could increase the risk to victim-survivors.³³⁵

Expansion to sexual violence outside domestic setting

A small number of stakeholders argued that consideration should be given to extending the entitlement to victim-survivors of sexual violence that occurs outside the familial context and/or by a perpetrator that is unknown to them (see positions/actions in Appendix B:7). This was highlighted by the ASU as ‘a significant gap’,³³⁶ and the ANMF proposed the introduction of a ‘broader ‘gender-based and sexual violence’ leave entitlement’ for this purpose.³³⁷ The WLSA pointed out that:

‘Workplaces have a role to play in supporting workers who have experienced sexual violence, and shaping community attitudes to violence’.³³⁸

While not specific to sexual violence, the Review also heard about experiences of violence that overlap with FDV but might sit outside of the domestic setting. The Office of the NSW Anti-Slavery Commissioner, for example, advocated for the ‘extension of this support to survivors of modern slavery’, in recognition of the multiple ‘intersecting vulnerabilities’ that they face.³³⁹ Modern slavery encompasses forced marriage, forced labour, human trafficking and debt bondage, all forms of exploitation that may occur in the context of FDV.

Workers outside the employment relationship

‘Access to paid FDV leave should be expanded to include all workers where there is an employment, employment like or business relationship. This would capture independent contractors, gig workers, and subcontractors.’

ACTU, written submission, 24 June 2024, p 27

‘Insecure work is common in feminised and low paid health and care work. In health and care sectors, namely in disability support and home and community aged care, insecure work is apportioned to an increasing rate of sole traders, sub-contractors and independent contractors, otherwise known as ‘gig-workers’.’

ANMF, written submission, 14 June 2024, p 11

333 Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024; Frontline Workers Roundtable, Oral submission made to the Independent Review, June 2024; Employee Roundtable, Oral submission made to the Independent Review, May 2024.

334 Employee Roundtable, Oral submission made to the Independent Review, May 2024.

335 Frontline Worker Roundtable, Oral submission made to the Independent Review, June 2024.

336 ASU Union, Written submission to the Independent Review, 13 June 2024, p.6.

337 ANMF, Written submission to the Independent Review, 14 June 2024, p.4.

338 WLSA, Written submission to the Independent Review, 6 July 2024, p.16.

339 NSW Anti-Slavery Commissioner, Questionnaire submission, 30 May 2024.



Position/actions (see Appendix B:6) concerns the particular issues faced by workers outside the employee–employer relationship.

Victim-survivors outside the employment relationship face intersecting issues that both compound and contribute to their disadvantage. The importance of job security³⁴⁰ for all workers, including sole traders, independent contractors and sub-contractors, was discussed by a range of stakeholders. SA Unions, the ASU and the WWQ emphasised the particular issues for women workers, including those making the decision to leave an abusive situation,³⁴¹ with the ACTU pointing out that:

‘insecure forms of employment are becoming increasingly common in feminised and low paid work, particularly in the health and care sectors’.³⁴²

It was also noted that women are heavily represented in the sole trader and independent contractor sectors, both of which commonly involve insecure and precarious work and lack options for paid time off,³⁴³ and are likely being forced to use their income to deal with the effects of FDV.³⁴⁴

Some employer and other stakeholders also presented the case for alternative government supports that could be made available for people without access to the paid FDV leave entitlement,³⁴⁵ reflecting that ‘domestic violence is everyone’s problem’.³⁴⁶ Within this context, it was argued that consideration should be given to the needs of gig workers in employee-like forms of work,³⁴⁷ and in this regard the ACTU noted that this is ‘timely’ given the recent passage of the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024 (Cth)*.³⁴⁸

While outside the scope of this Review, the ANMF and an employee organisation also made the case for considering paid FDV leave for volunteers. The ANMF observed that in many cases volunteers are ‘more likely to be women and over the age of 55’ and thus ‘more likely to be victim survivors, or [to be] supporting victims, of FDV’.³⁴⁹ In lieu of paid FDV leave, the ANMF suggested that volunteers experiencing FDV might be offered ‘leave with a commitment that they will not lose their position as well as having other supports such as security escorts made available to them, noting that this would have ‘minimal impact on businesses’.³⁵⁰ The employee organisation, while not offering a model for FDV leave support for volunteers, noted that volunteers are often part of larger volunteer networks, which would benefit from training and education to prepare volunteer leaders for situations in which fellow volunteers may disclose FDV.³⁵¹

340 ACTU, Written submission to the Independent Review, 24 June 2024; SDA, Written submission to the Independent Review, 7 June 2024; Mihajla Gavin and Ruth Weatherall, Written submission to the Independent Review, 6 July 2024; Employer Roundtable, Oral submission made to the Independent Review, June 2024; Frontline Worker Roundtable, Oral submission made to the Independent Review, June 2024; Employee Roundtable, Oral submission made to the Independent Review, June 2024.

341 Among others: SA Unions, Written submission to the Independent Review, 7 June 2024; ASU, Written submission to the Independent Review, 13 June 2024; Working Women Queensland, Written submission to the Independent Review, 7 June 2024.

342 ACTU, Written submission to the Independent Review, 24 June 2024, p.27. See also ANMF, Written submission to the Independent Review, 14 June 2024, p.11; Gavin & Weatherall, academics, Written submission to the Independent Review, 6 July 2024.

343 Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.

344 Employer Roundtable, Oral submission made to the Independent Review, May 2024.

345 Employer Roundtable, Oral submission made to the Independent Review, June 2024; Employer Roundtable, Oral submission made to the Independent Review, June 2024; Employer organisation, Questionnaire submission, 4 June 2024.

346 Employee, Questionnaire submission, 7 June 2024.

347 ACTU, Written submission to the Independent Review, 24 June 2024; ANMF, Written submission to the Independent Review, 14 June 2024.

348 ACTU, Written submission to the Independent Review, 24 June 2024, p.28.

349 ANMF, Written submission to the Independent Review, 14 June 2024, pp.11-12.

350 ANMF, Written submission to the Independent Review, 14 June 2024, p.12.

351 Employee Roundtable, Oral submission made to the Independent Review, May 2024.

5.4.5 Definition of FDV

Burden of proof

The AEU referred to the existence of a ‘double threshold’ in the definition of FDV provided in s106B(2) of the 2022 FDVL Act.³⁵² This double threshold, in its view, was caused by the use of the word ‘and’ in the delineation of conduct constituting FDV for the purposes of the entitlement. To meet the definition of FDV, the actions experienced by the victim-survivor must thus have sought to both ‘coerce or control the person’ *and* ‘cause the person harm or to be fearful’.³⁵³ Replacing the ‘and’ with ‘or’, as recommended by the AEU, would ensure that the definition of FDV would be satisfied in either case, without the requirement for both conditions to be present.

Greater alignment with other frameworks

Positions/actions in Appendix B:2 similarly emphasises the importance of ensuring that the definition of FDV reflects ‘the most accessible and already understood definitions in jurisdictions and workplaces’.³⁵⁴ The AEU argued that a relatively small change, such as that mentioned above, would also align the definition of FDV in the 2022 FDVL Act with that in the *Family Law Act 1975 (Cth)*.

Expanding the scope of close relatives

[T]he extension of FDV leave to ‘immediate family’ will deepen its broad social efficacy as well as dramatically increasing the quality of support available to the victim-survivor. [...] The intended effect of this clause is for men who are members of the MUA to be able to access the leave in order to provide support [to] their mothers, daughters, sisters and their children when they are experiencing FDV.’

MUA, written submission, 18 June 2024, p 5

Positions/actions (see Appendix B:2) also relates to the use of paid FDV leave for the purpose of caring for members of one’s immediate family who are experiencing FDV. While this is not currently provided for, both the ANMF and MUA were strongly supportive of paid FDV leave being used for this purpose.³⁵⁵ The ACTU and ASU further called for the definition of ‘close relative’ to be expanded with clear reference to the inclusion of other family relationships.

The Review also noted concerns of a lack of clarity among employer stakeholders regarding the process and application of paid FDV leave to close relatives.³⁵⁶

Cultural kinship relationships

While the current definition of a ‘close relative’ in s106B(3)(b) of the 2022 FDVL Act already encompasses Aboriginal and Torres Strait Islander kinship rules, the ASU, AEU and ACTU argued that the definition should be amended to explicitly include other ‘religious and cultural kinship rules’.³⁵⁷ This would ensure that the Act reflects the range of family and domestic relationships among Aboriginal and Torres Strait Islander and other culturally diverse groups.³⁵⁸

352 AEU, Online submission to the Independent Review, 13 June 2024.

353 AEU, Online submission to the Independent Review, 13 June 2024.

354 ANMF, Written submission to the Independent Review, 14 June 2024, p.4.

355 ANMF, Written submission to the Independent Review, 14 June 2024; MUA, Written submission to the Independent Review, 14 June 2024, p.5.

356 Employer Roundtable, Oral submission made to the Independent Review, June 2024.

357 ACTU, Written submission to the Independent Review, 24 June 2024, pp.28-29. See also ASU, Written submission to the Independent Review, 13 June 2024 p.5.

358 ASU, Written submission to the Independent Review, 13 June 2024.



The AEU thus proposed that a definition for ‘close relative’, as including a person ‘related to the first person [victim-survivor] according to ethnic, religious or cultural kinship rules’,³⁵⁹ be included in the Act.

5.5 Support and guidance

5.5.1 Existing resources underutilised

The employer and employee stakeholders talked about the sources that they used to access information about the paid FDV leave entitlement,³⁶⁰ including the websites of the FWC and FWO as well as materials prepared by trade unions³⁶¹ and workshops organised by community organisations.³⁶² It is noteworthy, however, that none of the stakeholders made specific reference to 10DaysPaidFDVLeave, the website that was specifically designed as a ‘one-stop shop’ for small businesses. There was also less mention of the FWO resources than might have been expected given the substantial investment in developing these. The observation by the WLSA that the FWO resources ‘are not well known’³⁶³ may account, at least in part, for the underutilisation of these materials; and the WLSA suggested that efforts to promote these be undertaken³⁶⁴ (refer to positions/actions in Appendix B:13).

5.5.2 Gaps in current guidance

Stakeholders had a lot to say about the limitations of the existing government resources (see positions/actions in Appendix B:13). The ARA, for example, referred to the ‘inadequacy of current government information-based resources’³⁶⁵ and SA Unions considered that the FWO guidance, in particular, was ‘unhelpfully narrow and provides limited interpretation of the circumstances’.³⁶⁶ Other identified gaps included content capturing the broader scope of workplace conversations about FDV; as one stakeholder put it:

‘workplaces are having conversations, the communities are having conversations, it needs to be much more broadly communicated that there are supports available through workplaces’.³⁶⁷

The difficulties associated with initiating conversations about FDV in the workplace – for both employers and employees – were also discussed. Specialist FDV organisations considered that, in the absence of targeted training and skill development, this could lead to victim-survivors being seen as liabilities in the workplace and missed opportunities for holding perpetrators accountable for their actions.³⁶⁸

Stakeholders highlighted a lack of understanding among senior managers and HR personnel of the nuances of FDV and the related implications for navigating evidentiary guidelines and adequately supporting employees. Thus, several stakeholders recommended that formal, or accredited, training be mandatory for management and HR staff to ensure that all victim-survivors are treated fairly and in accordance with the legislation. It was further emphasised that such

359 AEU, Online submission to the Independent Review, 13 June 2024.

360 This included 6 of the 14 respondents who completed the online questionnaire: one small and 2 large employers, one organisation representing employers, one employer legal support organisation, one organisation not disclosing.

361 COSBOA, Written submission to the Independent Review, 12 June 2024; ACTU, Written submission to the Independent Review, 24 June 2024, pp.17-18.

362 Employee Roundtable, Oral submission made to the Independent Review, May 2024.

363 WLSA, Written submission to the Independent Review, 6 July 2024.

364 WLSA, Written submission to the Independent Review, 6 July 2024, p.7.

365 ARA, Written submission to the Independent Review, 6 July 2024, p.3.

366 SA Unions, Written submission to the Independent Review, 7 June 2024, p.7.

367 Employee Roundtable, Oral submission made to the Independent Review, May 2024.

368 Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.

training should be government-funded and nation-wide and available in multiple languages and formats (see positions/actions in Appendix B:12 & 14). The ASU, for example, asserted that:

‘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’.³⁶⁹

‘Education and training of managers is a critical component of ensuring that employees are able to access maximal support, certainty and confidence.’

CPSU, written submission, 14 June 2024, p 5

Specialist FDV stakeholders, however, cautioned against the ‘sectorialising’ of education and training by, for example, outsourcing this to agencies such as 1800RESPECT and thus losing the opportunity to engage in cultural change and reflection within the workplace.³⁷⁰

The limitations of information and resources for victim-survivors from ‘diverse cultural, linguistic, gender identity, sexuality and other backgrounds’, that are available to specialist FDV services as well, were identified by the ACTU as a particular gap.³⁷¹ Further, some employee stakeholders pointed out that awareness/education programs, particularly those in conventional formats (such as government websites and resources) and delivered through mainstream outlets (such as media and social media), would not effectively reach rural and remote communities. They therefore argued for the development of diverse strategies, tailored to different contexts, environments and population groups, including innovations such as investing in the training of women elders in Aboriginal and Torres Strait Islander communities³⁷² and developing specialised materials for CALD communities.³⁷³

‘Resources and training must be made available by government, in languages other than English and a range of formats, to raise awareness and understanding of the paid FDV entitlement, other available entitlements and arrangements, and other social and health supports.’

