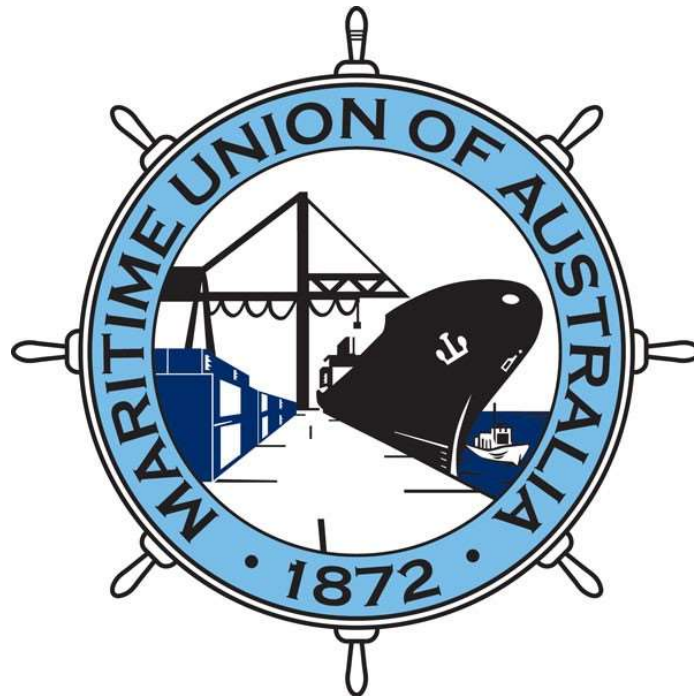


Independent Review of the Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022 (Cth)

Submission from the Maritime Union of Australia



June 2024

Flinders University, Independent Review Committee

Submitted by email: FDVLeaveReview@flinders.edu.au

**Mich-Elle Myers, Assistant National Secretary,
Maritime Union of Australia
A Division of the Construction, Forestry, Maritime, Employees Union**
365 Sussex St, Level 2, Sydney, NSW, 2000
michelle.myers@mua.org.au

For inquiries contact: angie.moore@mua.org.au

Recommendations

Recommendation 1: To deepen its broad social efficacy as well dramatically increasing the quality of support available to victim survivors, amended the NES to provide for Family Domestic Violence leave to be accessible to a capable 'immediate family'.

Recommendation 2: In recognition that undertaking the onerous task (accessing institutions and services) of dealing with the impact of family violence, the duration of FDV leave should be available for up to a minimum of 20 days.

Introduction

This submission has been prepared by the MUA, a division of the 120,000-member Construction, Forestry, Maritime, Employees Union and an affiliate of the 20-million-member International Transport Workers' Federation (ITF). The MUA plays a leadership role in several tripart discussions where unions represent workers experience. Members play a vital role in this union and are proudly one of the most active grassroots Trade Unions in the world. Actively campaigning for the dignity and rights of workers is core MUA business.

The MUA represents approximately 1000 women out of a 14,000 membership, in the traditionally male dominated work of stevedoring, shipping, offshore oil and gas, port services and commercial diving sectors of the Australian maritime industry.

We understand that family domestic violence (FDV) is both a cause and consequence of gender inequality. Addressing gender disparity in the maritime industry is ongoing work of the union with internal action underway driven by the member led 'Equity Charter' and affirmative action policies, in addition to external work of negotiating workplace improvements via enterprise bargaining to provide employer conditions which attract, and retain women. Now, thanks to the national drive by the Australian union movement which started with a single union member of the ASU, the advent of the Paid Family and Domestic Violence Leave is another aid to assist in the objective of a safe and equal society. We hereby provide important feedback for consideration of the independent review team, and will remain available for further discussion.

Overview

In response to Flinders University being engaged by the Australian Government Department of Employment and Workplace Relations to conduct an Independent Statutory Review of the Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022 (Cth), the MUA has compiled this offering. The significance of this review is deeply felt by MUA members and officials with the union being aware of the need for these provisions for a time now, and have already successfully argued the case for 20 days paid FDV leave in workplace enterprise agreements, such as Newcastle Stevedores. More recently, the MUA Sydney Branch have secured an extension of the 10 days paid provision for immediate family members of victim survivors (as detailed on p. 4). The extension is to broaden the support network available and acknowledge the psychological impact family violence has in the workplace, including to those adjacent to the direct harm.



