



Paid Family and Domestic Violence Leave Review

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

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Introduction

About the ACTU

Since its formation in 1927, the ACTU has been the peak trade union body in Australia. It has played the leading role in advocating for, and winning the improvement of working conditions, including on almost every Commonwealth legislative measure concerning employment conditions and trade union regulation. The ACTU has also appeared regularly before the Fair Work Commission (**FWC**) and its statutory predecessors, in numerous high-profile test cases (including the two FWC cases in relation to family and domestic violence leave), as well as annual national minimum and award wage reviews.

The ACTU is Australia's sole peak body of trade unions, consisting of affiliated unions and State and regional trades and labour councils. There are currently 36 ACTU affiliates who together have over 1.7 million members who are engaged across a broad spectrum of industries and occupations in the public and private sector. For over a decade, unions campaigned for, and won, the right to take paid family and domestic violence leave in workplaces across the country.

Our submission will address the Terms of Reference for the Review and some of the questions included in the online Questionnaire, as well as including relevant background about the union campaign to win paid family and domestic violence, insights from unions and union members who have had access to this entitlement for many years, and why the entitlement remains as important as ever.

Background

The ACTU welcomes the opportunity to make a submission to the Independent Review of the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022 (Cth)* (**Paid FDV Leave Act**). A number of our affiliates have also made submissions to this Review and this submission should be read in conjunction with those submissions.

In 1999, Ludo McFarren and a number of other practitioners set up the Australian Family and Domestic Violence Clearinghouse (**the Clearinghouse**) to look at family and domestic violence (**FDV**), the responses to FDV and the gaps in responses. One key gap identified was the lack of workplace responses, and the challenges women in the workforce confronted when seeking to leave a violent relationship, including:

- In order to leave violence, women needed to maintain employment during and after the process, as financial security and independence is key to being able to leave. All too

often leaving violence meant losing employment and risk of homelessness, a key driver for women returning to violence.

- The loss of income experienced when people had to take unpaid leave to deal with violence added to their financial disadvantage and made them far less able to leave. Further, given many perpetrators monitor income, any loss or change in wages could also alert the perpetrator to their plans.
- The workplace was often one of the only places women felt safe and respected. For many, due to their movements being closely monitored, often the only time they had any freedom was when the perpetrator thought they were at work. Maintaining a connection with the workplace (and with a safer space) was essential.

Paid family and domestic violence leave (**paid FDV leave**) was thus identified as a key intervention that would assist women to leave violence. In 2008, the Clearinghouse approached union forums to discuss union support for paid FDV leave and pursuing this form of leave through bargaining.

In 2010, the first paid FDV leave clause was developed by the Clearinghouse in conjunction with the Victorian Trades Hall Council (VTHC) Women's Committee. In 2010, the Australian Services Union Victoria and Tasmania Branch, supported by VTHC, negotiated the world's first paid FDV leave clause in an enterprise agreement covering workers at the Surf Coast Shire council.⁴ This was quickly followed by a number of other agreements that year.

From 2010-2015, the focus was on achieving paid FDV leave through bargaining. Unions and union members prioritised, campaigned for and won paid FDV leave in their workplaces. As a result, over six thousand employers, including all State and Territory Governments, provided the right to some 1.2 million workers through union won collective agreements.

However, the union movement recognised that whilst bargaining was successful for many workers in unionised workplaces, it did not deliver change in all workplaces, meaning many workers were still unable to access this lifesaving entitlement. In 2015 a court support worker rang her union, the ASU NSW-ACT Branch, to recount what she had seen in court that morning. She had supported two women seeking safety orders that day. One of the women had an entitlement to paid FDV leave and was able to go through the court process whilst accessing that

⁴ ASU-Victorian Authorities & Services Branch, 15 October 2010, ASU to launch and celebrate Australian-first Family Violence clause at Surf Coast Shire, http://www.asu.asn.au/documents/doc_download/389-asunews-archive-asu-tolaunch-and-celebrate-australian-first-family-violence-clause-at-surf-coast-shire-15-october-2010

leave. The second woman (who was applying for an AVO to protect herself and her children from a violent man) worked in childcare and had no entitlement to paid FDV leave. Her employer rang her whilst she was in court and told her that she had exhausted all her leave and if she didn't come to work, her employment would be over. The woman's choice was protection from violence or her job. The woman left court to go to work, without being able to finish the process of getting safety orders. The court support worker told her union that all women needed access to this leave, and that without it, she could not do her job properly in helping women to seek safety.

This was the beginning of the 'We Won't Wait Campaign' for universal access to paid FDV leave. Frontline workers across a range of industries (including ASU members, paramedics, teachers, police and nurses) came together and led the campaign from its inception. The campaign was spearheaded by the ASU NSW-ACT Branch and supported across the union movement. The 2015 ACTU Congress adopted as its policy a minimum of 10 days paid FDV leave in the National Employment Standards (**NES**).

The union movement also pursued the introduction of an industrial entitlement to 10 days paid FDV leave in two Fair Work Commission (**FWC**) award variation cases.² Following the first of these, the FWC determined in 2018 to vary modern awards to include an entitlement to 5 days' unpaid FDV leave, on the grounds that the entitlement was still largely untested but committed to reviewing this decision within four years.³ Shortly thereafter, the *Fair Work Act 2009* (Cth) (**FW Act**) was amended to incorporate an entitlement to unpaid FDV Leave in the NES.⁴

In 2021 the ACTU wrote to the FWC to seek the initiation of a review of the unpaid FDV leave entitlement.⁵ In this case the ACTU called for and provided evidence to support the introduction of 10 days paid leave. This ultimately led to a Full Bench of the FWC determining in May 2022 that 10 days paid FDV leave was necessary and should be inserted into awards⁶ (**2021 FDV Leave Review**). That decision would have provided leave directly to around 2 million employees.

² [2018] FWCFB 1691; [2022] FWCFB 2001.

³ [2018] FWCFB 1691 at [309].

⁴ Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018.

⁵ Letter from ACTU Secretary Sally McManus to FWC President Justice Ross, 12 April 2021 [Family & domestic violence clause \(AM2015/1\) \(fwc.gov.au\)](#).

⁶ [2022] FWCFB 2001.

In August 2022, following the introduction of the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022* into Parliament, the FWC issued a statement advising it did not propose to take further steps in the award matter.⁷

An important part of the work undertaken during the campaign (which informed the award variation cases and the content of the legislation) was examining what was needed for the entitlement to properly function as a women's safety measure. Treating it in the same terms as other leave entitlements would not deliver on women's safety. For example, if leave was only paid at the base rate of pay, workers would still be suffering financial disadvantage and may not be able to take the leave. If the full amount of leave wasn't accessible immediately but was accrued over time, this would leave workers without protection based on their length of service. If part timers only had access to pro rata leave, they wouldn't have enough leave in order to do all of the things required to deal with violence. If casuals didn't have access to the leave, this would leave some of the most vulnerable workers (who already face a lack of other paid leave entitlements, insecurity in their employment and lower incomes) without protection. Further, 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. In order for the leave to achieve its objective as a women's safety measure, it needed to have particular features.