ANMF, written submission, 14 June 2024, p 13

‘This lack of awareness underscores the critical need for targeted education and outreach efforts. At IWAA, we place significant emphasis on educating our workforce, especially given our focus on CALD communities.’

IWAA, written submission, 12 July 2024, p 2

³⁶⁹ ASU, Written submission to the Independent Review, 13 June 2024, p.5. See also ACTU, Written submission to the Independent Review, 24 June 2024.

³⁷⁰ Frontline Worker Roundtable, Oral submission made to the Independent Review, June 2024. Also CPSU, Written submission to the Independent Review, 14 June 2024, p.5.

³⁷¹ ACTU, Written submission to the Independent Review, 24 June 2024, p.27.

³⁷² Employee Roundtable, Oral submission made to the Independent Review, June 2024.

³⁷³ ANMF, Written submission to the Independent Review, 14 June 2024, p.13.



Case study – Training the frontline respondents

Women’s Legal Centre ACT has developed and run community legal education sessions with partner organisations such as the Canberra Child and Family Centres and the Domestic Violence Crisis Service. These sessions ran for under an hour and are designed to equip staff with an understanding of paid FDV leave, who is eligible for it and the tools to refer women to seek legal advice if they have issues accessing the leave. This has led to referrals from these agencies and an increase in women accessing FDV leave.

WLSA, written submission, 6 July 2024, p 9

Competing views regarding the priorities for improved information and guidance were expressed. For employee representatives and FDV specialist services, the need for specific training and support ‘post-disclosure’, focusing on how to support victim-survivors to enact safety, was particularly pressing.³⁷⁴ Some employer representatives, however, emphasised the difficulties of addressing the issue of FDV in the workplace at all and, noting the load that this places on individual employers, advocated ‘outsourcing’ this obligation to ‘appropriately trained and resourced’ professionals³⁷⁵ (see positions/actions in Appendix B:12).

Overall, the themes evident across the stakeholder consultations included:

- the need for guidance on the specific elements of the entitlement, including the administration and management of leave requests, maintaining confidentiality (refer to positions/actions in Appendix B:11-13)
- experience and confidence gaps especially in relation to initiating difficult conversations concerning sensitive issues (refer to position/action in Appendix B:12)
- guidance for employers regarding the specific needs and concerns of culturally diverse groups including First Nations peoples (refer to positions/actions in Appendix B:12).

The potential for confusion among employers, small businesses in particular, as a result of the complexity and ambiguity arising from the translation of generic legislative provisions into workplace practices was also highlighted.

5.5.3 Further opportunities for impactful outreach to key cohorts

Some stakeholders reflected on the opportunity that the reforms present to contribute to social change. The MUA, for instance, observed that:

‘[t]his is an enormous leap forward in providing institutional support for women experiencing FDV. Further, by pushing the cost of supporting women experiencing FDV onto employers (by virtue of paying for the leave), employers have a material imperative to support strategies to eradicate FDV.’³⁷⁶

In this context, more nuanced approaches to addressing barriers such as stigma, as discussed in Section 5.3.3, could be explored through reflection on existing workplace practices with a view to gradual cultural change,³⁷⁷ as reflected in positions/actions in Appendix B:9. As emphasised by IWA Australia Ltd, encouraging constructive exchanges and providing support³⁷⁸ could thus

374 Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024; Employee Roundtable, Oral submission made to the Independent Review, May 2024; SA Unions, Written submission to the Independent Review, 7 June 2024.

375 COSBOA, Written submission to the Independent Review, 12 June 2024; Employer Roundtable, Oral submission made to the Independent Review, June 2024.

376 MUA, Written submission to the Independent Review, 18 June 2024, p.4.

377 ANMF, Written submission to the Independent Review, 14 June 2024; CPSU, Written submission to the Independent Review, 14 June 2024.

378 IWA Australia Ltd, Written submission to the Independent Review, 12 July 2024.

provide the building blocks for improvements in workplace culture. FDV specialists also highlighted the importance of awareness-raising that is occurring broadly across sectors, from essential services through to corporate organisations.³⁷⁹

Stakeholders also talked about the progress that they have already made in establishing a positive base for the entitlement. For example, the ACTU discussed the training and support materials it had developed for unions, delegates and officials, designed to be trauma-informed, raise awareness in workplaces and guide ‘necessary conversation[s] with employers’.³⁸⁰ Employers who had been providing paid FDV leave prior to the reforms (via enterprise agreements) also discussed the work they were doing to build on previous efforts aimed at informing and training managers at all levels. This included efforts to ‘normalise the entitlement’.³⁸¹ Other employer organisations also referred to active steps they had taken to create FDV-related resources for their members,³⁸² as did specialist FDV organisations.³⁸³

Case study – Training for Employers

Women’s Legal Centre ACT was engaged and paid by the ACT Government to design and deliver training to public sector managers to support them to better respond to staff who were affected by domestic and family violence. This was coupled with the introduction by the ACT Government of paid FDV leave provisions for Territory public servants. Between 2020 and 2021 Women’s Legal Centre trained approximate 700 ACT Public Service managers. Given ACT Public Servants make up approximately 11% of the Territory’s labour force, this training had the potential to change the story for many people in Canberra affected by violence. Anecdotally the Centre has seen very few people employed by the ACT Government who have issues with accessing paid FDV leave. “It was really good training – lots of verbal interaction. I was glad you didn’t just stand up on your soap box, it felt like you were talking to us as one of us”.

WLSA, written submission, 6 July 2024, p 15

The existing work by employer and employee representatives and specialist services, thus, provides an excellent foundation for the development of further opportunities that can build on, and learn from, these experiences.

5.5.4 Particular focus on small business

The specific impacts of paid FDV leave for micro and small businesses were an important focus of the stakeholder consultations, centring, in particular, on financial risk, resources and the support needed to administer the leave. Noting the difficulties faced by small businesses without dedicated HR personnel,³⁸⁴ employer representatives and FDV specialist services emphasised the need for more detailed guidance regarding the specifics of the entitlement. It was explained that small businesses, therefore, more commonly rely on their affiliate organisations to provide them with relevant and accessible information about their legislative obligations. COSBOA, for example, noted that its members rarely have the ‘luxury of time ... to navigate the obligations and requirements’³⁸⁵ as detailed in the FWO materials.

379 Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.

380 ACTU, Written submission to the Independent Review, 24 June 2024, p.17.

381 Employee Roundtable, Oral submission made to the Independent Review, May 2024.

382 Employer Roundtable, Oral submission made to the Independent Review, June 2024.

383 Frontline Roundtable, Oral submission made to the Independent Review, May 2024.

384 Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024; Employer Roundtable, Oral submission made to the Independent Review, June 2024.

385 COSBOA, Written submission to the Independent Review, 12 June 2024, p.1.



COSBOA made the point that small business owners may lack the 'emotional skills required to support a staff member experiencing FDV'.³⁸⁶ Observing that 'employees suffering from FDV often do not want to involve their workplace given the[y] want to keep information private, especially where the perpetrator may work in the same environment', COSBOA considered that FDV matters would be more appropriately managed by a specialist FDV service (see positions/actions in Appendix B:12).

Positions/actions (see Appendix B:15) relates directly to the support needs of small business, including COSBOA's position that the financial impacts for small businesses warrant consideration of a fully or jointly funded government scheme.³⁸⁷

Case study – Paid FDV leave in Small Business

'An ASU member working in a domestic violence service in Western Sydney assisted a client working as a clerical worker and who had not been in her job long. Her employer was 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 of preparation. She was able to get her 3 children to safety in Temporary Accommodation and get support from the service to access a subsidised rental programme.'

ACTU, written submission, 24 June 2024, p 25

³⁸⁶ COSBOA, Written submission to the Independent Review, 12 June 2024, p.1.

³⁸⁷ COSBOA Written submission to the Independent Review, 12 June 2024, p.2.

6 Findings

This section provides an overview of the analysis and key findings of this Independent Review. Informed by the stakeholder perspectives, as outlined in Section 5, evidence from targeted research, and background information and data provided by relevant government and other bodies, this section draws together the findings and analysis to provide insights regarding the operation and impact of the paid FDV leave entitlement. The key themes arising from the stakeholder consultations are considered alongside research evidence provided by BETA and other relevant literature.

The Review notes that broad agreement was evident on the main issues identified by stakeholders. While the range of perspectives on these issues varied, the level of consensus regarding areas of shared concern is noteworthy. Importantly, the utility of paid FDV leave seemed not to be in question; the findings of this Review can therefore be read as providing the foundation for improvements to the existing entitlement.

6.1 Operations and scope

Finding 1

Early indications suggest that the entitlement is operating in a way that is consistent with policy intent and is impacting positively on workplace culture.

The extent to which the operation and impacts of the 2022 FDVL Act have been consistent with the policy intent has been a central concern for the Review. The reviewers have thus considered the specific impacts and implications for small business, the experiences of employees and victim-survivors, as well as the direct and indirect effects of the reforms on the management of FDV in the workplace.

The unanimous support for paid FDV leave among almost all the stakeholders mirrors the experience of the 2022 Senate Inquiry. This is not to say that all stakeholders were satisfied with the specific details – including the onus on employers to provide leave – but all were supportive of the policy intent in principle. BETA also found that there was majority support for the entitlement, with over three-quarters (77%) of surveyed employers supportive of the reforms.³⁸⁸ The finding that 75% of large businesses, 65% of small businesses and 53% of micro businesses ‘offered additional supports for staff experiencing FDV leave’³⁸⁹ is also significant, suggesting both that there exists considerable good-will in this regard and that workplaces are increasingly recognising their own role in responding to FDV. Additional supports provided to employees affected by FDV included additional unpaid (25%) and paid (13%) FDV leave as well as safety planning and protocols (14%).³⁹⁰ This is further supported by WAD data indicating that a growing proportion of workplace agreements are including paid and unpaid FDV leave provisions and were doing so even before the introduction of the 2022 FDVL Act.

The available evidence indicates that victim-survivors who have used the entitlement largely found it effective. Stakeholders representing specialist FDV services, for instance, provided examples of the positive impacts of paid FDV leave for their clients, noting that it had effectively

388 BETA, *op cit.*, p.11.

389 *ibid.*, p.50.

390 *ibid.*, p.50.



enabled victim-survivors to leave violent relationships ‘while maintaining some financial security and stability’.³⁹¹ Unions and other employee representatives also confirmed that the entitlement is ‘making a difference’³⁹² and ‘life changing for victim-survivors’.³⁹³

BETA’s research similarly highlighted the financial, safety and other impacts of paid FDV leave. Of the victim-survivors surveyed, nearly all who took the leave (n=46) agreed that it had helped them to maintain both their income and their employment.³⁹⁴ Victim-survivors also reported that accessing the leave enabled them to ‘do tasks associated with escape or safety during work hours without the perpetrator knowing’.³⁹⁵ Encouragingly, two out of three of the surveyed victim-survivors who had accessed the leave said that they had felt ‘very or extremely supported’ by their employer.³⁹⁶

The broader impacts of the entitlement on workplaces, from empowering workers to shifting socio-cultural paradigms, were also highlighted by multiple stakeholders. Stakeholders spoke positively about these impacts, emphasising that ‘workplace culture has changed significantly’,³⁹⁷ both, specifically, in responses to employees experiencing FDV³⁹⁸ and, more generally, in raising awareness and helping to address ‘taboos’ about FDV.³⁹⁹ Relatedly, BETA found that the vast majority of the surveyed workforce (including employers and employees) viewed the paid FDV leave entitlement as a ‘positive step for Australia’, and victim-survivors, in particular, viewed it as a ‘positive step towards supporting those who experience abuse’.⁴⁰⁰

Reference was also made to the important – and growing – recognition of FDV as ‘not just a criminal justice or social justice issue, [but also] an economic and workplace issue’.⁴⁰¹ This is a significant shift that aligns with the potential for this entitlement to help break down the traditional division between the private (‘home’) and public (‘work’) spheres, a divide that has been widely recognised as a key barrier to gender equality. In addition to providing employers with a ‘material imperative’⁴⁰² to support efforts to end FDV, stakeholders also emphasised the significance of paid FDV leave in acknowledging employers’ ‘broader obligations’ to address workplace gender inequality.⁴⁰³ This aligns with Australia’s National Plan which is focused on businesses working to ‘prevent and address gender-based violence through fostering gender equality in the workplace’, and ‘providing support for individuals experiencing violence and the ongoing impacts of trauma’.⁴⁰⁴

BETA’s survey experiment had a specific focus on examining the relationship between legislation and community attitudes. As discussed in Section 4, members of the Australian workforce were surveyed to determine their attitudes and potential attitudinal change towards victim-survivors within a workplace context. Citing research concerning the role of legal mandates in compliance, BETA set out to see whether the same might apply for the paid FDV leave entitlement. Based on

391 DV West, Written submission to the Independent Review, 5 June 2024, p.1. This benefit was also noted in the Employer Roundtable, Oral submission made to the Independent Review, May 2024.