THE MARITIME UNION OF AUSTRALIA SYDNEY BRANCH

A DIVISION OF THE CONSTRUCTION, FORESTRY, MARITIME, MINING & ENERGY UNION

Paul Keating – Branch [Secretary](#) | Paul Garrett - Deputy Branch Secretary
Nathan Donato - Assistant Branch [Secretary](#) | Brad Dunn - Assistant Branch Secretary | Shane Reside - Organiser

June 14 2024

To the Independent Review Committee,

On behalf of the Sydney Branch of the Maritime Union of Australia division of the CFMEU, please accept our supplementary submission into the Independent Statutory Review of the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022* (Cth).

The following evidence is primarily concerned with reference point 3: *challenges in implementing or accessing Family and Domestic Violence Leave*.

Background

Family and Domestic Violence is rooted in prevalent, widespread misogynistic values and behaviours in Australian social relations. Any strategy to eradicate FDV must include a strategy to socialize responsibility for eradicating these values and behaviours.

While women and children are overwhelmingly the victim-survivors of FDV, women make up only 8% of MUA membership. The MUA firmly believes that the men that make up our union must take responsibility for ending Family and Domestic Violence from our communities. Our members must stop committing FDV, they must provide support for the women in their lives that are experiencing FDV, and they must take responsibility for eradicating misogynistic values and behaviours exhibited by MUA men. It is incumbent upon us as individuals, and as a collective organisation to pursue every opportunity to meet these responsibilities.

Employment is an enormously significant institution in contemporary Australian life. For most working class people most of the time, employment shapes what is possible for leisure, housing, education and healthcare. Shouldering responsibility for socializing the strategy to end FDV cannot fall on the working class alone: large institutional employers must also take responsibility. The MUA celebrates the introduction of paid Family and Domestic Violence (FDV) Leave into the NES. This is an enormous leap forward in providing institutional support for women experiencing FDV. Further, by pushing the cost of supporting women experiencing FDV on to employers (by virtue of paying for the leave) employers have a material imperative to support strategies to eradicate FDV.

Family and Domestic Violence Leave restricts support to the individual experiencing violence

Only 8% of the MUA membership are women. The FDV provisions in the NES are only available to *the person experiencing* FDV. Accordingly, the leave is only meaningfully accessible to 8% of our membership when they are directly experiencing FDV.

While this is enormously important for these members (and the MUA congratulates all those responsible for fighting for and creating this condition) this limitation restricts the institutional support to the individual experiencing violence.

While acknowledging the significance of imposing responsibility on to employers for bearing the cost of support for the individual (and the positive ancillary effects of this), the union is of the view that the extension of FDV leave to 'immediate family' will deepen its broad social efficacy as well dramatically increasing the quality of support available to the victim survivor.

MUA proposal: Extension of Family and Domestic Violence leave to 'immediate family'

Through collective agreements, the MUA has been pursuing an extension to FDV leave so that it is available when *a person or their immediate family* are experiencing FDV. 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 their mothers, daughters, sisters and their children when they are experiencing FDV.

In building support for the extension of the FDV leave amongst members as part of collective agreement campaigns, the MUA has been using the "sister in Brisbane" example:

"My sister lives in Brisbane. If she was to call me today crying and tell me that she is experiencing violence at the hands of her partner, I could drop everything, jump in my ute, drive up there, pick her and the kids up and bring them back to my place where they will be safe"

Employer opposition: significance of government-imposed conditions

The status quo in employment relations in Australia is that employers resist the imposition of any condition for workers if it impedes in any way employer discretion; comes at any cost to the employer; in any way restricts 'productivity', ordinarily understood in narrowly defined terms.

In ordinary circumstances pay and conditions for working class people in Australia only improve if workers in a particular workplace collectively have the industrial power to compel employers to concede to collective demands, or if the state imposes legislative requirements on employers.