On 28 July 2022 the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022 (Paid FDV Leave Act)* was introduced into Parliament and was passed by both Houses on the 27 October 2022. Importantly the Paid FDV Leave Act:

- Extended the entitlement to non-national system employers and employees and casual employees, to make it a truly universal entitlement;
- Provided that payment would be made at a workers' full rate of pay;
- Provided that casuals and part time employees could access the full 10 days;
- Provided that leave would be available in full from commencement and each anniversary of employment thereafter (instead of accruing);
- Covered situations involving a household member or former intimate partner.

⁷ [2022] FWCFB 152 at [7].

The ongoing need for paid FDV leave

A staggering 3.8 million Australians aged 18 years and over have experienced violence from an intimate partner or family member since the age of 15.⁸ This includes 27% of women (2.7 million) and 12% of men (1.1 million).⁹ The overwhelming majority of these victim-survivors – 71% – are women, and on average one woman a week is killed by a current or former partner.¹⁰ There has been a sharp rise in deaths in 2024 compared to previous years.¹¹ In 2024 so far, 36 women have been killed by violence (1 January - 19 June),¹² 14 more than by the same time the previous year in 2023 (1 January - 19 June).¹³ In 2024, on average, two Australian women are being violently killed every nine days.¹⁴ Family and domestic violence is a national crisis, and the need for this leave is more apparent than ever.

FDV has a significant adverse impact on those who experience such violence, including a real and tangible impact in the workplace. More than 68 per cent of people experiencing family and domestic violence are in paid work.¹⁵ In comparison to women with no experience of FDV, women experiencing or who have experienced FDV have a more disrupted work history; are on lower personal incomes; have had to change jobs frequently; and are more likely to be employed on a casual and part-time basis.¹⁶

Paid FDV leave means workers impacted by family and domestic violence, overwhelmingly women, don't have to choose between their safety and their livelihood. On average it takes \$18,000 and 141 hours to leave a violent relationship¹⁷ and economic security is a key factor

⁸ [Personal Safety, Australia, 2021-22 financial year | Australian Bureau of Statistics \(abs.gov.au\)](#), Table 1.1

⁹ Ibid. These figures are further broken down by the ABS. Of women aged 18 years and over, 2.3 million (23%) experienced violence by an intimate partner, 1.7 million (17%) experienced violence by a cohabiting partner, 920,300 (9.3%) experienced violence by a boyfriend/girlfriend/date, and 806,000 (8.1%) experienced violence by a family member.

¹⁰ Fair Work Commission, 5 April 2022, Information note - Initiatives to reduce family and domestic violence in Budget 2022-23.

¹¹ Davey, Melissa (4 May 2024) *Eight years ago Australia had a wake-up call on family violence. So how did we end up here again?* <https://www.theguardian.com/australia-news/article/2024/may/04/australia-family-violence-against-women-law-changes-reforms>.

¹² Counting Dead Women Australia researchers, Destroy the Joint.

¹³ Ibid.

¹⁴ Roberts, Georgia (24 April 2024) *Eleven more women have died violently in 2024 compared to the same time last year* <https://www.abc.net.au/news/2024-04-24/eleven-more-women-have-died-violently-compared-to-last-year/103759450>.

¹⁵ Australian Government (2022), Report of the Senate Education and Employment Legislation Committee into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022 (**Paid FDV Leave Bill Senate Report**) at [2.5]. https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/DVLBill2022/Report.

¹⁶ [2022] FWCFB 2001 at [75], [436], [749] and [927].

¹⁷ Seymour et al, Family and Domestic Violence Leave Entitlement in Australia: A Systemic Review (3 November 2021) (**SWIRLS Report**) at p 5; Paid FDV Leave Bill Senate Report at [2.16].

determining whether a person is able to do so. Expenses incurred by victim-survivors include medical treatment, police support, legal advice, counselling, judicial support, costs of securing new accommodation, and obtaining goods such as furniture, clothes, school supplies, and new phones to avoid being tracked.

The cost of family and domestic violence is felt beyond the affected individuals and their workplace and is distributed (both directly and indirectly) across society.¹⁸ Family and domestic violence is estimated to cost the national economy \$20 billion per annum or around 1% of GDP.¹⁹ This includes the social cost to the community, particularly the increased demand for social, health and emergency services. This is compared to the cost of providing 10 days paid FDV leave, estimated at less than \$200 million per year across the whole economy (or less than 0.01 of national GDP).²⁰

Family and domestic violence also imposes significant costs on employers and adversely impacts workplaces through decreased/lost productivity and attendance and increased turnover (and associated costs such as recruitment and training).²¹ The cost to Australian businesses of absenteeism alone from family and domestic violence is estimated at \$14.3 million per annum.²² The total cost to employers from FDV is estimated to be up to \$2 billion per annum (which includes turnover, recruitment and training costs).²³

These costs to employers are significantly more than the estimated cost of providing an entitlement to 10 days paid FDV leave to workers. The total annual cost to employers of providing 10 days paid FDV were estimated to be between \$13.1 and \$34.3 million per annum.²⁴ Analysis conducted by Dr Stanford 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.²⁵ Expert evidence relied upon in the 2021 FDV Leave Review concluded that the cost of providing paid FDV leave would be largely offset by improved productivity and reduced absenteeism,

¹⁸ [Expert Report of Dr. James Stanford](#), Annexure JS-3 (from p47) to the Witness Statement of Dr James Stanford, filed in Family and domestic violence leave review 2021 (AM2021/55) (**Stanford Report**) at [13].

¹⁹ Ibid at [12].

²⁰ Ibid at [81].

²¹ Baird et. al. in Report prepared by Bankwest Curtin Economics Centre for the Australian Council of Trade Unions, Annexure AD-3 (from p25) to the [witness statement of Professor Alan Duncan](#), filed in the Family and domestic violence leave review 2021 (AM2021/55) (**Duncan Report**) at [14] – [15].

²² Ibid at [51].

²³ SWIRLS Report at [3], [4.1]-[4.2]

²⁴ Duncan Report at [39], [59] – [61].