392 WWQ, Written submission to the Independent Review, 7 June 2024, p.4.

393 VTHC, Written submission to the Independent Review, 4 June 2024, p.1.

394 BETA, *op cit.*, p.32.

395 *ibid.*, p.33.

396 *ibid.*, p.33.

397 ASU, Written submission to the Independent Review, 13 June 2024, p.2.

398 ARA, Written submission to the Independent Review, 7 June 2024, p.3.

399 DV West, Written submission to the Independent Review, 5 June 2024, p.1.

400 BETA, *op cit.*, p.11.

401 CPSU, Written submission to the Independent Review, 7 June 2024, p.2. See also VTHC, Written submission to the Independent Review, 4 June 2024, p.1; Mihajla Gavin and Ruth Weatherall, Written submission to the Independent Review, 6 July 2024, p.2.

402 MUA, Written submission to the Independent Review, 14 June 2024, p.4.

403 Mihajla Gavin and Ruth Weatherall, Written submission to the Independent Review, 6 July 2024, p.4.

404 DSS (2022), *op cit.*

the participation of 3,008 respondents in an online survey experiment, BETA concluded that paid FDV leave legislation does have the ‘potential to reduce stigma and discrimination’.⁴⁰⁵ This highlighted the possibility that the entitlement can contribute to reducing workplace discrimination.

The purpose of the 2022 FDVL Act was to ensure that ‘no worker should ever have to choose between their safety and their income’.⁴⁰⁶ It was anticipated that the availability of paid FDV leave would help individuals experiencing FDV to ‘maintain their economic security; to access relevant services, and to safely exit to a life free from violence’.⁴⁰⁷ Based on the consultation with stakeholders and the research insights provided by BETA, and notwithstanding that the entitlement is in its early stage, the Review finds that the operation and implementation of the reforms have fulfilled this policy intent. Thus, while the Review heard about potential areas for improvement, the reviewers consider that the paid FDV leave entitlement is operating as intended and making a difference. This is a significant finding. The Review, nonetheless, supports ongoing evaluation and stakeholder consultation over time – as familiarity with the entitlement increases – to inform proposals for further reform.

Finding 2

The current parameters of the paid FDV leave entitlement are appropriately set.

The Review notes broad support for the entitlement across the stakeholder consultations, including agreement on both the urgent need to address FDV, and the appropriateness of paid FDV leave in this regard. The reviewers thus find a general consensus that the current leave entitlements are both ‘appropriate and sufficient’.⁴⁰⁸ The elements of the paid FDV leave entitlement which the reviewers explored include:

- that the entitlement be available in full at the start of each 12-month period to full-time, part-time and casual employees.
- the ability of employees to take the leave as a single, continuous 10-day period, separate periods of one or more days each; or any separate periods to which an employee and employer agree, including periods of less than one day.
- the provision for employees to access 10 days of paid FDV leave at their full rate of pay, for the hours they would have worked had they not taken the leave.
- that paid FDV leave can be taken by an employee experiencing FDV if they need to do something to deal with the impact of that violence and it is impractical for them to do this outside their work hours.
- that employees are eligible to take the leave to deal with the impacts of FDV perpetrated by a close relative, current or former intimate partner, or a member of their household.
- restrictions on an employer’s use of an employee’s information regarding their access to paid FDV leave in order to ensure the employee’s confidentiality and that employees accessing the leave are protected from adverse action.
- regulations prohibiting employers from including information about paid FDV leave on employee pay slips.

405 BETA, op cit., p.31.

406 The Hon Tony Burke MP, Minister for Employment and Workplace Relations (cited in the House of Representatives Official Hansard, Thursday 28 July 2022, p.175).

407 Fair Work Commission, *Summary of Decision: 4 yearly review of modern awards, Family and domestic violence leave review 2021*, 16 May 2022, p.7.

408 ARA, Written Submission to the Independent Review, 7 June 2024, p.3.



The Review considers these findings reflect the shared commitment to the role of workplaces in responding to FDV experienced by their employees and, specifically, to employers' responsibility to support employees to do what they need to do in order to ensure their safety without jeopardising their employment or income.

The Review heard, however, varied proposals on the framing of the entitlement that warrant further exploration. For example, while the inclusion of casual employees was seen as especially significant,⁴⁰⁹ employers experienced the implementation of this as particularly challenging (see Finding 9). Moreover, despite wide agreement regarding the appropriateness of 10 days of leave in the current entitlement, some stakeholders, mostly from the union sector, recommended that the quantum of leave be increased.⁴¹⁰ Some suggested increasing this to 20 days per year⁴¹¹ to ensure consistency with the existing entitlement for public sector employees in Victoria and NSW, as well as accrual from year-to-year and access to the entitlement from previous years in certain circumstances.⁴¹² There were also calls for 'stronger and easier enforcement',⁴¹³ particularly in relation to employers' confidentiality obligations, along with standardised training to ensure 'consistency and quality'.⁴¹⁴

Several stakeholders advocated for legislative changes including that an employer's ability to request evidence be removed, 'so that there is a presumption in favour of granting paid FDV leave without the need to provide evidence, provided the notice requirements are met'.⁴¹⁵ Modification of key definitions was also recommended, with the definitional issues raised including:

- amending the entitlement for paid FDV Leave to 'a person or their immediate family [who] are experiencing FDV'.⁴¹⁶
- expanding the definition of 'immediate family' to 'include all cultural kinship relationships', not limited to Aboriginal and Torres Strait Islander peoples.⁴¹⁷
- replacing the word 'and' with 'or' to remove the double threshold in s106B(2) of the 2022 FDVL Act.⁴¹⁸
- expanding the entitlement to all workers where there is an 'employment, employment-like or business relationship'.⁴¹⁹

While these are important points that warrant close consideration, the Review considers that more time and experience with the existing paid entitlement is needed to ensure informed decision-making regarding the need for further reform.

The importance of maintaining a database to **monitor access** to and utilisation of paid FDV leave, was also raised, with one stakeholder emphasising that the impact of FDV on 'women workers and the workplace (and wider) must not remain hidden'.⁴²⁰ While also highlighting the

409 WWQ, Written Submission to the Independent Review, 7 June 2024, p.2. See also ASU, Written Submission to the Independent Review, 13 June 2024, p.4.

410 SA Unions, Written Submission to the Independent Review, 7 June 2024, p.1; ASU, Written Submission to the Independent Review, 13 June 2024, p.5; Unions NSW, Written Submission to the Independent Review, 7 June 2024.

411 WWQ, Written Submission to the Independent Review, 7 June 2024, p.4; MUA, Written Submission to the Independent Review, 14 June 2024, p.3; ANMF, Written Submission to the Independent Review, 14 June 2023, p.4.

412 Unions NSW, Written Submission to the Independent Review, 7 June 2024, p.1; Individual employer, response to questionnaire.

413 SA Unions, Written Submission to the Independent Review, 7 June 2024, p.6; Unions NSW, Written Submission to the Independent Review, 7 June 2024, p.1.

414 WWQ, Written Submission to the Independent Review, 7 June 2024, p.7.

415 WLSA, Written Submission to the Independent Review, 6 July 2024, p.5.

416 MUA, Written Submission to the Independent Review, 18 June 2024, p.5.

417 ASU, Written Submission to the Independent Review, 13 June 2024, p.6.

418 AEU, Online submission to the Independent Review, 13 June 2024; ACTU, written submission, 24 June 2024, p.28.

419 ANMF, Written Submission to the Independent Review, 14 June 2024, p.4.

420 WWQ, Written Submission to the Independent Review, 7 June 2024, p.5.

value of data collection in other areas, such as FDV-related workplace absences, stakeholders acknowledged the considerable challenges associated with managing confidentiality and prioritising safety in this context.

Sexual violence

Sexual violence is a common form of FDV, accounting for 39% of all reported sexual assaults in 2023.⁴²¹ Employees experiencing sexual violence within the context of FDV are already able to access paid FDV leave. The question of whether the paid FDV leave entitlement should be made available to victim-survivors of **sexual violence** perpetrated outside the FDV context, however, was raised by a small number of stakeholders. The prospect of introducing a 'broader 'gender-based and sexual violence' leave entitlement'⁴²² was discussed, as was the important role of workplaces in 'shaping community attitudes' and 'supporting workers who have experienced sexual violence'.⁴²³

Because most sexual violence is committed by a person who is known to the victim-survivor,⁴²⁴ even if not an intimate partner, family member or household member, it has the potential to be more than a 'one-off' assault. While the focus for the entitlement is specifically on FDV, the Review considers that more research into the support needs of employees who experience non-FDV-related sexual violence is warranted, taking into consideration the utility of other entitlements such as victims of crime leave and compensation.

An entitlement for perpetrators

Some stakeholders saw the potential for eligibility for the entitlement to be extended to **perpetrators** for the purpose of attending behaviour change and other programs, arguing that employers have a responsibility to support perpetrator accountability.⁴²⁵ Other stakeholders considered that this would undermine the purpose of the entitlement and could increase risk for victim-survivors.⁴²⁶ While caution is necessary to avoid the risk of undermining the focus on women's safety, it is nonetheless the case that women's safety cannot be assured without attention to perpetrators.

While noting the clear intention of Parliament that the paid FDV leave entitlement be available to victim-survivors, and not perpetrators, of FDV, the Review notes that questions concerning workplace responses to perpetrator are important, involving complex issues that require close and careful consideration. Employer responses to perpetrators of FDV, for example, have a critical potential to influence both attitudes and behaviour in the workplace, and community attitudes and expectations more broadly. Given the relative recency of the paid entitlement, the reviewers make no recommendation for change at this stage but emphasise that considerable potential exists to shift the focus away from the decisions and actions of victim-survivors towards the factors that sustain FDV – including gender norms and cultural ideals of masculinity, among

421 ABS (Australian Bureau of Statistics) (2023b), *Recorded Crime – Victims*. <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/latest-release/#victims-of-family-and-domestic-violence-related-offences>.

422 ANMF, Written Submission to the Independent Review, 14 June 2024, p.4. See also ASU, Written Submission to the Independent Review, 13 June 2024, p.6.

423 WLSA, Written Submission to the Independent Review, 6 July 2024, p.16.

424 The PSS 2021-2022 indicates that 15.6% of sexual assaults committed against women are committed by strangers, with 84.7% committed by a known person: ABS (2023a), op cit.

425 Employer Roundtable, Oral submission made to the Independent Review, May 2024. Also: Mihajla Gavin and Ruth Weatherall, Written Submission to the Independent Review, 6 July 2024, pp.3-4.

426 Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.



others. Thus, the Review supports ongoing consideration of this issue in the context of broader efforts around prevention.

Sole traders

The terms of this Review required consideration of the impact of paid FDV leave on sole traders. Thus, stakeholders were prompted to offer their view on this, an opportunity that was used by several stakeholders to advocate for a general broadening of the entitlement to forms of engagement not currently covered by the NES. These perspectives should be considered in the context of broader concerns about job security, including relevant reforms focused on the definition of employment and 'employee-like' ways of working.

The Review notes that a significant proportion of victim-survivors, including sole traders and contractors, lack access to paid FDV leave and/or equivalent support. Consideration of the situation for sole traders thus encompasses issues that are significantly broader than the paid FDV leave entitlement and its impacts. Noting the overrepresentation of women in low-paid, precarious employment, including 'non-direct employment models',⁴²⁷ in the community service and care sectors (such as disability support, and home and community aged care), and the relatively high numbers of women registered as sole traders,⁴²⁸ stakeholders expressed some concern about the lack of paid FDV leave provision for sole traders, independent contractors and sub-contractors.⁴²⁹

Given the dynamic nature of the legislative landscape in Australia, attention to the relative vulnerability and low visibility of other out-of-scope groups, including gig workers, is timely. While acknowledging that this goes beyond the remit of this Review, the Review notes that this highlights the importance of comprehensive and connected policies, systems and services, across government and non-government agencies, for addressing the entrenched nature of FDV and gender inequality.

6.2 Impact and uptake

Finding 3

The full impacts of the paid FDV leave entitlement, particularly for small business, are not yet known.

The Review notes that, while the financial and other costs of implementing and administering paid FDV leave did not emerge as a strong theme across the stakeholder consultations, not enough time has passed to enable full understanding of the operation and impacts of the entitlement. That the full impacts of paid FDV leave are not yet known was also observed by BETA, which found that many employers 'haven't yet fully incorporated the new entitlement into their processes and policies', or 'incurred the costs and benefits'.⁴³⁰ The Review nonetheless heard about the specific financial impacts for small business as well as the particular challenges

427 ANMF, Written Submission to the Independent Review, 14 June 2024, p.11.

428 ASBFEO (Australian Small Business and Family Enterprise Ombudsman) (2024) *Small Business Matters*, June 2023. <https://www.asbfeo.gov.au/small-business-data-portal/small-business-matters>

429 The Review recognises other government payments that may be available to these groups, but also that each has specific conditions that are likely to limit their utility. For example, the Crisis Payment (for extreme circumstances, family and domestic violence) is available only to those who are already in receipt of an income support payment and no longer living with the perpetrator. The Leaving Violence Program provides financial and case work support but is available only in cases of intimate (i.e. 'romantic') partner violence and where the applicant is 'planning to change or [has] changed [their] living arrangements within the last 12 weeks' and can demonstrate that they are experiencing 'financial stress'. Source: <https://www.servicesaustralia.gov.au/crisis-payment-for-extreme-circumstances-family-and-domestic-violence>; <https://www.unitingvictas.org.au/services/family-services/family-violence-services/escaping-violence-payment>

430 BETA, op cit., p.36.

faced by many due to their lack of dedicated HR personnel, infrastructure and systems to appropriately administer paid FDV leave.⁴³¹

Some concerns about the potential for employee misuse of paid FDV leave⁴³² were raised; however, this was not a majority view. The Review also notes the potential implications for First Nations–owned and other small businesses in regional and remote areas, for whom the provision of paid FDV leave may be expected to further deplete already narrow profit margins.

