



7 June 2024

The Independent Review Team
Flinders University
Bedford Park
South Australia 5042

By email: FDVLeaveReview@flinders.edu.au

Dear Independent Reviewer,

Submission to Independent Statutory Review of the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022 (Cth)*

Basic Rights Queensland Inc. (BRQ) is an incorporated non-profit organisation and community legal centre registered with the Australian Charities and Not-for-profits Commission.

BRQ provides free information, advice, advocacy and legal services in Queensland state-wide. Our organisation supports vulnerable and disadvantaged people in relation to social security, disability discrimination and to those who experience mental health concerns.

Working Women Queensland (WWQ) is a part of BRQ. WWQ provides provide free advice, support and information for vulnerable women in relation to employment related matters, including sexual harassment and gender discrimination. WWQ employ a team of solicitors, industrial advocates and one social worker who offer a holistic, interdisciplinary approach. WWQ is the only specialist women's employment service of its kind in Queensland.

BRQ and WWQ receive requests for support, information and advocacy from people who have are experiencing Domestic and Family Violence (DFV). While we do receive requests for assistance and information in relation to DFV leave, it is also common that women contact our organisation in relation to other work, social security or disability matters and through our intake process and/or consultations with our clients there is a disclosure that DFV is being experienced.

During the 2022/23 year WWQ provided direct support for 1251 women, 30% of whom have experienced, or are experiencing DV at the same time as seeking workplace advice.¹

¹ [BRQ Annual Report - 2023](#)

We are pleased to be able to provide a response to the Independent Review of the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022* (Cth) and provide our responses under the headings provided in the terms of reference with some suggested recommendations.

Paid FDV Leave

WWQ commends the introduction of paid leave to the NES for all working Australians and applaud that the leave is explicitly inclusive of casual employees.

The introduction of the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022* (Cth) and the introduction of paid FDV leave in the National Employment Standards (NES) followed a decade long campaign by to provide a paid entitlement to all workers experiencing FDV, irrespective if they are employed permanently, part-time or in a casual capacity. 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 DFV.

The Queensland State Government first introduced access to 10 days of paid DFV leave for all employees in the State Public Service in 2015². The paid leave was provided alongside a range of explicit support mechanisms including manager and mandatory training and other workplace supports that included draft safety plans and DFV HR specialists. As the state's largest employer, the Government sought to model the introduction of paid leave to other employers. This model followed the recommendations from Queensland's DFV landmark report *Not Now, Not Ever*³. The recommendations drew from the groundbreaking work of Ludo McFerran the Domestic Violence Clearing House (who identified that Family and Domestic Violence was a complex and pervasive scourge on our community, and workplaces had a vital role to play in making society safer for women and their children⁴).

The world's first *paid* FDV leave agreement was negotiated by the Australian Services Union in the Surf Coast Shire Council in 2010. It allowed for up to 20 days paid leave which was considered *best practice* based on available research⁵.

² [Queensland Public Service Commission Directive 4/15 \(superseded\)](#)

³ [Queensland Government response to the report of the Special Taskforce on Domestic and Family Violence](#)

⁴ <https://www.challengemag.org/post/we-didn-t-wait-the-campaign-for-paid-family-and-domestic-leave>

⁵ <https://www.weareunion.org.au/2023-wrap-up-fdv-leave>

Implementation

The staged implementation of the paid FDV leave was intended to accommodate the challenges small businesses with less than 15 employees face, and specific employer resources were provided along with the later implementation date of 1 August 2023. Employers with 15 or more employees required to introduce the leave by 1 February 2023.

The introduction of paid FDV leave in the NES followed data from Workplace Gender Equality Agency (WGEA) that showed over a third of employers reporting provided paid leave.⁶ Concerns raised in opposition to the paid leave was that it would be mis-used, financially unviable and employers would not want to employ women (the same arguments that were voiced when the concept of paid parental was introduced).

The economic modelling demonstrates *not* providing the leave was *more* costly and keeping employees supported and connected to the workplace remains beneficial for everyone.

PricewaterhouseCoopers Australia (2015) estimated the broad economic costs of violence against women from their partners to total \$12.6 billion per year – or close to one percent of GDP. Substantial economic costs are experienced by all stakeholders in society.

Most importantly, of course, are the costs borne by the victims of domestic violence. But others bearing substantial costs include governments at all levels, employers, broader society, children, and even the perpetrators.⁷

The introduction of a universal entitlement to paid leave intended to remove the requirement of women to have to choose between safety and their employment (economic security). The paid leave built on the prior entitlement in the FWA to *unpaid* leave. The unpaid leave did not provide workers with the financial security at a time of known trauma and stress. Leaving DFV costs time and money, in 2024 the cost for the average Australian woman to leave a violent intimate partner is estimated to be \$18 000 and 141 hours⁸.