²⁵ Stanford report; Paid FDV Leave Bill Senate Report at [2.27].

amongst other benefits.²⁶ The Senate Education and Employment Legislation Committee in its Report on the FDV Leave Bill (**Paid FDV Leave Bill Senate Report**) found that the existing use of paid FDV leave schemes has been modest, and the Fair Work Commissions' view regarding the upper range estimates provided by expert reports were sufficient to conclude that paid FDV leave would not result in significant costs to employers or the economy.²⁷

The Victorian Royal Commission into Family Violence (2014-16) found that workplaces are important sites for intervening to prevent and respond to FDV. The Commission found that:

- Workplaces present an opportunity to reach large sections of the population.
- Workplaces have the potential to reach and support workers who are experiencing domestic and family violence.
- A workplace may be the only place a person, particularly those from vulnerable groups who are experiencing domestic or family violence can reach out for support beyond their own families or households.
- Domestic and family violence has a negative impact on a victim's employment.
- Employment can be a protective factor against domestic and family violence.
- The workplace can be a place where domestic and family violence is perpetrated.
- A workplace's culture can perpetuate attitudes that support and condone domestic and family violence.

In the 2021 FDV Leave Review, the Full Bench of the FWC found that:

- FDV is a workplace issue that requires a workplace response.
- Employment is an important pathway out of violent relationships and an entitlement to paid FDV leave provides significant assistance to those experiencing FDV in that it helps individuals to maintain their economic security and independence, to access relevant services and to safely exit to a life free from violence. Sustained periods of employment also provided social networks and increased self esteem.
- The introduction of paid FDV leave is likely to be of some benefit to employers by reducing the absenteeism and lost productivity caused by FDV. Although the cost impact on employers would vary, it was unlikely to be substantial due to likely low employee utilisation rate of access to the entitlement and the existence of at least some offsetting

²⁶ Duncan Report at [44]; SWIRLS Report at [4.1].

²⁷Paid FDV Leave Bill Senate Report at [2.88].

benefits to employers. The FWC was not satisfied that the regulatory burden on employers would increase to any discernible degree.

Workplaces have a key role in preventing domestic and family violence and addressing the causes of it. Workplaces can also play a positive role by providing a safe and supportive environment for workers experiencing domestic or family violence while the worker is planning how to leave the violent relationship they are in.

The adoption of universal paid FDV leave has provided security, independence and safety for many workers subjected to FDV. Paid FDV leave remains life changing for victim-survivors and is a crucial part of the overall response to FDV.

Impact of the legislation

Addressing family and domestic violence requires complementary action across a range of policy areas from health, housing and criminal and family law to employment.²⁸ Positive interdependence and mutual reinforcement can be achieved through complementary measures in each policy portfolio area. For example, an employment measure – such as paid FDV leave – can encourage other positive complimentary measures and changes in culture and attitudes in workplaces which in turn shift broader societal norms.²⁹ There is clear evidence that the workplace can play a significant role as a driver of cultural change, by raising awareness and normalising discourse around family and domestic violence.³⁰

Acceptance of FDV as a serious and insidious problem (and more recently, as a national crisis) has been increasing over the last decade, including the recognition of the significant costs for individuals, communities, employers and society. FDV has also increasingly been recognised as a workplace issue with significant impacts for workers and employers, with increasing acceptance that workplaces have a critical role in addressing FDV.

The campaign for paid FDV leave over more than a decade has been a crucial part of this shift, as workers, union members, and employers all started having conversations about FDV and what employers can do to support workers who are impacted by FDV. Our affiliates report that paid FDV leave entitlements they have previously won through bargaining has led to improved workplace

²⁸ Chappell, L., & Curtin, J. (2013). Does Federalism Matter? Evaluating State Architecture and Family and Domestic Violence Policy in Australia and New Zealand. *Publius*, 43(1), 24–43, 25.

²⁹ Duncan Report at [12]

³⁰ Paid FDV Leave Bill Senate Report at [2.8].

attitudes towards FDV. The discussion of paid FDV leave meant that FDV was demystified, destigmatised, and prioritised amongst workers. The implementation of FDV leave entitlements and advocacy by unions for proper processes and training has had positive impacts on employers' approaches to FDV and paid FDV leave.

Identifying the workplace dimensions of FDV is an important precursor to creating supportive working environments to assist those who are experiencing it.³¹ The inclusion of this entitlement in the NES has accelerated this, bringing awareness and conversation to workplaces and employers that hadn't previously provided such support. Paid FDV leave focuses attention on the problem of FDV and the actions women must take to survive abusive and violent relationships. It brings the issue further out of the shadows and challenges the silence and stigma experienced by victim-survivors.

Anecdotal reports from frontline workers support this, with those workers reporting to their unions that paid 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.

The evidence shows that workers (and particularly women) are more likely to survive, leave and be able to stay away from violent relationships if they have a secure job and secure income. Women with greater access to resources and better access to external options are more likely to be able to leave violent family and domestic situations.³² This was recognised by the FWC in the 2021 FDV Leave Review, which found that *"the introduction of paid FDV leave...will provide a critical mechanism for employees to maintain their employment and financial security, while dealing with the effects of FDV."*³³ They also observed that *"Income security is necessary for employees experiencing FDV to bear the cost of relocating and to spend time seeking legal advice and attending court proceedings and accessing medical treatment and other forms of support. The absence of such income security may mean employees experiencing FDV do not leave violent relationships."*³⁴

³¹ See Elizabeth Broderick, Sex Discrimination Commissioner, Australian Human Rights Commission (Speech), 24 October 2011, Vincent Fairfax Speaker Series, Melbourne Business School, University of Melbourne.

³² Amin, M., Islam, A.M. and Lopez-Claros, A. (2021) 'Absent Laws and Missing Women: Can Domestic Violence Legislation Reduce Female Mortality?', *Review of Development Economics*, 25(4), pp. 2113–2132.

³³ [2022] FWCFB 2001 at [999].

³⁴ [2022] FWCFB 2001 at [678].

On average, it takes seven attempts for a woman to leave a domestic violence situation. When a woman is able to access financial resources, it may only take three attempts to leave whereas those who lack financial resources can actually take up to 30 attempts to leave.³⁵

Another positive impact of the legislation is that it has allowed unions to more easily negotiate and secure additional entitlements and supportive arrangements through collective bargaining to support employees experiencing FDV and other forms of gender-based violence which improve on the baseline entitlement in the NES.

Our affiliates report that the new NES entitlement has allowed many workers to take the time they need off work to deal with family and domestic violence. The experience of unions has been that the entitlement has:

- kept people in work, ensuring they remain connected to their employment and they don't lose their job, and do not have to choose between attending work or taking safety and other actions in relation to FDV;
- ensured they can access support and services from a safe place (including the workplace where needed); and
- meant they can maintain financial independence and security, making it more likely they can leave and remain away from violence.