The view that the costs associated with paid FDV leave are likely to be ‘far outweighed’ by the benefits of retaining workers,⁴³³ and ‘positively offset by the attraction, retention and wellbeing benefits’, was expressed by a number of stakeholders.⁴³⁴ For example, a number of employee representatives refuted claims of excess financial burden, pointing out that earlier concerns regarding the ‘unmanageable financial pressure [and] nefarious claims and absences by employees have not been realised’.⁴³⁵

In this context, one employer stakeholder’s reference to the ‘initial panic by businesses’⁴³⁶ may well indicate that the low uptake of paid FDV leave has ameliorated early concerns about the financial burden. The distinction between the anticipated and the actual cost-burden was captured in BETA’s finding that 30% of surveyed employers who had not provided paid FDV leave expected the financial costs to be a challenge; yet, of those employers who had provided leave only 18% reported this as a challenge. This suggests, as observed by BETA, that ‘financial costs and staffing shortages may be more significant in anticipation than in reality’.⁴³⁷

The Review heard from victim-survivors who have used paid FDV leave through the research undertaken by BETA⁴³⁸ as well as stakeholders including unions and specialist FDV service providers, who talked about their interactions with victim-survivors. BETA conducted interviews (n=22) with and surveyed (n=594) FDV victim-survivors, identifying 46 participants who had accessed paid FDV leave. Of the 46, while many said that they felt supported, a number of these respondents also reported that they felt judged (33), shamed (31), excluded (13, 10 of whom were men) or discriminated against (11, 7 of whom were men).⁴³⁹ This points to the complexity of FDV as a workplace issue. Victim-survivors may report feeling supported – for example, 20 victim-survivors said that they felt their workplace supported them a lot and 9 felt extremely supported⁴⁴⁰ – but, at the same time, also feeling judged and excluded.⁴⁴¹ BETA thus concluded that workers’ experiences of accessing paid FDV leave were mixed.

That 7 of the 46 victim-survivors who had taken paid FDV leave in BETA’s study reported that they had been dismissed or asked to resign in the period after taking the leave⁴⁴² is especially

431 COSBOA, Written Submission to the Independent Review, 12 June 2024, p.1.

432 Employee Roundtable, Oral submission made to the Independent Review, June 2024; Employee Roundtable, Oral submission made to the Independent Review, June 2024.

433 ASU, Written Submission to the Independent Review, 13 June 2024, p.4.

434 ANMF, Written Submission to the Independent Review, 14 June 2024, p.10.

435 ANMF, Written Submission to the Independent Review, 14 June 2024, pp.9-10.

436 Respondent #11, Questionnaire submission made to the Independent Review, 7 June 2024.

437 BETA, op cit., p.26.

438 Note BETA’s advice, given the recent implementation and low uptake of paid FDV leave, regarding the challenges of recruiting a large enough sample to understand the full impacts of the entitlement.

439 BETA, op cit., pp.34-37.

440 *ibid*, p.35, Figure 16.

441 Note that, because BETA only asked victim-survivors who had taken the leave about these negative repercussions, it is not possible to differentiate between the effects of the leave and the effects of FDV.

442 BETA, op cit., p.35.



concerning. The Review notes that this may contravene the adverse actions protections in subsection 351(1) of the Fair Work Act, which makes subsection to FDV a protected attribute.

The reviewers also acknowledge the diverse views on certain aspects of the entitlement, as summarised in Section 5. Because data on leave utilisation has not yet been incorporated into nationally representative surveys and relevant WGEA analysis is not yet available, the Review notes that it is difficult to offer specific suggestions for improving the evidence base. The inadequacy of the available data on gender-based violence has also been recognised in the National Plan, with specific implications for the measurement of outcomes for victim-survivors and perpetrator accountability. A commitment to improving the national evidence base is included in the First Action Plan of the National Plan, which notes the need to achieve consistent terminology and evaluation frameworks and to enhance arrangements for the collection and sharing of data and evidence. Notably, the Domestic, Family and Sexual Violence Commission, with whom the reviewers met during the consultations, has been specifically appointed to promote coordinated and consistent monitoring and evaluation frameworks, and to report to Parliament annually on progress against the National Plan.

This Review has provided a valuable opportunity for an early and quick evaluation, supported by targeted data collection, to test whether the entitlement is meeting its policy objective and identify potential unintended consequences. It has, however, been limited by the lack of nationally representative data on leave utilisation and, in turn, the impact of paid FDV leave, and other workplace responses, on the labour force participation of people experiencing FDV.

The Review acknowledges the need for a range of stakeholder views on complex matters such as extending the entitlement to perpetrators and sexual violence (see Finding 2). Thus, it considers that ongoing evaluation of workplace responses to FDV is needed, particularly given the protected attribute that is now in place, to ensure that the Government is fully informed about the evolving impacts of its reforms within the context of broader efforts to address FDV and gender inequality.

Recommendation One

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.

Finding 4

Utilisation of paid FDV leave remains low.

Low utilisation of paid FDV leave was a consistent theme emerging from the stakeholder consultations, although due to the lack of national data on uptake, as mentioned above, this could not be confirmed. Stakeholder accounts of low utilisation, however, were supported by BETA's finding that, of the 1,437 employers it surveyed, only 12% reported any instance of staff using the paid FDV leave entitlement (see Figure 10).

Figure 10: Paid FDV leave uptake reported by employers since legislation change (% of employer type)



Source: BETA, 2024, p.17

Employee representatives and specialist FDV services reported that they were aware of only a small number of employees who had either taken paid FDV leave or contacted them seeking advice on accessing this.⁴⁴³ BETA’s research, again, confirms this trend. Of the 594 victim-survivors surveyed by BETA, 128 were identified as having last experienced FDV while they were in the workforce over the period 2023–2024; and of these, only 13% had used paid FDV leave.⁴⁴⁴ As BETA pointed out, though, this represents a sizeable increase from the reported uptake of paid FDV leave prior to the provision being legislated in the NES. Only 6% of victim-survivors in BETA’s survey who had experienced FDV before 2023 had accessed paid FDV leave,⁴⁴⁵ suggesting that the availability of a paid entitlement has led to an increase in uptake.

One employer organisation observed that the trend of limited uptake pre-existed the introduction of paid FDV leave, pointing to the complexities of disclosing or identifying as a ‘victim’ of FDV as well as (arguably) the limitations of a financial ‘solution’.⁴⁴⁶

The Review notes BETA’s finding that 14% of surveyed employers had denied a request for paid FDV leave, with larger businesses (21%) much more likely to do so than small (11%) and micro (4%) businesses. The most common reasons given by employers for denying paid FDV leave requests were suspected misuse (7%), insufficient documentation (5%) and ‘operational reasons’ (5%).⁴⁴⁷ Relatedly, multiple frontline stakeholders noted the variations in practices and preferences that exist across regional and rural areas,⁴⁴⁸ likely reflecting the lower density of support services and greater proportion of small and medium-sized businesses in these areas, which may hamper access to, or reduce the immediate utility of, paid FDV leave.

The Review also heard about the risk of FDV disclosure leading to termination of employment.⁴⁴⁹ Employees who disclosed FDV risked being seen as a liability in the workplace, with particular implications for smaller and/or remote communities in which victim-survivors and perpetrators, as well as other family members, are more likely to be working together. Cultural considerations were also recognised as critical, particularly in the context of businesses operated by, or employing, First Nations peoples. For example, FDV may be viewed as women’s business and

443 Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024; Employee Roundtable, Oral submission made to the Independent Review, June 2024.

444 BETA, op cit., p.16.

445 ibid, p.16.

446 Employer Roundtable, Oral submission made to the Independent Review, May 2024.

447 BETA, op cit., p.30.

448 Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024; Frontline Worker Roundtable, Oral submission made to the Independent Review, June 2024.

449 Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.



cultural safety elements could affect FDV responses, unintentionally enabling FDV to be perpetuated in workplaces.⁴⁵⁰

Given the timing and scope of this Review, the impacts of FDV being made a protected attribute could not be captured or understood. Thus, the reviewers consider that any updates to the guidance or resources on FDV leave should incorporate information about the protected attribute, to ensure that employees have access to comprehensive information concerning their rights and protections.

6.3 Information and awareness

Finding 5

Limited awareness among employees and employers contributes to low utilisation of paid FDV leave.

Limited awareness of the entitlement, and of the related resources, was another theme that was consistent across the consultations. The Review notes BETA's finding that only 58% of surveyed employers were aware of the new entitlement. Importantly, employers in BETA's study identified lack of awareness of the entitlement as the 'most significant barrier' they faced in providing FDV leave to their employees.⁴⁵¹ Further highlighting the importance of low awareness as a barrier for take-up of paid FDV leave, BETA also found that nearly 6 in 10 surveyed victim-survivors (59%), and nearly 8 in 10 of those employed on a casual basis (78%), were not aware of the existence of paid FDV leave.⁴⁵² BETA's observation that employee awareness of the paid FDV leave entitlement was mostly informed by social media and work colleagues, rather than official FWO sources or FDV services,⁴⁵³ is also significant.

The BETA research further found that employers who had visited government websites found them useful. In the interviews, participants reported that they found the information on these websites highly valuable. Surveyed employers who visited government websites were slightly more likely to feel equipped to support employees experiencing FDV (72%) compared to those who received information about FDV from other channels (68%) and far more likely than those who were not aware of the paid FDV leave entitlement at all (38%).⁴⁵⁴

Challenges remain with respect to reaching certain workplaces, particularly those in regional, rural and remote locations, and employees, especially those in casual employment. Government resources are nonetheless a valuable source of information but could be better promoted to maximise their reach. Stakeholders referred specifically to the lack of familiarity with the FWO resources,⁴⁵⁵ hence the Review considers that attention should be directed to broadening awareness of the existing resources. Awareness raising activities directing employers to the FWO resources and the 10DaysPaidFDVLeave website could contribute to workplace change and, in turn, increase the uptake of the leave, as well as signalling to employees that the leave is available. Similarly, search engine optimisation efforts could be made to promote the 10DaysPaidFDVLeave site, ensuring its prominence in search results for generic terms such as 'FDV leave' or 'domestic violence leave'.

450 Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.

451 BETA, op cit., p.14.

452 ibid, p.21.

453 ibid, p.13.

454 BETA, op cit., p.28.

455 WLSA, Written Submission to the Independent Review, 6 July 2024, p.6.

The Review notes that representative bodies that have direct access to their membership have a vital role to play in promoting awareness and providing practical guidance on the entitlement including how to manage a leave request sensitively and appropriately. The Review also heard that co-workers provide a critical source of information and support in the workplace; these conversations could considerably impact on an employee's decision to access the entitlement.⁴⁵⁶

The Review heard feedback from stakeholders concerning alternative means of reaching and supporting employees and employers to understand the entitlement, focusing in particular on the need to better educate employees about the entitlement and how to access it. While it was observed that reaching victim-survivors might be better achieved outside the employment context (see Finding 8), further work could be done to tailor existing channels for employees. However, the Review further notes that, while less prominent than the guidance targeted at employers, both the FWO and 10DaysPaidFDVLeave websites contain resources that are specifically targeted at employees. The FWO website, for example, includes a course for employees and a guide to having difficult conversations in the workplace; and the 10DaysPaidFDVLeave website contains specific webpages for both employees and co-workers. The lack of awareness regarding the existence of these resources may be perpetuating stakeholder concerns about these resource gaps and is a priority for action.

Finding 6

Uncertainty and misconceptions about evidentiary requirements are a continuing concern for employers and employees.

The adequacy of support and guidance to assist with implementation of the 2022 FDVL Act was a central concern of this Review. The reviewers heard about areas of concern from all stakeholder groups; for example, there was broad uncertainty about how paid FDV leave applies to those who require the leave to care for others. The need for education and training, specifically in relation to interpreting and applying evidentiary requirements and managing employee confidentiality, was a strong theme. The Review heard that evidentiary requirements can be a particular barrier for victim-survivors, who might otherwise access and benefit from paid FDV leave, and that this could be compounded by concerns about confidentiality.

Uncertainty and misconceptions about evidentiary requirements, in addition to concerns about confidentiality, are potentially significant deterrents to victim-survivors accessing paid FDV leave. The stakeholder consultations, for example, highlighted considerable uncertainty among both employers and employees about the purposes of paid FDV leave, evidentiary requirements, confidentiality obligations and application of the entitlement to casuals.

