



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

CPSU Submission

Community and Public Sector Union (PSU Group)

June 2024

Introduction

The Community and Public Sector Union (CPSU) is the main union for workers in the Commonwealth public sector, ACT and NT public sectors and other workers including CSIRO, ABC, Australia Post and Telstra. We are committed to providing a strong voice for our members on work health and safety, industrial matters, and key public policy and political debates.

The CPSU welcomed the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022 (Cth)* and its introduction of a universal entitlement of 10 days paid leave for workers (full-time, part-time and casual) experiencing family and domestic violence. The CPSU along with the broader union movement long campaigned for these reforms to better protect and support workers, women in particular, who experience violence, abuse and coercion and are at risk of significant harms.

This submission outlines the important impact the amendments have had on the lives of working people, particularly women impacted by family and domestic violence and the progress our union has since made to extend on the NES entitlement through bargaining to further protect and support workers. We also seek to share some of the issues or barriers workers experience when seeking to access paid leave for the purposes of family and domestic violence.

Legislative reforms that change and save lives

The *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022 (Cth)* represented significant reform for workers affected by family and domestic violence (FDV). The reform recognised that the incidence of FDV is not confined to specific demographics, communities or identities. While it can be said that no group of people in our community is excluded from the effect of FDV, research (and our own experience) provides that overwhelmingly, it is women who are the most severely impacted. Vulnerable groups facing acute and significant challenges also include First Nations women, young women, women with disability and women in remote and regional areas. Sadly, the incidence of FDV continues to grow in Australia and its impacts devastate far too many lives. More than ever, it is crucial that we work together as a community to arrest this situation and do better. In this context, workplaces 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. By enshrining an NES entitlement to 10 days paid FDV leave for permanent and casual employees affected by FDV, the reforms have enabled those workers to put in place steps to ensure their own safety, and where relevant, the safety of their dependents, without having to also be concerned about their job or their income. 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.

The legislative reform built upon progressive changes which the union movement long campaigned for including recognition of FDV as a workplace issue, decisions by the Fair Work Commission (FWC) to include FDV leave in all modern awards including as a paid leave entitlement.

Enterprise Agreement entitlements

While the reform established a modern baseline of entitlements for all workers by way of a NES entitlement for 10 days paid FDV leave, it has also allowed employees with their unions to be able to improve in enterprise bargaining on these baseline arrangements.

In 2023, the CPSU has bargained in the Commonwealth Public Sector (including the APS and non-APS) and secured provision for uncapped paid leave for FDV purposes in all APS enterprise agreements for all workers (ongoing, non-ongoing and casual) who experience family and domestic violence. Many non-APS agencies have similarly adopted these provisions.

Consistent with the NES provisions, employees covered by these enterprise agreements may access paid leave for a range of reasons relating to their FDV situation including but not limited to:

- An illness or injury affecting the employee due to FDV
- To provide care or support to a family member, including a household member, who is also experiencing FDV, and is ill or injured due to FDV
- To provide care or support to a family member, including a household member, who is experiencing FDV, and is affected by an unexpected emergency due to FDV
- To make arrangements for the employee's safety or safety of a close relative
- To access alternative accommodation or police services
- To attend court hearings, counselling or appointments with medical, financial, legal professionals

Consistent with the NES provisions, enterprise agreement provisions allow an employee who needs to access this leave in an emergency, to proceed to take the leave and seek approval later, as soon as practicable. Paid leave for FDV can be taken as consecutive, single or part days and alongside other existing types.

In bargaining, the union has negotiated less onerous evidentiary requirements for an employee to access paid FDV leave than under the NES. In most cases evidence is not needed for a manager to approve paid leave for FDV. Where evidence is requested, a manager is required to have a discussion with the affected employee and are only able to request evidence in the form of a statutory declaration unless the employee chooses to provide another form of evidence, such as a medical certificate or document issued by the police, a court, a doctor, district nurse, family violence support service or lawyer. Once an employee has told their story and established their circumstances, it is reasonable to reduce the burden on the affected employee of having to repeatedly explain and/or seek out evidence in support of their situation. These changes have been welcomed by employees.