For some women ten days is simply not enough and when they exhaust the ten days they are then required to access other forms of leave, if they have it, and then

⁶ [Safe and Equal at Work/McFerran-2022_Opinion-piece.pdf](#)

⁷ [Future Work - Economic Aspects Domestic Violence Leave - 2015](#)

⁸ <https://www.mamamia.com.au/cost-of-leaving-a-violent-relationship/>

access unpaid leave and/or risk their employment and financial security. When the world's first paid DFV leave was introduced, it was 20 days (which was based on research and best practice) and other employers also provide 20 days of paid leave.⁹ The capacity to apply for more paid leave when the employee needs more than ten days is considered on a case-by-case basis for Queensland public servants.

There is an established and demonstrated need that some people, but not all, require more paid leave than what is provided currently in the NES and employers are able to accommodate this need. The New South Wales state government introduced 20 days of paid FDV leave for public servants in 2023¹⁰, the South Australian government provides 15 days of paid DFV leave and the Northern Territory does not place a quantum against the amount of paid leave provided to public servants.

Not all people accessing paid leave need 20 days. But for those who situations require it, the need is great, and the impact compounded. The entitlement to paid DFV leave is making a difference and must be retained and continued to be built upon as was understood when the entitlement moved from unpaid leave to paid leave. We now need to consider best practice and provide 20 days in the NES. DFV continues to kill too many women.

WWQ Recommendation

1. Domestic and Family Leave should be increased to 20 days in the National Employment Standards

Impact on employees accessing DFV leave and challenges in implementing and accessing DFV leave

The devastating reality is that, on average, one woman is killed every nine days in Australia, either by a current or former intimate partner.¹¹ The intent and purpose of the paid leave is to provide a very practical provision to assist people impacted by

⁹ [AHRC - FOUR YEARLY REVIEW OF MODERN AWARDS – FAMILY AND DOMESTIC](#)

¹⁰ [NSW support for employees experiencing DFV](#)

¹¹ [Our Watch – quick facts – statistics on violence against women](#)

DFV to flee, and provide them with a safety net when the practicalities associated with leaving necessitate absences from the workplace.

“Access to paid DFV leave has the potential to save lives. It removes the barrier of women risking job loss because of the need to have time off work when they need to leave the violence, or in relation to their experiences of DFV.”¹²

Many of the people accessing our services were not aware of their entitlement to paid DFV leave. While there was wide-spread celebration in response to the introduction of paid DFV leave amongst key stakeholders, there was no community education campaign to support the implementation.

All workplace induction processes, workplace agreements, and HR policies and leave forms need to explicitly include information on paid DFV leave. This basic measure will ensure visibility, and as the leave type is normalised (as sick leave is) it is less likely to be misunderstood as an additional *discretionary* entitlement, that may or may not be granted under goodwill or the perceived benevolence of the employer.

Many women are not aware that they have an entitlement to paid leave under the NES. Women who have their employer *offer* the leave when they needed it provides dignity and practical assistance. It is important that any barriers such as confusion about eligibility or internal processes to provide are considered in workplaces, prior to it being requested.

Women are accessing this leave across the nation and the entitlement is being used. Working Women Centres, DFV services and Unions have committed to resources and training amongst workers and to ensure the entitlement is understood and access.

Government and employers also need to continue to monitor access to paid leave. DFV related workplace absences need to be recorded, the impact of DFV of the women workers and the workplace (and wider) must not remain hidden. It does however need to remain confidential.

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

¹² [Hon Amanda Rainsworth MP – Editorial – 10 February 2023.](#)

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 DFV 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 DFV leave request, hours of work and payment.

These emails containing confidential details were sent to HR as well as payroll and included the DFV 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."

Confidentiality is a key element to how paid DFV leave is managed well in workplaces. There is a genuine risk to the safety of employees where this is not managed. Paid leave is part of the systems of support workplaces can provide that will positively impact employees experiencing DFV. On introduction to the 10 days of paid leave in the FWA, Ludo Mc Ferran stated;

"...and while paid leave has given the issue of domestic violence as a workplace issue a focus it never had before; the mere existence of the entitlement does not guarantee a turning point. The goal is the safety and wellbeing of those affected- the reduction of unemployment and homelessness as a result of the violence, their ongoing safety and financial security and the calling to account for those responsible for the violence.

Legislating leave doesn't guarantee that, but ensuring the leave is well implemented into an informed workplace may. So, its job is half done if we don't get the implementation right¹³."