The Fair Work Act provides that employers *can* ask for evidence to confirm that an employee is experiencing FDV, that the employee needs to do something to deal with the impact of the FDV and that it is impracticable for them to attend to this outside their working hours. BETA's findings, however, show that half of all victim-survivors who had accessed paid FDV leave (50%) were required by their employer to provide evidence, while a further 33% indicated that they had done this voluntarily. Of those leave takers who provided evidence, 53% said that they faced challenges in gathering this evidence.

⁴⁵⁶ Frontline Worker Roundtable, Oral submission made to the Independent Review, June 2024.



Employee misconceptions concerning evidence – for example, that a police report or formal record of the abuse is required⁴⁵⁷ – were highlighted by BETA as well as some stakeholders representing employee organisations.⁴⁵⁸ Given their potential deterrent effect, and recognising that many victim-survivors choose not to involve the police or courts, such misconceptions are important to address through improved guidance and education.

BETA's findings show that both employers and victim-survivors were uncomfortable with the evidentiary requirement, albeit for different reasons. While the logistics of obtaining evidence posed a significant challenge for victim-survivors, having to initiate a conversation about evidence was difficult for employers, and they felt 'uncomfortable asking for proof while also harbouring concerns about potential misuse'.⁴⁵⁹ Evidence presented to the Review that described concerning employer practices, such as asking intrusive and unnecessary questions and making unreasonable or onerous requests for supporting evidence, may thus be indicative of employers' misunderstanding of the requirements and/or their uncertainty about managing these requirements. Relatedly, the observation by one stakeholder (a large employee organisation) that disclosures of FDV are often 'incidental', arising during discussions about issues like performance, punctuality or absenteeism,⁴⁶⁰ highlights the complexities that employers must navigate in having these conversations.

The Review also notes that a decision to request paid FDV leave is closely intertwined with a personal judgement about how a person's workplace will receive and manage a disclosure of FDV. Gathering evidence is also potentially a difficult process for victim-survivors, who might be under the constant surveillance of the perpetrator. The development of guidance and training must be particularly conscious of such risks.

Having viewed the existing guidance offerings, the reviewers consider that it could be made clearer that the legislation does not require, but rather permits, employers to collect evidence. The examples of suitable evidence that have been provided in the legislation could be broadened to demonstrate the range of acceptable – including more informal – forms of evidence. Guidance outlining the difficulties that obtaining evidence can present for victim-survivors would also be of value to employers.

Finding 7

Small businesses continue to call for support with implementing the entitlement.

The translation of legislation into organisational policies and its subsequent enactment at the workplace level⁴⁶¹ is important to consider if the entitlement is to fulfil its intended purpose; this represents a significant support need for small businesses. The stakeholder consultations, for example, highlighted the potential for confusion among employers when it comes to areas of complexity and ambiguity in the translation of generic legislative provision into workplace practices.⁴⁶² That small businesses have been subject to multiple workplace reforms in recent years also provides critical context, highlighting the particular challenges associated with

457 BETA, op cit., p.26.

458 Employee Roundtable, Oral submission made to the Independent Review, May 2024; Employee Roundtable, Oral submission made to the Independent Review, May 2024.

459 BETA, op cit., p.30.

460 Employee Roundtable, Oral submission made to the Independent Review, May 2024.

461 Mihajla Gavin and Ruth Weatherall, Written submission to the Independent Review, June 2024, p.3.

462 Employee Roundtable, Oral submission made to the Independent Review, May 2024; Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024; Employee Roundtable, Oral submission made to the Independent Review, June 2024.

understanding and adapting to legislative change while continuing to manage the ongoing impacts of the COVID-19 pandemic.

The BETA research indicates that 40% of surveyed employers who had granted the paid FDV leave had difficulty sourcing clear guidance and 24% did not understand their obligations. As reported earlier, the Review heard employer concerns about the adequacy and accessibility of government-provided resources; although these were not consistent across the consultations. It nonetheless seems likely that there are specific gaps in format and/or delivery that should be considered.

Opportunities exist for the Government to support this, including by ensuring that information is both user-friendly and readily accessible to employers, especially to small business which lacks access to human resource expertise or support.

The Review notes the Government's substantial investment in raising awareness about the entitlement, including dedicated support for small business employers to implement the 2022 FDVL Act. All resources produced through the SBAP (as outlined in Section 2) were developed in close collaboration with representatives from small business and the FDV sector. In addition, the stand-alone 10DaysPaidFDVLeave website was specifically designed as a 'one-stop shop' for small businesses and relevant peak bodies played a role in promoting the website to their members.

BETA's employer survey data suggests that employers that have provided paid FDV leave to their employees have typically used a wider range of sources to stay informed about the entitlement. It is unclear, however, whether they did so in preparation for the introduction of the entitlement, or directly in response to an employee query. BETA also reported that 34% of those employers who provided paid FDV leave sourced their information from the FWO's website and 23% from the 10DaysPaidFDVLeave website.⁴⁶³ It is noteworthy, however, that no reference was made in the stakeholder consultations to the 10DaysPaidFDVLeave website. FWO statistics show that the website received 99,514 page views over the period July–December 2023, and the 10DaysPaidFDVLeave website 13,500 page views over a slightly longer period (July 2023 – 31 January 2024). It is possible that the relatively recent launch of the 10DaysPaidFDVLeave website (on 24 July 2023), which was developed specifically for small businesses by Transitioning Well and funded by government, as well as the high level of familiarity with the FWO and its website, accounts, at least in part, for its lower use.

463 BETA, *op cit.*, p.28.



Recommendation Two

Existing resources should be improved and promoted, with a particular focus on small business and resources that speak to employees, including:

- Reconsider and revise existing Government resources with a particular focus on areas of uncertainty including the interpretation of evidence 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.

Finding 8

Everyone has a role to play in improving the awareness and utilisation of the paid FDV leave entitlement.

The Review heard that awareness of the entitlement – both in the community and in workplaces – is a critical influence on access to and uptake of paid FDV leave. This was a strong theme raised by the stakeholders, who emphasised the need for community awareness to inform and support employer obligations and employee rights.

The critical role of **first responders** – general practitioners, frontline FDV services, legal services and courts – in building broader awareness of paid FDV leave was also emphasised by multiple stakeholders. Frontline FDV services, in particular, were seen as vital for ensuring that victim-survivors have accurate information to make informed decisions, as well as for providing education and training to employers. This was confirmed by BETA who found that victim-survivors' engagement with FDV support services outside the workplace was an important influence on their uptake of leave.

Stakeholders also talked about the wider range of supports facilitated by frontline FDV services, including accommodation, women's health and family support, that provide critical scaffolding to support the use of paid FDV leave,⁴⁶⁴ ensuring that victim-survivors have accurate information to make informed decisions.

The necessity of an integrated approach was raised in the evidence provided by the stakeholders,⁴⁶⁵ most notably in relation to cultural and accessibility barriers for certain groups including migrants, refugees and temporary visa holders. The Review thus emphasises the importance of a broad, comprehensive approach, recognising the role played by multiple agencies, including FDV specialist services, as well as community and professional education, in supporting the implementation and uptake of paid FDV leave.

464 Employee Roundtable, Oral submission made to the Independent Review, May 2024; Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.

465 Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.

Employers' responsibility for proactively informing employees of their right to paid FDV leave was stressed by employee representatives.⁴⁶⁶ Employer awareness of their obligations regarding FDV leave and their preparedness for managing these – most notably, through the establishment of relevant processes for processing and recording pay and maintaining confidentiality – were also seen as critical and a key influence on employee use of the paid FDV leave.

The Review notes also the crucial role played by unions in raising awareness and supporting employees to access paid FDV leave, thus complementing the efforts of employers. Several stakeholders referred to the important contribution of employee representatives, including unions and specialist FDV and legal services, in both providing information and advice about paid FDV leave and directly advocating for employees in the workplace.⁴⁶⁷

Recommendation Three

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.

Finding 9

Casual employees are less aware of, and less likely to access, paid FDV leave.

The stakeholder consultations and BETA's research highlighted that low awareness of the entitlement is particularly pronounced among casual employees, and that providing the entitlement to casuals has been one of the most challenging aspects of implementation for employers. Concerns about adverse consequences of disclosure, including the impacts of social stigma, were also seen as more acute for casual employees, likely reflecting the inherent insecurity of their work.

Trends in paid FDV leave uptake identified by BETA included lower uptake among casual employees and, importantly, lower numbers of employers granting paid FDV leave to casuals; only 22% of employers had granted the leave to casuals, compared with 75% of employers who had granted it to full-time employees and 34% to part-time employees.⁴⁶⁸ Thus casual employees are less likely to access paid FDV leave, and employers are less likely to grant paid FDV leave to casual employees.

In BETA's research, none of the five victim-survivors in casual employment interviewed had taken paid FDV leave or were even aware of its existence.⁴⁶⁹ As FDV leave is the first paid leave entitlement that has been extended to casual employees through the NES, casual workers may assume that they are not eligible for paid FDV leave,⁴⁷⁰ thus contributing to the lower awareness and low uptake.

The stakeholder consultations highlighted the significant challenges faced by businesses in providing the entitlement to casuals, and this was corroborated by BETA. Challenges were

466 Employee Roundtable, Oral submission made to the Independent Review, May 2024; Employee Roundtable, Oral submission made to the Independent Review, June 2024; Employee Roundtable, Oral submission made to the Independent Review, May 2024.

467 See, for example, ANMF, Written submission to the Independent Review, 14 June 2023, p.6.

468 BETA, *op cit.*, p.17.

469 *ibid*, p.14.

470 Employee Roundtable, Oral submission made to the Independent Review, May 2024. See also BETA, *op cit.*, p.14.



associated with applying the leave to casual employees given that employees must both be rostered and have accepted the rostered shift before they can request paid FDV leave. As emphasised by the ACTU, this potentially limits the utility of the leave for casuals and may also be a concern for some part-time employees. In its written submission to the Review, for example, the ACTU indicated that part-time employees also often work irregular and unpredictable hours and have frequently changing rosters, making it difficult for them to access paid FDV leave.⁴⁷¹

While the Government information is explicit and detailed on the operation of leave for casuals, it appears there is still doubt about how this operates in practice, particularly in fast-moving businesses in which casuals are routinely offered shifts with short lead times.

The FWO's website and Employer guide to family and domestic violence provide relatively clear outlines of how paid FDV leave works for businesses, including multiple examples of paid FDV leave, how it operates for casuals and how to record it on pay slips. On the FWO website, this material is distributed over three separate webpages including the 'family and domestic violence leave', 'taking family and domestic violence leave' and 'pay slips' webpages. The 10DaysPaidFDVLeave website also has a dedicated leave and payment processes page which provides specific guidance and case studies on casuals, embedded within the broader detail for all employee types.

Employee representatives additionally highlighted that casual employment, by its very nature, places casual employees in a unique position of vulnerability within the workplace, impacting their ability to access their workplace entitlements in general, including paid FDV leave. Workforce data suggests that casual employees are more likely to be women and to earn less than permanent employees.⁴⁷² Therefore, casual employees may be less likely to feel comfortable advocating for their rights in the workplace, not least due to the precariousness of their income and employment. In this context, issues related to awareness, reluctance to disclose and employee confidence are likely to have a greater impact for victim-survivors in casual employment. Notwithstanding these issues, the provision of the paid FDV leave entitlement to casuals was regarded by unions in the consultations as a 'significantly positive step'.⁴⁷³

Given that the entitlement has only been in place for a short period of time, and that the availability of paid FDV leave to casuals is a unique feature of this entitlement, some challenges might be anticipated as businesses work through this new process. More time with the paid entitlement being in operation is thus important to enable businesses to become familiar with the existing entitlements. Acknowledging, both, the additional challenges faced by casual employees in accessing their entitlement and the support needs of businesses, particularly small business, in effectively administering the entitlement, the Review considers it imperative that guidance and education efforts be specifically targeted to casual employees.

6.4 Context and integration

Finding 10

The utility of the entitlement for particular population groups of victim-survivors requires closer consideration.

While reference was made in the consultations to the diverse needs of First Nations and CALD communities, these perspectives were generally underrepresented. BETA similarly observed the

471 ACTU, Written submission to the Independent Review, 24 June 2024, p.29.

472 Australian Bureau of Statistics (July 2024). *Labour Force, Australia*. (ABS) [website].

<https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/latest-release>

473 SA Unions, Written submission to the Independent Review, 7 June 2024, p.2.

need for 'more in-depth and customised research'⁴⁷⁴ targeting these populations. The issues for LGBTQIA+ communities and people living with disability also require further consideration. The specific needs of these groups are acknowledged in the National Plan and the Aboriginal and Torres Strait Islander Action Plan, with reference to addressing data gaps as key action points. In addition to prioritising these cohorts, further focus should include building a better understanding of the experiences and needs of these groups to ensure that the strategies to address these cohorts' needs are both relevant and effective.

Some stakeholders shared their perspectives on the particular challenges faced by CALD and First Nations workers in accessing the leave, including those relating to confidentiality and disclosure. While the need for accessible and culturally appropriate resources⁴⁷⁵ was emphasised, the reviewers recognise that these are challenges that cannot be fully addressed through the provision of further guidance alone.