This includes many individual examples and case studies, as well as the following general observations:

- Affiliates with members who are front line workers report that they have witnessed a greater uptake of women utilising this leave compared to the previous NES entitlement of unpaid leave or when workers had to utilise other forms of leave such as annual or sick leave;
- Affiliates with members who are front line workers report that since the legislation was passed, they have witnessed more women attending court and being able to navigate and seek protection through the court system.
- Affiliates with members who work at domestic violence services report that many women workers have commented on how difficult it would have been for them to leave a violent

³⁵ News Article: Without money, it takes 30 attempts to leave a violent relationship [Online]
<https://au.finance.yahoo.com/news/30-attempts-domestic-violence-relationship-201141802.html>

relationship if they if they had not been able to access paid leave and remain in paid employment, and that it is a huge relief to know they can engage in the legal process without putting their employment in jeopardy.

- One affiliate has seen a 434% increase in members raising FDV matters between 2020-2021 and 2023-2024.
- Another affiliate reports that it has had 18 inquiries from August 2022-April 2024 regarding FDV leave, compared to 9 inquiries from February 2021-July 2022 (about double the number of inquiries since paid FDV leave was legislated).
- Affiliates with members who are front line workers report that victim-survivors are very grateful for the leave, and often use it over a period of time rather than as one block (eg 1 or 2 days each week) to attend appointments, housing inspections, support services, and so on.
- Affiliates and frontline workers have seen a wide variety of workers access the leave – including vulnerable cohorts of workers such as culturally and linguistically diverse workers, workers in regional and remote areas, and people employed in casual and part time work. Frontline workers report that a significant proportion of people accessing the leave are casual and part time workers. Affiliates report that there are men accessing the leave, although the vast majority of people accessing it are women.

The ACTU has received multiple examples and case studies from unions of workers who have accessed the leave and the positive impact on them, including the following:

- An HSU member and 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, 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 associate nurse unit 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.
- An SDA member who sought union advice and assistance with communication with the company was able to access 10 days plus additional leave, and was able to return to work safely at a different site.
- 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.

- 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.
- A CPSU member accessed family and domestic violence leave. Their partner was psychologically and economically abusive and had stated an intention to take the children overseas without the member's consent. The member was able to use the leave to attend legal appointments and prepare for legal proceedings.
- A frontline worker and ASU member assisted a client experiencing family and domestic violence working as a factory hand and who was not an Australian citizen. Prior to the NES entitlement, the client would have had no support to get out, as she was not eligible for Centrelink entitlements and had limited access to temporary accommodation or government support. The client was afraid they would lose their job, but spoke to her direct manager, who was very supportive and assisted the worker to access paid FDV leave, commencing the following day. The manager had previously had several requests and so was familiar with the process. The client took 10 days paid leave, and because she did not have to worry about any interruptions to her income, was able to move house, leave the violent situation and re-establish herself.
- A full-time registered nurse with 3 young children left a violent relationship after many years with the assistance of a local women's family violence worker who helped her to plan a safe way to leave with her children. Due to the extent of the violence perpetrated over a long period, the woman had no accrued leave. She attended court to seek protective orders for her and her children, and the perpetrator used delaying tactics to postpone the court proceedings. The woman was able to successfully apply to her employer (a private health provider) for paid FDV leave in order to attend the postponed court date to seek protective orders.

Comments from frontline workers provided to the ACTU include:

- “I had an older woman client say she wished the leave had been around years ago as she would not have had to wait until she is 75 to leave her violent husband.”
- “I have had positive feedback about paid FDV Leave. The women I have spoken with have not had any problem accessing it. One woman told me the hardest thing was talking to her boss because no-one knew about the situation at home. Clients who have talked about the leave have said their bosses were very helpful and they had no problems. Not all clients took the full 2 weeks, one woman took one day a week over multiple weeks to go to meetings and house inspections, and her boss was fine about it.”
- “I have had 2 women access the paid FDV leave and they both had no issues accessing this. Their biggest hurdle was to actually request the leave as their managers didn’t know they were going through FDV. But both women said their managers have been very supportive.”

Implementation of the reforms

Our affiliates report that implementation of the new NES entitlement has been relatively straightforward for employers who previously provided an entitlement to paid FDV leave. There are more likely to be implementation issues for employers who have never provided the leave before. Common implementation issues raised by our affiliates are in relation to confidentiality; evidence; lack of support, knowledge and awareness; rostering issues for casual and part time workers; and the need for further education about the entitlement for employers, managers and workers – as there is still a lack of awareness about the entitlement and people are missing out on accessing it as a result.

Some affiliates report that take up is limited and could be stronger, due to a lack of awareness and education about the entitlement amongst employers, managers and workers, and also due to stigma, which still prevents many employees from disclosing FDV and using up other entitlements first such as paid personal leave. Sometimes workers are only accessing FDV leave when they are at a crisis point or they have run out of other paid entitlements. Affiliates expect that as the entitlement becomes more well known and more embedded, take up will increase. On the other hand, some affiliates report a huge increase in members raising FDV matters since the new entitlement was legislated.

Our affiliates report that the constitution of management and executive structures (such as boards) has a determining impact on the support for paid FDV leave and an employer’s responsiveness. One affiliate reports that there is more likely to be less support for FDV leave from employers with male dominated boards or management structures, and that employees are also less likely to see workplace support where management is male dominated and where

workplace diversity is not encouraged or promoted. Similarly, many affiliates report that the supports and culture that surround the entitlement are also very important in ensuring that people feel they are able to access the entitlement and receive support from the workplace. Some affiliates also reported increased resistance to the entitlement in regional, rural and remote areas, due to the risk that in small communities, the perpetrator may be known to the employer through the community.

Most affiliates have successfully advocated and bargained for paid FDV leave and related entitlements for many years, and these entitlements are often more beneficial than the NES entitlement (in terms of quantum of leave, additional workplace supports, and more beneficial definitions and ease of access). The experience of our affiliates with the implementation of these entitlements has been generally positive – workers value and rely on the entitlement, employers are supportive, broadly compliant and able to administer the leave appropriately, and any negativity or challenges in implementation have been reduced and eliminated in the first years of the entitlement being available.

Case study – access in regional area

A CPSU member was due to start a new job at a regional location in Western Australia, having recently moved with her children from interstate to escape family and domestic violence. The member had an active and current Nationally Recognised Domestic Violence Order (DVO) against her former partner.