Working class people face significant difficulties in building and exercising industrial power, largely due to intentional restrictions and penalties imposed by governments and capital interests. Accordingly, there is a small proportion of working people who will be able to achieve above-award pay and conditions, including in the realm of Family and Domestic Violence.

Since 2022 the MUA has tabled a proposed clause extending FDV leave to 'immediate family' as part of collective agreement negotiations with a number of large maritime employers including Vopak, Quantem, Birdon, NRMA, DP World and Polaris Marine.

The response from employers has been mixed. The NRMA collaborated with the union in the drafting and implementation of the clause (see clause from the NRMA agreement below for example). Vopak and Quantem have fought the MUA's proposal, arguing that they have no role in eradicating Family and Domestic Violence. DP World has provided partial concessions and indicated the possibility for future extension. Birdon and Polaris Marine have conceded an extension to FDV after MUA industrial campaigns have compelled them to accept union collective agreements with the FDV leave as part of the package.

As a result of campaigns by MUA members, these registered Enterprise Agreements now include an extension of FDV leave:

- *NOORTON PTY LTD T/A MFF - MASTERS, DECK HANDS AND CUSTOMER SERVICE CREW ENTERPRISE AGREEMENT 2023 (NRMA Fast Ferry)*
- *Polaris Marine and the MUA Division of the CFMMEU NSW Enterprise Agreement 2023*
- *Birdon Pty Ltd and the Maritime Union of Australia Wire Drawn Ferries Enterprise Agreement 2024*

The MUA is proud of achieving an extension of FDV leave in these agreements and will continue pursuing this leave using the industrial power we have in our industry, however the union is of the view that unless an extension is created in the NES, the majority of Australian workers will not have the ability to access this leave.

Example: Family and Domestic Violence Leave clause in the *NOORTON PTY LTD T/A MFF - MASTERS, DECK HANDS AND CUSTOMER SERVICE CREW ENTERPRISE AGREEMENT 2023*. Operative words highlighted in yellow.

“28. Family and domestic violence leave

28.1. The purpose of this clause is to support the eradication of family and domestic violence from our society, including providing a safe and supportive workplace for employees who may be experiencing family and domestic violence.

28.2. The parties acknowledge that family and domestic violence occurs at unacceptable levels in our community. We have zero tolerance for any form of violence, whether in the workplace or in the community, and deem any instance of domestic and family violence unacceptable.

28.3. Permanent and casual employees who are currently experiencing family/domestic violence, **or whose immediate family** are experiencing family/domestic violence, will be able to access up to 10 days of paid family and domestic violence leave.

28.4. Family and domestic violence leave will be available for a range of purposes, including but not limited to:

- (a) recovering from an injury caused by violence;
- (b) seeking medical, financial and legal assistance;
- (c) preparing for and attending court appearances;
- (d) counselling;
- (e) relocation or making other safety arrangements
- (f) organising alternative care and education arrangements for the employee’s children; and
- (g) accessing police services.

28.5. The parties acknowledge that family and domestic violence can affect anyone, regardless of their gender, sexual identity, culture, age, ethnicity, religion, disability, economic status or location. For the purpose of this provision, family and domestic violence means violent, threatening or other abusive behaviour by a current or former close relative of an employee (including de facto and

married relationships, household members, previous partners, same sex relationships, carers or support workers, and parents and children) that seeks to coerce or control the employee and which causes them harm or to be fearful for their wellbeing/safety or the wellbeing/safety of others within their care (children, elderly, carers etc.). A family member can also mean a person related to the employee according to Aboriginal or Torres Strait Islander kinship.

28.6. This entitlement shall operate in accordance with the Company's policies as updated from time to time and the NES."

Summary

To conclude, the MUA applauds the move to enshrine the FDVL provisions of 10 days paid leave to any employee in the NES, however, advocates for the sensible extension to 20 days and for immediate family to be included. We hope that the testimony herein, serves to strengthen this case and are keen to expand on any details for the benefit of this review.