The Review notes that the FWO webpage on paid FDV leave is available in Arabic, Simplified Chinese, Filipino, French, German, Hindi, Bahasa Indonesia, Italian, Japanese, Korean, Nepali, Portuguese, Spanish, Thai and Vietnamese; however, there does not appear to be specific support developed for First Nations employees, nor materials to enhance employers' understanding of the cultural sensitivities impacting First Nations employees and their access to the leave. The Review considers that generic government guidance is unlikely to capture the nuances required for culturally sensitive conversations and interactions. Instead, face-to-face support for employers, delivered by FDV specialists with expertise in working with CALD and First Nations peoples, is likely to be the best avenue for improving workplace practices, and there is need for collaboration and co-design in this regard.

Recommendation Four

Any response by Government to enhance resources should tap into existing distribution networks and focus on better understanding and addressing the needs of 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.

Finding 11

Paid FDV leave is one of a range of strategies necessary to address FDV in Australia. Integrating paid FDV leave with broader community actions is critical to achieve the objective of ending gender-based violence in a generation.

As forms of gendered violence, FDV and sexual violence are long-standing problems in Australia with far-reaching impacts and are remarkably resistant to change. Given the intersection of FDV with gendered, raced, and classed inequalities, efforts to address gendered violence require multiple, interlinked policies and strategies, including paid FDV leave, and shared responsibility

474 BETA, op cit., p.60.

475 See, for example, WLSA, Written submission to the Independent Review, 6 July 2024.



across governments and sectors. The reviewers note, however, the particular significance of the entitlement in explicitly acknowledging that FDV is not just a private or individual issue.

Questions regarding the impact and effectiveness of paid FDV leave raise issues that are significantly larger than the legislated entitlement; paid FDV leave is one piece of a much larger, and considerably complex, puzzle. Gender inequality is deeply embedded in Australia, as it is globally, and FDV is widely recognised as a sociocultural – and highly gendered – problem.⁴⁷⁶ This context inevitably shapes both the utilisation of paid FDV leave and, importantly, its potential to impact more broadly on gender inequality. This is not to undermine the importance of paid FDV leave in its own right, or its significance as a reform, but rather recognises the scale of the problem and the pressing need for structural, systemic and cultural change. Recognising this as non-reducible to ‘good’ or ‘bad’ employers or employees is also critical, acknowledging instead the structural and gendered inequalities that shape our everyday lives, both within and beyond the workplace.

Because FDV is enabled and reinforced by gendered, and other interconnecting, inequalities, measures such as paid FDV leave must be well integrated and consistent with other FDV and gender equality strategies – both within and between government agencies as well as across multiple sectors and communities. Thus, paid FDV leave is one of a number of strategies required to address FDV and, in turn, gender inequality. For example, paid FDV leave is identified in the Government’s Strategy for Gender Equality,⁴⁷⁷ as one of several key investments intended to end gendered violence, and in the National Plan, as a critical means for addressing the barriers to creating safety for victim-survivors.⁴⁷⁸ The integration of paid FDV leave with broader policy, systems and practices is critical to its effectiveness, both, in its own right (that is in line with policy intent) and in its contribution to broader social change in Australia.

Relatedly, developing a national definition of gender-based violence has been identified in the National Plan as an important priority for Australia, on the basis that ‘alignment and greater consistency of national definitions will support a shared understanding of, and consistent response to, gender-based violence’.⁴⁷⁹ The Review notes that achieving a nationally consistent definition of FDV across government, workplaces and the community will also support the implementation of paid FDV leave.

Because the leave entitlement does not operate in isolation from broader workplace and community responses to FDV, ongoing evaluation efforts should be progressed from a holistic point of view. For example, the Domestic Family and Sexual Violence Commission’s role in ongoing evaluation could be harnessed to better understand, over time, how legislative efforts that embed FDV as a workplace issue are operating, and their role in the necessary cultural shift to end gender-based violence.

476 See, for example, Rose, E, Mertens, C and Balint, J (2023) ‘Structural problems demand structural solutions: Addressing domestic and family violence’, *Violence Against Women*, online first. <https://doi.org/10.1177/10778012231179212>; Our Watch (2021) *Change the story: A shared framework for the primary prevention of violence against women in Australia*, Melbourne, Australia, 2nd ed; Walby, S and Towers, J (2017) ‘Measuring violence to end violence: Mainstreaming gender’, *Journal of Gender-Based Violence* 1(1):11-31. <https://doi.org/10.1332/239868017X14913081639155>

477 PM&C (2024) *Working for women: A Strategy for Gender Equality*, Department of the Prime Minister and Cabinet, p.35. <https://www.pmc.gov.au/office-women/working-women-strategy-gender-equality>

478 DSS (2022), op cit.

479 *ibid.*

Finding 12

Societal and community attitudes to FDV provide a critical context for paid FDV leave and present barriers that inhibit its uptake.

A baseline awareness of FDV across the community is fundamental to the effective use and implementation of paid FDV leave, as it is to efforts to improve gender equality. Community awareness and understandings both shape and reflect attitudes to FDV⁴⁸⁰ and, in turn, the willingness of victim-survivors to disclose violence and seek support, as well as the reception they receive, in the workplace and elsewhere.⁴⁸¹ As employers are members of the community, their awareness of FDV and, in particular, their recognition of diverse family relationships and the range of physical and non-physical forms of FDV, is critical to their general support for paid FDV leave.⁴⁸² An awareness of FDV patterns and behaviours is also important in enabling community members to recognise their own, and other people's, experiences as FDV and access the relevant services and supports. Thus, both community education and targeted employer education, in multiple languages and diverse formats (including print, posters, radio, and social media), is needed to support implementation of and access to paid FDV leave.

Societal and community attitudes to FDV provide a critical context for the use of paid FDV leave. For instance, stakeholders identified stigma as both a potential barrier to accessing FDV leave, likely contributing to its low utilisation, and reflecting broader gender inequalities. 'Persistent social stigma'⁴⁸³ was also named as significant to the underreporting of FDV and, subsequently, the underutilisation of paid FDV leave. Stakeholders⁴⁸⁴ were thus concerned that paid FDV leave could become a leave of 'last resort',⁴⁸⁵ meaning that employees would either avoid disclosing FDV, using up all other leave before they consider accessing paid FDV leave, or would never disclose at all.⁴⁸⁶ BETA, for instance, found that almost half (45%) of surveyed victim-survivors had taken some other form of leave (paid or unpaid) or cancelled their work shifts to deal with FDV instead of requesting paid FDV leave.⁴⁸⁷

The significance of stigma is further evidenced in BETA's observation that participants in their survey of members of the Australian workforce (n = 3,008) 'very rarely used the terms FDV or domestic violence', instead, using terms such as "private life" or "personal situation". As noted by BETA, this suggests 'an overall discomfort in discussing or labelling FDV in work contexts' that may reflect broader challenges, as observed elsewhere,⁴⁸⁸ associated with efforts to transform workplace cultures.

480 Employee Roundtable, Oral submission made to the Independent Review, May 2024.

481 Employee Roundtable, Oral submission made to the Independent Review, May 2024; Frontline Worker Roundtable, Oral submission made to the Independent Review, June 2024; Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024; Academic Roundtable, Oral submission made to the Independent Review, May 2024.

482 Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024; Frontline Worker Roundtable, Oral submission made to the Independent Review, June 2024; Employee Roundtable, Oral submission made to the Independent Review, May 2024.

483 ANMF, Written submission to the Independent Review, 14 June 2024, p.4.

484 Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.

485 ANMF, Written submission to the Independent Review, 14 June 2024, p.6.

486 ANMF, Written submission to the Independent Review, 14 June 2024, p.6; Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.

487 BETA, op cit., p.18.

488 See, for example, Hay, GJ, Parker, SK and Luksyte, A (2021) 'Making sense of organisational change failure: An identity lens', *Human Relations* 74(2):180-207; Holgersson, C and Romani, L (2020) 'Tokenism revisited: When organizational culture challenges masculine norms, the experience of token is transformed', *European Management Review*, 17(3):649-661; Alvesson, M and Sveningsson, S (2015) *Changing organizational culture: Cultural change work in progress*, 2nd ed, Routledge.



In addition to stigma, other factors driving the low take-up of paid FDV leave may include limited awareness among employees (as potential leave users) and employers (regarding their obligations), reluctance to disclose FDV within the workplace⁴⁸⁹ and concerns about confidentiality.⁴⁹⁰ Such factors are also likely to overlap; for example, an employee's reluctance to disclose FDV at work might reflect their discomfort with a particular manager/employer, fear of judgement, fear of repercussions including implications for their ongoing employment or career progression⁴⁹¹ and/or a preference for privacy.

Recommendation Five

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.

489 Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.

490 Employer Roundtable, Oral submission made to the Independent Review, May 2024; Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.

491 Frontline Worker Roundtable, Oral submission made to the Independent Review, May 2024.

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United Nations (1989) Convention on the Rights of the Child, Treaty Series, 1577, 3

United Nations (1979) Convention on the Elimination of All Forms of Discrimination against Women, Treaty Series, 1249, 13

United Nations (1966) International Covenant on Economic, Social and Cultural Rights, UNGA Res. Resolution 2200A (XXI)

E. Cases

Fair Work Commission, *4 yearly review of modern awards – Family and Domestic Violence Leave Clause* (AM2015/1) [2017] FWCFB 3494, 3 July 2017

Fair Work Commission, *4 yearly review of modern awards – Family and Domestic Violence Leave* (AM2015/1) [2018] FWCFB 1691, 26 March 2018

Fair Work Commission, *Family and domestic violence leave review 2021* (AM2021/55) [2022] FWCFB 2001, 16 May 2022

Fair Work Commission, *4 yearly review of modern awards* (AM2014/196) [2014] FWC 8583, 1 December 2014

Mondelez Australia Pty Ltd v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union Known as the Australian Manufacturing Workers Union (AMWU) [2020] HCA 29

F. Submissions to the 2022 Senate Inquiry

Senate Education and Employment Legislation Committee, *Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022*, AIG Submission



Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, COSBOA Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, ACCI Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, ASU Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, Centre for Future Work, Australia Institute Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, Thales Australia Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, SYFS Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, HIA Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, NFF Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, NDVC Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, APRCC Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, Unions NSW Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, DV West Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, WWCs Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, RTBU Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, ACTU Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, AHA Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, ABIC Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, NRWG Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, Clubs Australia Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, ICA Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, ARA Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, CE Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, Legal Aid NSW Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, AHRI Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, Tanda Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, ASBFEO Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, Women's Legal Centre ACT Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, FWC Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, MMA Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, Women's Legal Service Victoria Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, Women's Legal Service NSW Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, NWSA Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, Ludo McFerran Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, Safe Work Australia Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, WESNET Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, NFAW Submission



Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, ANMF Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, AWU Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, AFAB Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, BY Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, LUCAS Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, ANROW Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, CFMEU Submission

Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, RA Submission

Appendix A: Submissions and consultations

Submissions - written

1. Shop, Distributive and Allied Employees' Association
2. Victorian Trades Hall Council
3. DV West
4. Working Women Queensland
5. SA Unions
6. Unions NSW
7. Women's Legal Services Australia
8. Australian Retailers Association
9. Dr Mihajla Gavin and Dr Ruth Weatherall (Academics, Human resources and industrial relations; Gender equality)
10. Ms Christine Smith (Individual, FDV frontline worker)
11. Australian Services Union
12. Australian Nursing & Midwifery Federation
13. Community and Public Sector Union (PSU Group)
14. Australian Salaried Medical Officers' Federation
15. Council of Small Business Organisations Australia
16. Maritime Union of Australia
17. Australian Council of Trade Unions
18. IWA Australia Ltd

Submissions – online

1. Australian Education Union
2. Dr Eugene Schofield-Georgeson (University of Technology Sydney)
3. Office of the NSW Anti-slavery Commissioner
4. Ability WA
5. Woolworths Group
6. Name withheld
7. Name withheld
8. Name withheld
9. Name withheld
10. Port of Newcastle
11. Name withheld
12. Name withheld
13. NSW Premiers Department

Roundtable participants

Note: roundtable participants are listed according to the session they attended.

Employers

1. Business Council of Australia
2. MacKillop Family Services
3. Council of Small Business Organisations Australia
4. The Newsagents Association of NSW and ACT Ltd
5. Australian Hairdressing Council
6. Australian Chamber of Commerce and Industry



Employees

1. Women's Legal Centre ACT
2. Women's Legal Service NSW
3. Health and Community Services Union, Victoria
4. Community and Public Sector Union/Civil Service Association
5. Australian Council of Trade Unions
6. Australian Education Union
7. Australian Services Union
8. Australian Council of Trade Unions
9. National Tertiary Education Union
10. First Nations Workers Alliance
11. SA Unions

Frontline Workers

12. Safe & Equal
13. Equality Rights Alliance
14. NT Working Women's Centre
15. Working Women's Centre SA
16. Women Up North Housing
17. Top End Women's Legal Service
18. Ms Ludo McFerran
19. The Bangle Foundation

Academics

1. Associate Professor Barbara Baird
2. Associate Professor Sarah Moulds
3. Associate Professor Catherine Kevin
4. Ms Susan Ellicott
5. Dr Zoei Sutton
6. Dr Monique Mulholland
7. Dr Claire Henry

Additional information

1. Fair Work Commission
2. Fair Work Ombudsman
3. Australian Small Business and Family Enterprise Ombudsman
4. Australian Government Department of the Treasury
5. Australian Government Attorney-General's Department
6. Australian Government Department of Social Services
7. Office for Women, Australian Government Department of the Prime Minister and Cabinet
8. National Indigenous Australians Agency
9. Australian Government Domestic, Family and Sexual Violence Commission
10. South Australian Office of the Commissioner for Public Sector Employment
11. State and Territory Officials representing New South Wales, Victoria, South Australia, the Australian Capital Territory, Western Australia.
12. Transitioning Well

Appendix B: Stakeholder positions and actions proposed in written submissions and online questionnaires

Appendix B presents positions and actions proposed to Flinders University in written submissions and online questionnaires, having regard to any specific requests for confidentiality. Note that all but one of the online questionnaire respondents requested that their contribution not be attributed to the author or their organisation.