Prior to commencing the new job, the member's ex-partner had tracked her and travelled interstate to follow her to the first location in WA. She then temporarily located to a different regional location a large distance away for her personal safety and the safety of her children, one of whom had been a witness to the violence. Due to the relocation, the member was unable to present for her first day at work at the first regional site. When she was able to contact her employer, she attempted to access family and domestic violence leave and government housing available to departmental staff, in lieu of the housing that formed part of her original contract at the first regional location. This request was not well received by her employer, whose position was that she had never "enlivened" her permanent employment contract and was therefore not an employee of the department. However, the employer still wished to engage the member's services and was motivated to resolve the industrial dispute. The employer's initial offer to resolve the dispute was to offer the member a fixed term contract for the second regional location however did not recognise the original permanent contract of employment.

On behalf of the member and through providing documentation to evidence her claim, including the DVO, the CPSU was able to negotiate a temporary transfer of employment to the second regional site, inclusive of government housing, while retaining her substantive permanent position at the first location. The member was able to retrospectively access her full entitlement to FDV leave.

The role of unions in implementation and providing information, training and support

Unions have played, and continue to play, a very significant role in understanding and implementing paid FDV leave, including raising awareness in their workplaces and addressing gaps in both employer and employee understanding. Given the history of union bargaining for paid FDV leave, employers regularly consult with unions about the drafting of FDV leave clauses and policy for their workplaces.

As well as providing direct information and support to members, unions often play a significant role as a bridge between the employer and worker, as workers are far more likely to disclose to the person they feel the most comfortable or safe with, who is 'on their side' – i.e. their union. This role often includes education of employers as to their obligations and how to respond in sensitive and compassionate ways.

Disclosures made by employees to their union are often incidental and are made when FDV starts to adversely impact other areas of their work – such as being subject to performance management or disciplinary action for attendance issues. The ACTU has developed training and support for unions, delegates and officials so that they are able to support members in a trauma informed way (including referral pathways), have the necessary conversations with employers, and raise awareness in workplaces.

Case study – unions as a source of support

A member called for advice and support from the SDA as she was experiencing domestic violence and was advised of her entitlement to 10 days paid FDV Leave. A barrier to taking the leave – and the member's economic security – was that she did not want to call her employer (a large supermarket), and indicated she was considering quitting instead.

The SDA called the company and advised that one of its employees was a trusted person for the member, an information officer, and they were the only person the member wished to speak with about the matter, as it was taxing to repeat her story. The member was also very concerned about her confidentiality as she needed to relocate to safe accommodation without the abuser knowing. The member provided written authority to speak on her behalf and the union wrote on her behalf seeking that the company support the member in accessing paid FDV leave.

The member accessed paid FDV leave and contacts the Information Officer periodically with updates. The member has confirmed she had no direct contact with the company during the period of FDV leave, for which she was grateful, reiterating she needed it to be strictly confidential. The member later revealed that the perpetrator is known by store management.

With regular communication between the member, the union and the company, the company facilitated additional leave, and she was welcome back to work safely at a different site.

Unions are also an important source of information for workers more broadly, with many affiliates providing information to workers about paid FDV leave in various forms.

Case study – unions as a source of information

An aged care worker working part time to support her partner and two children began experiencing escalating and high-level violence from her long term and previously non-violent partner when the partner developed early onset dementia. The violence was perpetrated against her and her children. The woman's workplace had recently been visited by a union that provided information about paid FDV leave in community languages and left flyers in the lunchroom. The woman, who wasn't a union member, read the flyers and took one to the employer, asking if she was able to access paid FDV leave. The employer, who had previously been unaware of the NES entitlement, looked up information on a government website, and the woman was able to successfully access the leave. She used the leave to seek support and advice from a dementia support service on dealing with the violence, including respite care for her partner and referral to a social housing organisation so that she and her children could leave the violent home.

Unions NSW provides training about the paid FDV leave entitlement as part of its gender equity training, and has delivered 129 training sessions to 2,468 workers and employers, predominantly in male-dominated, blue collar industries. The training aims to increase knowledge of gender equality and violence and develops skills in prevention, cultural change and being an ethical bystander in the workplace. The training covers the drivers of gender inequality; primary prevention of gendered violence; understanding the causational attitudes and behaviours, facts, definitions and statistics in relation to sexual, domestic and family violence; providing trauma informed responses, understanding the paid FDV leave entitlement; ethical bystander skills and principles of workplace cultural and behaviour change.

Implementation challenges

Evidence

Evidence is a common issue raised by our affiliates, who report that the evidence required by employers can be unreasonable, onerous, intrusive, or difficult for a worker to access. Some managers ask for too much information from victim-survivors. Often the kind of evidence requested by employers contains deeply personal and distressing information which workers will not want to share with their employers. Research has shown that evidentiary requirements have deterred some victim-survivors from using leave entitlements due to the shame of providing sensitive information, difficulties in getting access to documents, and concerns about how the

information would be recorded.³⁶ Requirements for evidence can therefore be a barrier that makes accessing the leave more difficult, and which may reduce safety for people experiencing FDV.

Evidence requirements are also one of the most common issues raised by employers in the training provided by Unions NSW. Some employers express that they expect evidence in the form of police reports, doctor's certificates or counsellors reports. Relevant considerations in relation to evidence (which are emphasised in the training) are:

- The person may be very unsafe, be facing many barriers and have multiple things they need to attend to, and this may continue over an extended period. Further, evidence options (other than a change of address or next of kin) may not be readily available or accessible.
- Only a small proportion of people who experience paid FDV leave will go to the police, and if they have a protection order most won't want to give it to their employer given the private and distressing information contained in such documentation.
- Many won't talk to their doctor about experiencing FDV and may not have identified FDV as the cause of any medical issues they present with, and won't feel comfortable disclosing to their doctor in order to get a medical certificate.
- Counsellors are often not accessed until after a person has reached a safe situation, and can sometimes be a long time down the track.
- Evidence of this nature is intrusive and contains deeply personal information which many workers won't want to share with their employers, and can be a barrier to employees accessing FDV leave.
- Requirements for evidence can also present difficulties in relation to the storing of documents and the responsibility to maintain confidentiality about those records.
- If some form of evidence must be provided, then a very brief statutory declaration should suffice.

Some large employers in NSW who have engaged with the Unions NSW education and training have taken the opportunity to engage in significant cultural change. As part of their approach to FDV, they do not require any form of evidence from workers accessing FDV leave, which is of significant benefit to employees accessing the leave and also to employers, as they do not have

³⁶ Fitz-Gibbon, K, Pfitzner, N, MicNicol, E & Rupanagudi, H. (2021), Safe, thriving and secure: Family violence leave and workplace supports in Australia, Monash University.

to ensure that those documents are stored confidentially. The employers decided that the additional impact on the person of requiring evidence is detrimental to the support they are providing to employees during a difficult time in their life, and that given the many barriers and issues the person faces, any additional requirements other than the person's word is not required.