Barriers workers have experienced when accessing paid FDV leave

The CPSU supports members with individual grievances and disputes with their employers. Accessing paid leave including leave for FDV purposes is an example of an individual grievance where the union provides support to members.

Prior to the introduction of the NES entitlement on 1 February 2023, some employers within the CPSU's coverage offered paid leave for the purposes of FDV on a discretionary basis or extended personal carer's leave for FDV purposes which had the effect of reducing an employee's personal leave balance. Before the NES entitlement of 10 days paid leave, CPSU would often have to support workers trying to access this discretionary form of paid leave and it would often come down to a line managers (or HRs) understanding of FDV and the policy position of the organisation. Employees experiencing FDV had no certainty or confidence about their ability to access paid leave for FDV purposes when they needed it. While individual grievances concerning an employee's eligibility to access paid leave for FDV purposes is said anecdotally to have reduced since the introduction of the NES entitlement, employees can still come up against barriers in accessing paid leave which are described below.

Workers can face unreasonable questions from their managers about the reasons for taking the leave including an expectation from some managers for workers to share unnecessary and quite personal and/or detailed information about their circumstances, i.e., managers overstepping in their questions of affected employees. Managers may also question the need for taking a whole day's leave and may seek to limit approval for 1-2 hours for the purpose of a specific appointment, failing to understand the toll on a person's emotional capacity to continue to work with stress of their experience.

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. We note the outcomes of APS bargaining (detailed above) are very recent with most enterprise agreements taking effect between January 2024 and March 2024. Education and training of managers and employees about the new provisions including relaxed evidentiary requirements is still ongoing in most cases.

Some workers seeking to access paid leave for abuse/ violence that does not relate to a domestic partner may face some initial push back from their manager/employer. There is a general awareness of domestic partner abuse/ violence however awareness of other forms of family violence is less well understood.

It is known that workers experiencing FDV can be dealing with these issues for years. Some managers can fail to understand the time that is required for a person in a FDV situation to deal with issues, risks and/or exit a particular relationship. Industrial organisers have supported women workers who may avoid asking for leave so as not to frustrate managers and this comes back to their confidence in managers understanding FDV and its impacts.

Industrial organisers have also expressed that managers should be taking a person-centred approach when discussing FDV – some managers will make assumptions about an employee’s situation and impose solutions on them rather than being guided by the individual and giving them agency in their situation.

Improving workplace support for workers experiencing FDV

Many employers already have in place enterprise agreement provisions and related policies for paid FDV leave and other supports such as flexible working arrangements. Policies and procedures on their own will not ensure that affected workers are getting the support they need.

Education and training of managers is a critical component of ensuring that employees are able to access maximal support, certainty and confidence. It is important that managers receive education and training not just in relation to the FDV leave entitlements and access to flexible work arrangements but also including (but not limited to) 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.

Good practice examples: APS Policy Template Family and Domestic Violence Framework

The APS as an employer has adopted a good practice framework to better support employees who experience FDV. The APSC has developed in consultation with the union and other stakeholders a Policy Template - Family and Domestic Violence Framework for agencies to adopt and amend. The Policy Template has been revised over the past 12 months to reflect recent legislative and policy changes and is currently being reviewed to reflect changes in bargaining and further better practice measures.

The Policy Template serves as an important educative tool for agencies, managers and workers and can serve to establish a consistent practice and culture across the public service when it comes to supporting employees affected by FDV. Agencies may voluntarily adopt and amend the template to their particular circumstance. It is unclear how many agencies have adopted the Policy Template.

<https://www.apsc.gov.au/initiatives-and-programs/workplace-relations/public-sector-workplace-relations-policy-2022/policy-qas/family-and-domestic-violence-support>