Please note that, in accordance with the attribution protocol (see 1.2.3 – Reporting), roundtable contributions are not represented below. The range of positions and actions put forward by stakeholders who attended the roundtable sessions have, nonetheless; informed the reviewers' analysis and are discussed in Section 5.

When these positions and actions are referred to in the body of the report, reference is made to the numbered grouping (1-16) rather than individual dot points. For example, reference to the first grouping (Support for continuation of the current paid FDV leave legislation) will appear as Appendix B:1.

Much of the wording of the positions and actions summarised in the following table has been paraphrased to ensure clarity and brevity.



Stakeholder positions and actions proposed in written submissions and online questionnaires

1. Support for continuation of current paid FDV leave legislation

- **Support paid FDV leave for job and economic security for women** Paid FDV leave is essential for helping victim-survivors maintain paid employment; ‘...job security and economic security are often deciding factors when a woman contemplates leaving a violent relationship’ (SA Unions, written submission, 7 June 2024, p 3). Further, FDV leave is ‘deeply necessary to address FDV, is valued and relied on by workers’ and has been ‘conveniently administered by employers, including smaller employers whose staffing arrangements are analogous to the AEU’s small worksites and small employee cohorts’ (AEU, online submission, 13 June 2024, p 2).
- **Support continuance of FDV leave in entirety** (Christine Smith, written submission, 7 June 2024, p 2; DV West written submission, 5 June 2024, p 2).
- **Paid FDV leave should continue and, ideally, be expanded** The entitlement to paid FDV leave must, at the very least, be maintained. Ideally, it would be expanded and improved for the benefit of workers. (SA Unions, written submission, 7 June 2024, p 6)
- **Support for casual employee entitlement scenarios** Scenario based examples to help understand when a casual employee would have an entitlement to paid leave are helpful. Implementation for other classification of employees is simpler (Employer organisation, questionnaire, 2 June 2024).
- **Implementation of paid FDV leave is not burdensome** The introduction of paid FDVL is supported; ‘rejects claims that the reporting requirements, business costs, or administration of leave entitlements are too burdensome’ (ASMOF, written submission, 14 June 2024, p 1).
- **Paid FDV leave is life-changing** The continuation of paid FDV leave as part of NES ‘remains life changing for victim-survivors’ (VTHC, written submission, 4 June 2024, p 1).
- **Current leave entitlements are appropriate and sufficient** (ARA, written submission, 6 July 2024, p 3)
- **Current eligibility criteria should remain** (Unions NSW, written submission, 7 June 2024, p 1).
- **Availability of entitlement from commencement of employment should remain** (Unions NSW, written submission, 7 June 2024, p 1).
- **Continue payment of entitlement at full rate including allowances** (Unions NSW, written submission, 7 June 2024, p 1).

2. Definition

- **Align definition of FDV in s106B(2)(a)-(b) with s4AB in Family Law Act 1975 (Cth)** The definition of FDV in s106B(2)(a)-(b) of the FW Act uses an unreasonably burdensome double threshold in the use of the term ‘and’. Replacing the ‘and’ with ‘or’ would broadly align the definition of FDV in the FW Act with the definition of FDV in s4AB in the Family Law Act 1975 (Cth). Further consideration should also be given to harmonisation of definitions across all state and territory jurisdictions (ACTU, written submission, 24 June 2024, pp 28-29; AEU, online submission, 13 June 2024, p 5).

- **Expand definition of FDV leave entitlement to victim-survivors of modern slavery** Paid FDV leave entitlement should be extended to survivors of modern slavery, being a ‘cohort of survivors that experience similar challenges in leaving abusive situations’. Also recommend consultation with people with lived experience of modern slavery as their insights would provide invaluable guidance (The Office of the NSW Anti-Slavery Commissioner Questionnaire, 7 June 2024).
- **The various forms of FDV should be made explicit** The ‘current wording may provide those employers who do not want to provide the leave with an excuse to not do so’, thus listing the ‘7 recognised categories’ of FDV listed is important. ‘Evidence is not as easily seen’ in some types of (non-physical) family violence (Employee, questionnaire, 4 June 2024).
- **Expand definition of ‘close relative’ in s106B(3) to reflect ethnic, religious and cultural kinship rules** The ‘definition of close relative should be expanded to include a person’s aunt or uncle, a person’s former intimate partner’s immediate family, and someone related to the person according to ethnic, religious or cultural kinship rules’, in order to reflect the ‘diversity of non-Aboriginal and Torres Strait Islander family and domestic relationships, including relationships based on non-Indigenous ethnic, religious or cultural kinship rules’ (ACTU, written submission, 24 June 2024, pp 28-29). This should include ‘all cultural kinship relationships’, not limited to Aboriginal or Torres Strait Islanders (ASU, written submission, 13 June 2024, p 7).

3. Increase quantum of leave

- **Increase quantum of leave to 20 days** The current 10 days’ paid leave should be increased to 20 days per annum (Unions NSW, written submission, 7 June 2024, p 1; WWQ, written submission, 7 June 2024, p 4; ANMF, written submission, 14 June 2024, p 4).
- **Align quantum of FDV leave entitlement across Australia** The current quantum of paid FDV leave in the NES is well below that provided by many of the states; increasing quantum would ‘provide invaluable additional support to victim survivors, as well as improving consistency with the state jurisdictions’ (SA Unions, written submission, 7 June 2024, pp 6-9).
- **Increased quantum needed to meet the needs of victim-survivors** ‘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’. (ASU, written submission, 13 June 2024, p 5). A minimum of 20 days FDV leave is necessary to enable victim-survivors to undertake the ‘onerous task (accessing institutions and services) of dealing with the impact of family violence’ (MUA, written submission, 18 June 2024, p 3).
- **Improve ease of access and quantity** Support paid FDV leave with improvements to ease of access and quantity (SA Unions, written submission, 7 June 2024, p 9).
- **Draw-down of future leave entitlements** Support the current reallocation of leave on the anniversary of employment. Recommend that employees should be able to ‘draw upon their subsequent years allocation’ of paid FDV leave ‘when their circumstances are substantial’ (Unions NSW, written submission, 7 June 2024, p 1).



4. Expansion of eligibility of FDV leave

- **Expansion of reasons for access: Recovery** Reasons for accessing paid FDV leave should be expanded to ‘explicitly include time for recovery. Paid domestic and family violence leave is needed to support a victim-survivor across the entirety of their journey – including their recovery’ (SA Unions, written submission, 7 June 2024, pp 6-7).
- **Ensure cultural relevance of reasons for access** Additional example should be included (in the non-exhaustive examples at Note 1 at s106B of the FW Act) to refer to a ‘non-formalistic, non-legalistic, and culturally appropriate example of a relevant action’ including ‘accessing culturally appropriate supports’. The non-exhaustive examples do not currently reflect the ‘broad range of informal, non-mainstream supports relied on by persons experiencing FDV’ (AEU, online submission, 13 June 2024, p 5).
- **Expand examples in s106B to illustrate breadth of FDV leave entitlement** Non-exhaustive examples of actions that might be taken to deal with the impact of FDV (Note 1 of s106B FW Act) are ‘all of active participation in quite formal and legal processes, which might not be applicable to people who are less likely to engage with institutions but who might rely on culturally appropriate and informal supports’ or who might wish to access the leave ‘for general recovery. The examples thus don’t reflect the ‘breadth of the legislative entitlement’. The addition of one or two further examples ‘without making the list exhaustive’, could include ‘accessing culturally appropriate supports’ and ‘time taken to recover’ (ACTU, written submission, 24 June 2024, pp 28-29).

5. Casuals and Rostered staff

- **Support for inclusion of casual employees** The extension of paid FDV leave to casual employees – with payment at their full pay rate for the hours they were rostered to work – is significantly positive (SA Unions, written submission, 7 June 2024, p 2).
- **Irregular or unpredictable hours of work** The obstacles for casual and part-time employees ‘who work irregular and unpredictable hours’ and need to access FDV leave require consideration; such groups ‘effectively lose their entitlement due to their hours constantly changing’. An enterprise agreement provision that ‘allows for casuals who take FDV leave on a day that they are not rostered to work’ to be ‘paid for 5 hours for the day at ordinary rates of pay’ is one way to address this. (ACTU, written submission, 24 June 2024, p 29). The Reject Shop Agreement 2023 (clause 36, appendix 4, par 4.8(a)(i) B) provided as an example (SDA, written submission, 7 June 2024, p 6).
- **Implementation of paid FDV leave for casual employees** Clarification needed on ‘how a pro-rata payment would work for irregular casuals, to enable businesses to properly prepare, budget and respond quickly when the leave is required’ (Employer organisation, questionnaire, 6 June 2024).

6. Expand FDV leave to include workers outside the employment relationship

- **Expansion of entitlement to include independent contractors and subcontractors** The entitlement should be available to ‘all employees, including where there is an ‘employee-like’ relationship as in gig-work, and where there is a connection to federal funding, as is the case for workers delivering Government-funded NDIS and aged care packages’ (ANMF, written submission, 14 June 2024, p 11). Including workers where there is an ‘employment, employment like or business relationship’ would ‘capture independent contractors, gig workers, and subcontractors’ (ACTU, written submission, 24 June 2024, p 27).

- **FDV leave provisions for volunteers** Rather than a paid entitlement, volunteers could be ‘provided leave with a commitment that they will not lose their position, as well as having other supports such as security escorts made available to them. This would have minimal impact on businesses’ (ANMF, written submission, 14 June 2024, p 12).
- **Support for independent contractors, gig economy and other insecure workers** Businesses that ‘notoriously seek to bypass employment law and reduce workers’ conditions by engaging labour in non-employment and disempowering work relationships’, including as independent (sub)contractors and via the gig economy, ‘should not be incentivised to cut labour costs – all workers deserves basic rights at work, including, crucially, FDV leave’ (AEU, online submission, 13 June 2024, p 2).
- **Expansion of entitlement to all employees, sub-contractors and regular volunteers** FDV does not ‘discriminate according to a person’s employment status, [and] neither should this leave’ (Employee, questionnaire, 4 June 2024).

7. FDV leave to cover sexual violence outside of the domestic setting

- **Extension of paid FDV leave to sexual violence** The expansion of paid FDV leave to encompass all forms of sexual violence is urgently needed to ‘comprehensively support all victims of sexual violence’ (WLSA, written submission, 6 July 2024, pp 4-5; ASU written submission, 13 June 2024, p 6).
- **Introduction of paid leave for other gender-based and sexual violence** The introduction of a ‘broader “gender-based and sexual violence” leave entitlement’ would ensure that ‘employees experiencing or managing the impacts of violence by a perpetrator unknown to them or known through a different relationship’ (eg a coworker) have access to paid leave. This should include the Government and Fair Work Commission giving consideration to expanding the ‘definitions currently contained in industrial instruments [...] to ensure they reflect the most accessible and already understood definitions in jurisdictions and workplaces’ (ANMF, written submission, 14 June 2024, p 4).
- **Support for more broadly defined FDV leave entitlement** For example, ‘Domestic, Family and Sexual Violence Leave’ in the Northern Territory Public Section 2021 – 2025 Enterprise Agreement provides for a ‘broader definition of, and uncapped access to, FDV and sexual violence leave’. It is noted, however, that ‘leave without pay being offered in favour of paid entitlements and arrangements, as suggested by the NT Commissioner’ is not supported (ANMF, written submission, 14 June 2024, pp 7-8).
- **Breadth of entitlement encourages access** The entitlement, including the grounds on which it can be accessed, should be ‘as broad as possible to accommodate the breadth and forms of FDV experienced by victim-survivors, and the variety of actions victim-survivors take to address FDV’ (AEU, online submission, 13 June 2024, p 5).

8. Social, cultural and systemic context for FDV leave

- **FDV is rooted in social, cultural and systemic factors** FDV is a multi-faceted societal issue; addressing this requires that the Government take a ‘broad approach [that is] inclusive of examining other pathways of policy intervention relevant to other socioeconomic or cultural factors, that lie outside the employee-employer relationship’ (ARA, written submission, 6 July 2024, p 4).
- **FDV workplace policies should be embedded in broader strategies to improve gender equality** (Gavin & Weatherall, written submission, 6 July 2024, p 4).