One affiliate also reports that it has been working with employers on improving their approach to evidence requirements. Some employers in that industry 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.

Another affiliate has negotiated less onerous evidentiary requirements through bargaining. In most cases, evidence will not be required 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 is only able to request evidence in the form of a statutory declaration, unless the employee chooses to provide another form of evidence. Once an employee has disclosed FDV and established the circumstances, they are not required to repeatedly explain or provide evidence in support of taking leave.

These issues suggest that there is a need for further education and training for employers and better guidance on the type and scope of evidence that can reasonably be required, and the difficulties that providing evidence can present for victim-survivors. Further, 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.

Case Study – evidentiary requirements and other implementation challenges

An HSU member and 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.

Confidentiality

Some affiliates have reported some difficulties with employers not maintaining confidentiality, although we did not receive any specific examples of this. They have also reported that many workers are fearful to access the entitlement, or choose not to, because of confidentiality and privacy concerns. For some, there is a fear that the perpetrator may become aware of their plans, especially where they work for the same employer or there are workplace friendships that extend beyond the workplace. Others are concerned that their personal life and circumstances may become common knowledge in the workplace, and that they may face judgement, victim blaming or stigma as a result.

Other affiliates have reported that they had broadly positive experiences with management of confidentiality issues, and that managers have tended to be supportive and empathetic, HR and payroll practices have been discrete, and they have been able to achieve minimal handling and retention of sensitive employee evidence which demonstrates the need to take FDV leave.

There is a need for employers and workers to be educated about the confidentiality requirements to ensure that all employers are aware of their obligations, and that workers have confidence that those obligations will be met.

Lack of support, awareness and knowledge

There is a need for further education of employers, workers and the community regarding 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. Our affiliates report that where workers have trouble accessing FDV leave, they have often ended up leaving their employment, meaning that employer responses are critical to the safety of workers.

Affiliates report variously that:

- Workers are not adequately informed by their employers about their entitlements or how to access the leave.
- Workers can face unreasonable and intrusive questions from some managers about the reasons for taking the leave, including the expectation for them to share unnecessary detailed personal information about their circumstances.
- Managers may also question the need to take a whole day of leave and may seek to limit approval to 1-2 hours where the person is attending a specific appointment. This fails to take into account the toll taken on a person's capacity to work by the stress of their experience.
- Some workers have also experienced some initial pushback from their manager where seeking to access paid leave to deal with violence not relating to an intimate partner. This underscores a lack of awareness of other forms of family violence and that the NES entitlement is broader than intimate partner.
- Although it is well known that FDV can affect victim-survivors for years, some managers lack understanding of the time required for a victim-survivor to deal with violence, including the time it takes to do safety planning, deal with risks, leave a relationship, and remain safe after leaving. Victim-survivors may avoid asking for more leave for fear of frustrating their managers, highlighting a lack of confidence in employer understanding of FDV.

A number of specific examples and case studies provided by our affiliates demonstrate that there is still a need for education regarding the entitlement and how to support employees experiencing FDV.

- An SDA member was called in for a meeting by her manager to talk about the time she had been having off work. The manager was aware of the FDV issues the member was experiencing. The manager told the member "it wasn't good enough" leaving early from shifts and taking time off because her kids were sick. The member did not access FDV

leave as she didn't know at that time that it existed, and it was not offered to her by management. They also did not offer any mental health services or other support.

- An SDA member who needed to go into protective custody with her daughter asked her manager (who was in a compliance role) if she could access FDV leave. The manager told her she couldn't access it as she didn't have any sick leave, and FDV leave is just "a fancy way to use sick leave without a certificate."
- An assistant store manager and SDA member experienced significant FDV, which her employer knew about. When her KPIs were not met (despite there being valid reasons for this including resourcing issues within her team), she was told she could go to a lower level role in another store or go onto a performance improvement plan. The member initially accepted the role and a pay cut, however after she was further marginalised she took all of her leave and resigned.

Case study – lack of workplace support

A UWU member 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 ID had been terminated, she was unable to access EAP services which included 6 free counselling sessions.

The member is moving towards returning to work, but in order to do so she needs to reactivate her ID number which requires her finding work within the sector. Her union is supporting her to arrange a return to work. 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.

Response to employer concerns

This section addresses some potential concerns that employers might raise in this review, and which have also been dealt with previously when the Paid FDV leave Act was passed and during the FWC award variation cases.

Cost to Employers

Some employers and employer representatives have said that it isn't fair to make employers 'bear the cost' of family and domestic violence,³⁷ and that this form of leave should be administered through the social security system instead. The concerns that paid FDV leave would impose an unreasonable financial burden or lead to unmeritorious claims have not been realised.

The cost to business from FDV through existing absenteeism alone is already greater than the cost of providing paid FDV leave. The existing cost to business is magnified when considering the costs associated with FDV related turnover that could be avoided by employees maintaining contact with the workplace through paid FDV leave, as well as the increased costs of absenteeism if a person is forced to remain in a violent situation out of economic necessity.

Paid FDV leave is utilised by a relatively small proportion of the workforce (to whom it makes a huge difference) and represents a small cost to employers which is offset by the various benefits of providing leave such as reduced turnover and improved productivity.³⁸ Further, putting aside the question of cost, this objection ignores the fact that FDV is a community problem and all sectors of the community, including business, have a part to play in addressing it, and that this contributes to broader and significant attitudinal and cultural change.

There are many reasons why paid FDV leave should not be administered through the social security system:

- It is already a very complex system to navigate in connecting with services and leaving violence. Having to navigate yet another complex system is not in the interests of victim-survivors experiencing family violence, and could put their safety in danger if there are delays, issues, or difficulties accessing the payment.

³⁷ See for example [2022] FWCFB 2001 at [224], [236], [770].

³⁸ Fiona Smith, Domestic violence leave a small cost to employers but priceless to victims, Guardian (online, 9 February 2017) [Domestic violence leave a small cost to employers but priceless to victims | Guardian sustainable business | The Guardian](#)

- It is paramount that there is no disruption to the income in a victim-survivor's bank account. If victim-survivors suddenly stop receiving payments from their employer and start receiving welfare payments instead, that is an immediate alert to perpetrators of violence that they may be planning to leave, and can significantly escalate the situation, putting the victim-survivor's safety and life in danger. This is why specific regulations relating to payslips exist, to prevent perpetrators being alerted to what victim-survivors might be planning.
- This argument also completely ignores the importance of paid FDV leave being a workplace entitlement, and the many associated benefits, such as the maintenance of the employment relationship; a woman being able to leave violence due to having economic security; an employer knowing about FDV, which can enable them to support employees in other ways; and the contribution this entitlement makes to cultural and attitudinal change in workplaces, which in turn shift broader societal norms. Workplaces have a key role to play as a source of critical support for people experiencing FDV, and paid FDV leave is a key part of creating supportive working environments.