Employers also need to be assured when they do provide training and education that they are accessing training that is of a high quality and provides current information. Currently there are no standardised training standards and no accreditation of trainers or resources available.¹⁴

The pervasive stigma attached to all forms of gendered violence, including DFV, is a significant barrier to women workers accessing and requesting the leave. Where

¹³ [Safe and Equal at Work/McFerran-2022_Opinion-piece.pdf](#)

¹⁴ Ibid.

a worker can access information discretely and easily fit reduces the burden of the asking, and the potential for (misplaced) shame on the victim.

Almost 1 in 3 (32%) Australians believed that women who do not leave their abusive partners are partly responsible for violence continuing¹⁵.

Not all employers are supportive or understand the protective factor ongoing employment can have. A 2019 survey of people with lived experience of DFV by Sightlines indicated that half of all employees responding to their survey did not know if their employer had a DFV policy, and most employees experiencing DFV did not choose to disclose this to their employer (66%). Where people did disclose, it was often difficult to do so with 56% described the experience of disclosing with negative, mixed, or neutral sentiments¹⁶.

Paid DFV leave is not the “magic bullet” or only workplace provision to positively support an employee. There are opportunities to strengthen and improve understanding on how *flexible work* can be accommodated and vary depending on the nature of work and the workplace, and often it is temporary accommodations that are needed. While the FWA outlines the considerations for employers not granting workplace flexibility in cases of DFV requests where this is unfair, there is a reliance on formal dispute mechanisms, which is a further barrier for this cohort of vulnerable workers.

WWQ Recommendations

2. That Fair Work develop a nation-wide resource and education campaign to highlight the protective factors of DFV leave and flexible work for employees that are impacted by DFV.
3. There is a need for standardised training and accreditation of trainers to ensure the consistency and quality of the training accessed by employers.

Challenges in implementing and accessing DFV leave

Queensland’s draft new Anti-discrimination Bill 2024 was released for consultation earlier this year. DFV was listed as a protected attribute under the proposed Act¹⁷.

¹⁵ [the-obstacles-and-responses-to-domestic-violence-in-the-workplace-2/](#)

¹⁶ Ibid.

¹⁷ [Draft Anti-Discrimination Bill 2024 \(Qld\)](#)

As with forms of protected attributes in anti-discrimination legislation, inclusion in a legal document is not a preventative factor and does not stop the discrimination from occurring. People who experience DFV experience all manners of disadvantage in the community. DFV does intersect with other forms of discrimination and disadvantage. There are certain groups of people, identities and communities that are at greater risk¹⁸.

The duty of the employer to prevent injuries, both physical and psychosocial is established in WHS legislation. DFV impacts on workers' health and safety and should also be viewed as a WHS matter and viewed through a WHS lens.

Workplaces that unreasonably refuse flexible work requests relating to DFV need to view this accommodation as a preventative control measure in relation to a possible psychosocial workplace hazard and consider that the employee has experienced a traumatic event. PSCBUs have a *duty* to prevent psychosocial hazards under existing WHS legislation.

Queensland's *Managing the risk of psychosocial hazards at work Code of Practice 2022* outlines that there are certain groups of workers more at risk of incurring psychosocial injuries at work. These include workers with exposure to known traumatic events and workers certain attributes, such as those with listed in anti-discrimination legislation¹⁹. Workplace systems and interpersonal interactions are elements of work that can lead to psychological injury. The employer must recognise that for FDV victims, flexible work is a support accommodation and a *control measure* when an employee is at risk. The risk is the DFV and a perceived lack of support when reasonable accommodations such as flexible work is withheld.

Fair Work provided education and support materials in relation to the leave but there was little other wrap around support provided to employers in relation to their capacity to provide other support. Managers and HR personnel require quality, standardised and accredited training as is required for WHS matters by legislation. Nearly four times as many women die from DFV each year than Australia than at work.²⁰

¹⁸ [Our Watch - quick facts - statistics on violence against women](#)

¹⁹ [worksafe.qld. - managing-the-risk-of-psychosocial-hazards-at-work-code-of-practice](#)

²⁰ <https://data.safeworkaustralia.gov.au/insights/key-whs-stats-2023>

Workcover statistics in Queensland indicates that there is a gendered nature to the psychological workplace injury, it is the only type of workplace injury where women outnumber men²¹.

WWQ Recommendation

4. That the workplace management of DFV support and flexibility must be considered by employers (PCBU) as a WHS matter and states and territories should consider the introduction of regulation to increase compliance in relation to psychosocial injuries at work.

On behalf of the vulnerable women our organisation provides workplace assistance and support to, we thank you for the opportunity to participate in this Parliamentary Review process. If you would like further information or would like to discuss the submission, please contact Penny Spalding on 07 3421 2505 or pennys@brq.org.au.

Yours sincerely

Basic Rights Queensland



Penny Spalding
A/Director WWQ

²¹ [Workcover Statistics 2022-2023 full report - pg 14](#)