- **FDV leave part of broader package** FDV leave is part of a broader package; it is important that governments ‘fund the development and rollout of the broader package’ (WLSA, written submission, 6 July 2024, pp 4-5).
- **Address social stigma related to gender-based violence** Persistent social stigma associated with gender-based violence is a ‘cause of underreporting and underutilisation of paid FDV leave’ (ANMF, written submission, 14 June 2024, pp 4-5).
- **The implementation of other industrial relations reforms is needed** Other industrial relations reform to support ‘victims to retain employment while seeking criminal, judicial and health support’ should include ‘expanded personal and carer’s leave, paid leave for cultural and kinship care for First Nations workers, ability to take other forms of leave at half pay, and additional resources for culturally and linguistically diverse groups to understand and access the entitlement’ (ANMF, written submission, 14 June 2024, pp 4-5).
- **A range of measures to achieve gender equality in the workplace are needed** Because paid FDV leave is often accessed at ‘crisis point’, more must be done in prevention and early intervention. Gender inequality is the ‘underlying determinant of violence against women and children [and] must be seriously and meaningfully addressed by Government, acknowledging that we must have a shared understanding of the problem in order to achieve the goal of ending gender-based violence’. Achieving gender equality ‘must include investment in increasing the wages and securing decent employment conditions for female-dominated and diverse occupations’ (ANMF, written submission, 14 June 2024, p 5).

9. Broader workplace reforms and supports for victim-survivors in the workplace

- **The management of FDV in the workplace is a WHS matter** Managing FDV in the workplace, including support and flexibility, should be recognised by employers as a WHS matter; ‘states and territories should consider the introduction of regulation to increase compliance in relation to psychosocial injuries at work’ (WWQ written submission, 7 June 2024, p 9).
- **Workplace responsibilities regarding perpetrators of FDV** Greater research and policy discussion is needed regarding the responsibilities of workplaces to respond to employees who perpetrate violence (Gavin & Weatherall, written submission, 6 July 2024, p 4).
- **FDV has long-term impacts which should be recognised in the workplace** ‘Dealing with the impact of violence and trauma may be a long-term experience, and workplace policies should adequately reflect this nuance’ (Gavin & Weatherall, written submission, 6 July 2024, p 3).
- **Broader workplace responsibilities to support efforts to address FDV** Just as strategies on workplace gender inequality are important for preventing FDV, ‘consideration should [also] be given to designing safe workplaces focused on preventing violence and gendered harms, rather than only responding to the experience of violence as it becomes known’. This should include workplace policies that consider ‘and confront, behaviours of gender stereotyping and discrimination which contribute to gender-based violence and harassment’ (Gavin & Weatherall, written submission, 6 July 2024, p 4).
- **Workforce Investment** Investment is needed in the ‘attraction and retention of nursing, midwifery and care workforces of adequate size and skill to provide safe rostering and backfill for colleagues on [FDV] leave’ (ANMF, written submission, 14 June 2024, p 9).
- **Encouraging safe disclosure of FDV** Employers have a responsibility to ‘foster supportive workplaces where employees feel safe to come forward’. Employers should also be prepared to ‘meet any duty of care where they suspect an employee is unsafe or in danger’ (ANMF, written submission, 14 June 2024, pp 6-7).

- **Education to support workplaces to understand FDV and gender equality** Workplaces require ‘education and practical support to understand and manage domestic violence as a complex issue and design appropriate strategies that drive workplace gender equality’. For example:
 - a. Whole-of-organisation training for staff on responding to domestic violence matters.
 - b. Workplace policies which recognise that support may need to be provided long after a violent relationship has ended.
 - c. Appropriate support around performance management and development recognising that violence may impact productivity and work performance.
 - d. Guidance for reintegration of women into the workforce.
 - e. Appropriate support and guidance for workplaces in responding to domestic violence in the context of working from home.
 - f. Policies that effectively respond to perpetration of violence, in and beyond the workplace. (Gavin & Weatherall, written submission, 6 July 2024, p 5)

10. Evidentiary requirements of FDV leave

- **Removal of evidence requirement from s107(3) of the Fair Work Act** There should be a ‘presumption in favour of granting FDV leave without the need to provide evidence, provided the notice requirements are met’ (WLSA, written submission, 6 July 2024, pp 4-5).
- **Amendment of evidence requirements** Evidence requirements should be amended so the ‘only evidence required is the person’s word’ (Unions NSW written submission, 7 June 2024, p 1).
- **Further consideration of evidence requirements** Consideration should be given as to ‘whether the current evidentiary requirements (‘evidence that would satisfy a reasonable person’) are too onerous, and should be amended or relaxed’ (ACTU, written submission, 24 June 2024, p 18).
- **Education and training for employers about reasonable evidentiary requirements** Difficulties with ‘managerial personnel asking for too much information from the victim-survivor’ suggest a need for education/training for employers, and/or ‘better guidance with respect of the type and scope of evidence that can be reasonably required’ (SA Unions, written submission, 7 June 2024, pp 6-9). Education should also cover the ‘difficulties that providing evidence can present for victim-survivors’ (ACTU, written submission, 24 June 2024, p 18).

11. Preservation of confidentiality and penalties for negligence

- **Education and training for employers on confidentiality obligations** Education is needed for employers (and workers) to ensure they are aware of their confidentiality obligations (ACTU, written submission, 24 June 2024, p 19; Unions NSW, written submission, 7 June 2024, p 1,) ‘and that workers have confidence that those obligations will be met’ (ACTU, written submission, 24 June 2024, p 19).
- **Enforcement and penalties for negligence** ‘[P]enalties should be applied where [employers] are negligent’. (Unions NSW, written submission, 7 June 2024, p 1) Employers not maintaining confidentiality is ‘particularly distressing for victim-survivors’ and ‘suggests



a need for stronger and easier enforcement of the confidentiality obligations and a need for education/training for employers' (SA Unions, written submission, 7 June 2024, pp 6-9).

12. Education and training

- **Employer communication with employees about paid FDV leave** The importance of employers educating and communicating the entitlement to employees, including the importance of confidentiality, was at 'the forefront of implementing these reforms at the workplace level' (ARA, written submission, 6 July 2024, p 2).
- **Education and training for managers about FDV and the leave** Education and training of managers is a critical for ensuring that employees are able to 'access maximal support, certainty and confidence'. This should focus on FDV leave entitlements and access to flexible work arrangements as well as 'the impacts of FDV; the important role of employers and managers in providing support; about employees who are most likely to be impacted; taking a person-centred and trauma-informed approach; understanding how an individual's performance and attendance may be affected and making reasonable accommodations' (CPSU, written submission, 14 June 2024, p 5). This should include all levels of business, including 'site, store and corporate management', as well as employees and the community, in order to 'avoid unfair treatment at work compounding the impact of family and domestic violence' (SDA, written submission, 7 June 2024, p 5).
- **Mandatory training for management and HR staff** Investment in 'early intervention, prevention and reduction of social stigma' is critical and should include measures such as 'mandatory training for management and human resource staff to understand the impact of FDV and how to facilitate supportive work environments' (ANMF, written submission, 14 June 2024, p 9). Education and training sessions should also focus on ensuring that HR departments are 'up to date with the new legislation and understand how to handle requests sensitively and appropriately'. This education and training should also be government-funded (ASU, written submission, 13 June 2024, p 5).
- **Education for employers, employees and the community on FDV leave** Employers, workers and the community need to be educated about the entitlement, 'including understanding that it is available, and how to respond appropriately to these situations to avoid unfair treatment at work that will compound the impact of FDV' (ACTU, written submission, 24 June 2024, p 20).
- **Funding for NGOs to assist FDV victim-survivors** Government funding for NGOs to work with victim-survivors to build awareness and navigate access to the entitlement (ACTU, written submission, 24 June 2024, p 27) would complement the Small Business Assistance package, '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'. (ASU, written submission, 13 June 2024, p 6)
- **Government funded education for professionals that respond to FDV** Government funded awareness campaigns targeting professionals, including GPs, are critical to ensure they are 'well informed about the availability and specifics of paid FDV leave' (ASU, written submission, 13 June 2024, p 5). An organisation such as Women's Legal Services Australia could be funded to deliver training on the paid FDV leave entitlement to frontline and community organisations, including 'how it works in practice, how to support a client who may want to access it, and how to refer to a specialist organisation if there are issues accessing the leave' (WLSA, written submission, 6 July 2024, pp 4-5).
- **Standardised training and accreditation of trainers** Standardised training and accreditation of trainers will ensure the consistency and quality of training available to employers (WWQ, written submission, 7 June 2024, p 7).

- **Targeted education about FDV leave and outreach to employees** [D]iligent implementation, education, and fostering a supportive workplace culture', are foundational for enhancing employee awareness, 'reduc[ing] stigma, and empower[ing] individuals to seek help and support without fear'. Ongoing 'dialogue and collaboration' is also important for further refining and strengthening the entitlement (IWAA, written submission, 12 July 2024, p 3).
- **Unions and employer organisations should play a key role in education and training** Government-funding for further education, training and awareness building activities, developed and rolled out by unions and employer organisations, is necessary to ensure effective implementation of the entitlement. This should include 'dedicated resources, materials and training for assisting diverse employees experiencing FDV, including resources in different language and in a range of formats' (ACTU, written submission, 24 June 2024, p 27).

13. Guidance and resources

- **Education and Guidance** Successful implementation of the entitlement scheme requires 'better communication of the option and consideration of how the leave applies to those industries where rostering impacts family life'. (SDA, written submission, 7 June 2024, p 3)
- **Targeted education and resources for law sector** Targeted education materials and resources is needed to assist lawyers, judicial officers, and court staff in the criminal justice or family law systems to advise victim-survivors about the entitlement. These should be developed and delivered through the Law Council of Australia, in conjunction with the Federal and State/Territory Attorneys General (WLSA, written submission, 6 July 2024, pp 4-5).
- **Promotion of existing Fair Work Ombudsman resources** Awareness and use of the existing FWO resources on FDV leave should be promoted by the Federal Government working with key stakeholders such as employers' associations, industry groups, unions, and key statutory agencies including the Federal Circuit and Family Court of Australia and SafeWork Australia (WLSA, written submission, 6 July 2024, pp 4-5).
- **Expansion of FWO guidance materials to enhance accessibility and understanding for employers** The inclusion of more examples in FWO materials, regarding evidentiary requirements for example, is important to enhance employer confidence in implementing FDV leave. Details of acceptable forms of evidence would ensure that employers 'are able to help those who need support genuinely' (Organisation not further specified, questionnaire, 30 May 2024). Expanded examples could focus on:
 - a. an employer who does not require any evidence to be provided.
 - b. the types of evidence that can be used.
 - c. a broader range of behaviours that could be considered FDV, including systems abuse.
 - d. systems abuse, including an 'explanation of why someone is experiencing domestic and family violence may also be accused of systems abuse'. (WLSA, written submission, 6 July 2024, pp 4-5)
- **Expansion of education and guidance materials to better inform employee access to paid FDV leave** Currently the 'examples and descriptions provided to assist victim-survivors with the interpretation of the legislation are far too narrow and confined'. These could be modified to 'better reflect the breadth of the legislative provision' (SA Unions, written submission, 7 June 2024, pp 6-7).



14. Public Awareness Campaign

- **Promote paid FDV leave through public education campaigns** Government-funded awareness campaigns to promote paid FDV leave (Christine Smith, written submission, 7 June 2024, p 2), accompanied by ‘accessible and culturally appropriate resources’ (WLSA, written submission, 6 July 2024, pp 4-5), should ‘highlight the protective factors of DFV leave and flexible work for employees that are impacted by DFV’ (WWQ, written submission, 7 June 2024, p 7).
- **Wide availability of appropriate resources in multiple languages** The availability of resources in languages other than English and a range of formats are needed to ‘raise awareness and understanding of the paid FDV entitlement, other available entitlements and arrangements, and other social and health supports’. The Government should be involved in funding, coordinating and disseminating resources ‘given the resource intensity in both cost and time to produce and distribute such materials’ (ANMF, written submission, 14 June 2024, p 13).

15. Support for small businesses

- **Organisations, especially small businesses, need more support to implement the paid FDV leave entitlement** While the reforms are a ‘positive step to protect victims of violence [...] more work is needed to support organisations in their implementation of these new provisions at a workplace level, particularly for small businesses’ (Gavin & Weatherall, written submission, 6 July 2024, p 5).
- **Specialised FDV support** The provision of ‘appropriately trained and resourced assistance’ to either an ‘impacted employee or their notified employer’, through an organisation such as 1800Respect, would facilitate implementation of the entitlement in small businesses (COSBOA, written submission, 12 June 2024, p 1),
- **Paid FDV leave to be fully or jointly funded by Government** Given the financial impacts of paid FDV leave provision on small business, consideration should be given to establishing a scheme that is fully, or jointly, funded and administered by Government (COSBOA, written submission, 12 June 2024, p 2).

16. Government scheme as an alternative to paid FDV leave for certain employees

- **Federal Government scheme offering equivalent FDV leave payment** Similar to the Fair Entitlements Guarantee, a Federal Government scheme could ensure an equivalent FDL leave payment for employees who are unable to access paid FDV leave from their employer (e.g. employees of small businesses, especially family-owned; employees for whom the perpetrator is their manager or colleague; labour hire employees; etc.) (WLSA, written submission, 6 July 2024, pp 4-5).

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