Small Business Employers

Some have argued that it is onerous and burdensome for small business in particular to provide paid FDV leave. In addition to the reasons discussed above as to the cost of FDV, there are specific reasons why small business employees should not be treated differently to other employees in relation to paid FDV leave:

- A person's experience of family and domestic violence, its severity and its impact is not determined by whether their employer hires 14 or 16 people. Their access to paid leave should not depend on this either.
- The 2021 FDV Leave Review also considered whether or not the entitlement should apply to small business.³⁹ The decision drew no distinction (despite invitations to do so from employer groups) between small and larger businesses and their employees. Rather, the leave which would have been brought about by that decision would have flowed to all of those employees equally.
- The impact of FDV does not diminish in a small workplace. On the contrary, in small workplaces where people work closely together, the impact upon other employees and the

³⁹ [2022] FWCFB 2001.

workplace is likely to be magnified where victim survivors are taking unpaid leave, having sporadic absences, or working at lower productivity.

- Small businesses are more likely to represent more tightly knit workplace communities in which there is greater connection between the owners of business and their workplaces. This is more likely to lead to supportive working environments where small business employers are attuned to incidences of FDV and see the value in providing paid FDV leave.
- As evidence of this, prior to the entitlement to 10 days paid FDV leave being legislated, a wide range of small businesses already offered their staff this entitlement. A comprehensive review of all active enterprise agreements completed in the 2021 FDV Leave Review showed that more than 1 in 3 agreements (34.7%) with the entitlement covered a business with 15 employees or less.⁴⁰
- Finally, our affiliates have not reported any correlation between the size of an employer and the experience of members in accessing paid FDV leave. Rather, the factor that is the most influential is how the situation is handled by the relevant manager.

Affiliates who have members working in small business or whose clients work in small business report that the cost of providing paid FDV leave is far outweighed by the benefits of retaining workers. When workers are disconnected from their employment, there are significant associated costs for the employer, including the loss of an experienced worker, recruitment, interviewing, onboarding, training, and bringing in a new worker without the same capacity due to limited experience. These costs are particularly significant for small business. Affiliates report that many small businesses have been very supportive of the new NES entitlement and have gone above and beyond to help their workers leave violent relationships. This is consistent with evidence given to the 2022 Senate Inquiry on the Paid FDV Leave Bill from small businesses that providing the leave was beneficial and positive for the business as well as for employees, and not onerous, with some emphasising that they could not afford to lose ‘skilled, committed and experienced’ employees, and that the cost of providing the leave was offset by maintaining the employee and not having to engage in recruitment, training and onboarding.⁴¹

Affiliates who successfully negotiated paid FDV leave with small employers or small worksites prior to the NES entitlement being legislated report that the entitlement was easily deliverable by these employers and that they had success in normalising this entitlement across smaller employers.

⁴⁰ Flinders University Research for the FDV leave case.

⁴¹ Paid FDV Leave Bill Senate Report at [2.34]-[2.38].

Case study – 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.

FDV leave as a disincentive to hiring women

A perennial argument that has been raised as an objection to almost all gender equality employment measures introduced over many decades (including equal pay, parental leave, FDV leave, and so on) is that employers might stop hiring women, or be reluctant to do so. This argument was put in relation to paid FDV leave by a range of parties from the then Minister for Women Senator the Hon Michaelia Cash to some employer groups in the recent 2021 FDV leave case.⁴² On the contrary, there is a strong correlation between improved workplace rights for women and improved levels of their workforce participation, as Chart 9 from the FWC 2021 FDV Leave Review shows (shown below).⁴³

This chart was prepared by the Fair Work Commission’s economic research team, and charts female workforce participation against various key arbitral and legislative changes relating to leave, gender equality and equal pay. The Full Bench said: “The chart does not appear to suggest that the various changes to the award and legislative context have had any adverse impact on the female workforce participation rate. Indeed it is arguable that these changes have *supported* the consistent rise in the female participation rate.”⁴⁴

Accordingly, the Full Bench rejected the submission that paid FDV leave may be a disincentive to the employment of women, noting that in the absence of an evidentiary basis it was mere speculation. It further noted that refusing to employ prospective female employees because they might exercise an entitlement to access paid FDV leave would contravene the general protections provisions of the FW Act.⁴⁵

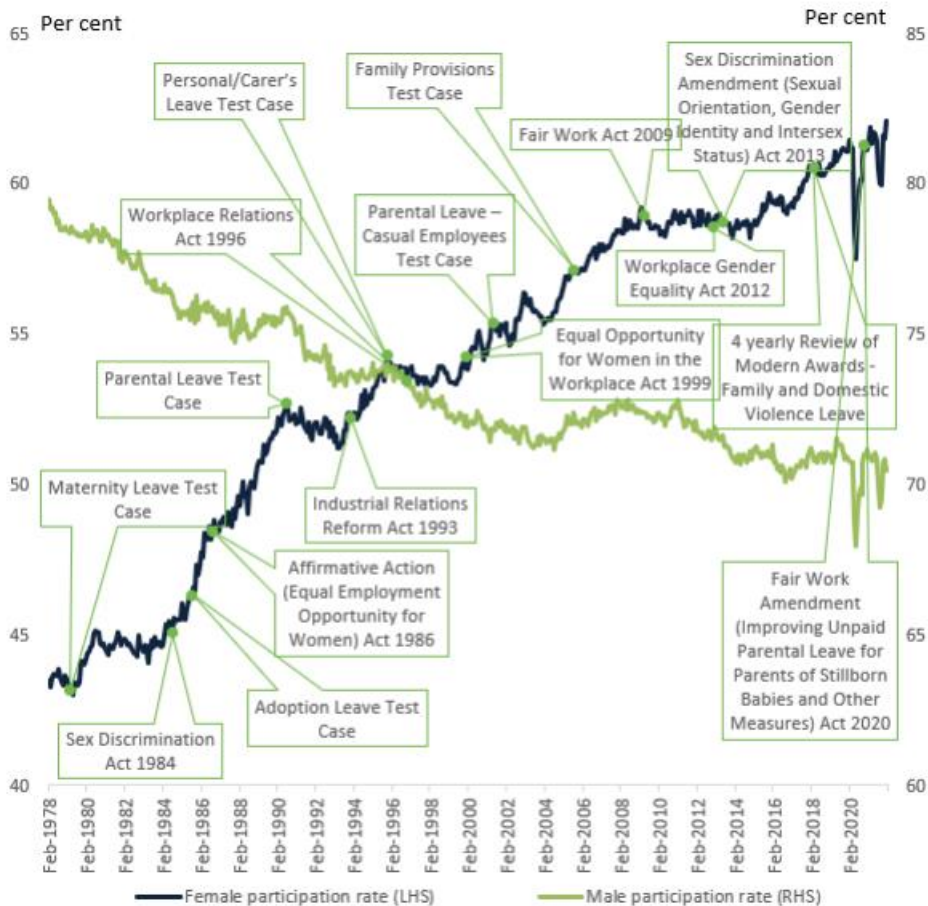
⁴² Noel Towell, 27 May 2016, Canberra Times (online) [Domestic violence leave would mean fewer jobs for women: Cash | The Canberra Times | Canberra, ACT](#); [2022] FWCFB 2001 at [920] – [924].

⁴³ [2022] FWCFB 2001 at [919].

⁴⁴ *Ibid.*

⁴⁵ *Ibid* at [924]-[926].

Chart 9: Female workforce participation following various key arbitral and legislative changes relating to leave, gender equality and equal pay



Improvements

This section covers what could be done to address the implementation challenges discussed above, the lack of knowledge and awareness, and possible improvements that could be made to the entitlement.

The need for more education and training

It is evident from the examples and case studies provided that more education and training is required to ensure employers are fully aware of the new entitlement and their obligations, as well as how to respond and handle requests in appropriate, sensitive and supportive ways. In particular, as discussed above, there is a need for education around evidence and confidentiality requirements.

Many workers do not know they have an entitlement to paid FDV leave, especially those in insecure employment, students and workers on visas. These vulnerable groups have both a limited understanding of their rights but also fear about the potential repercussions of accessing paid FDV leave. One affiliate representing frontline workers members reports that several

frontline domestic violence services and women's services have raised the fact that their clients are often completely unaware of the entitlement, and it is only when they interact with the service to seek assistance that they become aware of the entitlement. There are also not enough resources available for workers from diverse cultural, linguistic, gender identity, sexuality and other background. The lack of dedicated information compounds existing barriers to discussing FDV such as cultural norms and stigma that can be particularly acute for such vulnerable groups.

Government should fund further education, training and awareness building activities that are developed and rolled out by both unions and employer organisations, 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.

Further, there is a need for more education amongst some groups of frontline workers, to ensure that all services victim-survivors interact with are able to provide them with this information. One affiliate particularly highlighted the need for GPs (who are often the first point of contact for victim-survivors) to be well informed about the availability and specifics of paid FDV leave.

Finally, NGOs that provide the first point of contact and are skilled in trauma informed responses are in a good position to provide this information effectively (including rape, domestic and family violence services; refuges; homelessness, housing and tenancy services; family support services, community legal services, health and mental health services, and specialist women's services). Government should fund NGOs to provide comprehensive guidance on the entitlement and how to access it, to ensure more victim survivors are informed about and can utilise paid FDV leave, and to reduce barriers to accessing the leave.

Extension to all workers

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.

These insecure forms of employment are becoming increasingly common in feminised and low paid work, particularly in the health and care sectors. For example, in disability support and home and community aged care, there are an increasing number of sole traders, sub-contractors and independent contractors (gig workers). This leaves some of the most vulnerable workers who are more likely to experience FDV without access to this lifesaving entitlement. The 2022 Paid FDV Leave Bill Senate Report noted the government's commitment to regulating 'employee-like' forms of work such as in the gig economy and said there was merit in examining how the entitlement

could be extended to those groups of workers in the near future.⁴⁶ Given the passage of the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (Cth), it is timely that such an extension is considered.

Legislative drafting

There are three elements of the current legislative drafting that could be amended to improve the operation of the entitlement.

Firstly, Note 1 of s106B of the FW Act contains non-exhaustive examples of actions that might be taken to deal with the impact of FDV. These examples 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. They also don't specifically contemplate that the leave can include time for general recovery. The examples therefore don't reflect the breadth of the legislative entitlement that allows people to access leave to "do something to deal with the impact of family and domestic violence." Adding one or two further examples to illustrate the breadth of the entitlement, without making the list exhaustive, could assist. These could include "accessing culturally appropriate supports" and "time taken to recover."

Secondly, 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". FDV is defined as being behaviour that 'seeks to coerce or control the person' **and** 'causes the person harm or to be fearful.' The 'and' could be replaced with 'or.' This 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), which uses 'or' rather than 'and.'

The ACTU notes the comment made by Greens senators in the 2022 Paid FDV Leave Bill Senate Report regarding the desirability of harmonising definitions of FDV across jurisdictions. The ACTU is not aware of any issues that have arisen due to different definitions of FDV that may operate in different jurisdictions and states and territories, but considers that aligning the definition of FDV in the FW Act with the definition in the Family Law Act is desirable. Whether definitions should be harmonised across all state and territory jurisdictions is something we would need to give further consideration to. The case study below illustrates potential issues that may arise.

⁴⁶ Paid FDV Leave Bill Senate Report at [2.89].

Thirdly, s106B(3) defines 'close relative' as a member of a person's immediate family (defined in s12), or who is related to the person according to Aboriginal and Torres Strait Islander kinship rules. 'Immediate family' does not contemplate 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. In many cultures, kinship extends beyond the nuclear family model and includes aunts, uncles, cousins and community elders. FDV is also often perpetrated by a former intimate partner's immediate family. This leaves some workers experiencing FDV without protection, including workers from diverse cultural backgrounds. One of our affiliates reports that a member was refused access to paid FDV leave by the employer on the basis that it was a non-Aboriginal and Torres Strait Islander cultural kinship relationship.

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.

Case Study – potential definitional issues

The SDA assisted a member in her 60s, who is the mother of a victim-survivor of FDV. As a result of the violence, the member's daughter moved with her 5 young children into the member's home. The member exhausted all of her leave due to the new high demand caring responsibilities for the children, and would often have to leave work and drop everything else to pick the kids up from school when their father failed to do so.

The member was denied access to the paid FDV leave entitlement as she was not herself experiencing violence by a member of her immediate family or close relative (rather, her daughter was). The employer was accommodating with roster flexibility but the member lost take home pay due to the ongoing impact of FDV on her family as she had no paid leave left.

There was no intervention order in place against the father of the children. However, the member would have been eligible for protection through an intervention order in Victoria as they can be used to protect children and people supporting the protected person. If there had been an intervention order in place protecting the member, this would have led to a situation where she could access an intervention order, but not paid FDV leave.

Rostering

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. One example of a way to overcome these difficulties is an enterprise agreement provision that has been negotiated by one of our affiliates that allows for casuals who take FDV leave on a day that they are not rostered to work being paid for 5 hours for the day at ordinary rates of pay.

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