



7 June 2024

Flinders University Review Team
FDVLeaveReview@flinders.edu.au

Dear Review Team,

Thank you for the opportunity to comment on the national Paid Family and Domestic Violence Leave NES entitlement review.

Unions NSW supports the continuation and expansion of this entitlement.

Unions NSW supports the submissions to this review from the Australian Services Union, the Australian Council of Trade Unions and Affiliates.

Recommendations

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| Recommendation 1 | That the current eligibility criteria remain unchanged. |
| Recommendation 2 | That the current 10 days paid leave be increased to 20 days per annum. |
| Recommendation 3 | That the current reallocation of leave used, on the anniversary of employment continue. Further, Unions NSW supports employees being able to draw upon their subsequent years allocation when their circumstances are substantial. |
| Recommendation 4 | That the entitlement continues to be available from the commencement of employment. |
| Recommendation 5 | That the entitlement continues to be paid at the full rate including allowances. |
| Recommendation 6 | That employers be educated on their confidentiality obligations in relation to the entitlement, and penalties be applied where they are negligent. |
| Recommendation 7 | That evidence requirements be amended so the only evidence required is the person's word. |

Introduction

Unions NSW is the peak body for trade unions and union members in New South Wales. It consists of 48 affiliated trade unions and Trades and Labour Councils, representing approximately 600,000 workers across New South Wales. Affiliated trade unions cover the spectrum of the workforce in both the public and private sectors.

Unions NSW understands:

- On average, one woman is killed every nine days by a current or former partner.
- In the year 2021/22, 4,620 women aged 15 years and over, (average of 13 women/day) were hospitalised due to family and domestic violence.
- 1 in 4 women (27%) has experienced violence, emotional abuse, or economic abuse by a cohabitating partner since the age of 15.

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- 1 in 3 women (31%) has experienced physical violence since the age of 15.¹
 - From 1 January to 23 April 2024, 25 women have died in Australia from gender-based violence².
 - In 2021/22 it is estimated that the cost to the Australian economy of violence against women and their children was \$15.6 billion³
 - In 2022/23, 1 in 6 women in Australian workplaces experience domestic violence⁴.(ABS)
- On any measure Family and Domestic Violence is a crime of national significance. It is also a crime that impacts the Australian economy and Australian workplaces.

Short History of the Paid Family and Domestic Violence Leave Entitlement

In 2008 the DV Clearing House, led by Ludo McFarren, identified challenges women in the workforce confronted when seeking to leave a violent relationship.

They saw the workplace problem as 2-fold:

- the loss of income if the person had to take unpaid leave to plan and establish their escape added to their financial disadvantage. In addition, if they were making their plans while in the relationship, as offenders often monitor income, any loss of income could alert the offender to their actions, and
- for many their movements were closely monitored. Often the only time they had any freedom was when the offender thought they were at work.

Women's services quickly came on board and began raising the need for paid Family and Domestic Violence leave.

In 2010 the enterprise agreement with Surf Coast Council became the first agreement in Australia to provide paid Family and Domestic Violence leave. From 2010, unions prioritised bargaining for paid Family and Domestic Violence leave in their members' collective agreement campaigns.

In 2015 a Court Support worker rang her Union, the ASU NSW-ACT Branch, and said 'A woman was in court this morning applying for an AVO to protect her and her children from a violent man. Her boss rang and said if you don't come to work you will get the sack'. Her choice was protection from violence or poverty. The woman went to work. The ASU NSW-ACT Branch, recognising the inconsistency for those who did and didn't have access to the paid family and domestic violence leave entitlement in their agreements initiated the 'We won't wait' campaign which was supported by Unions NSW.

The 2015 ACTU congress adopted a minimum of 10 days paid FDV leave in the NES as their policy.

In 2018 the Fair Work Act was amended to include an entitlement of up to five days unpaid family and domestic violence leave in the national employment standards. In 2021 the ALP promised that if elected they would introduce paid family and domestic violence leave as a national employment standard.

On the 28 July 2022 the Fair Work Amendment (Paid Family and Domestic Violence) Bill 2022 was introduced into Parliament and was passed by both Houses on the 27 October 2022.

¹ [Quick facts | Our Watch | Preventing violence against women - Our Watch](#)

² [Eleven more women have died violently in 2024 compared to the same time last year - ABC News](#)

³ [Economic cost of violence against women and their children | Department of Social Services, Australian Government \(dss.gov.au\)](#)

⁴ [1 in 5 Australians have experienced partner violence or abuse | Australian Bureau of Statistics \(abs.gov.au\)](#)

Important Inclusions in the Paid Family and Domestic Violence Leave National Employment Standard

Eligibility Criteria

The entitlement provides leave for those who were experiencing family or domestic violence *to do things to deal with the impact of the violence where it was impractical for them to do that thing outside of their work hours.*

This broad definition recognises that each person's situation and needs are specific to their circumstances. Influences may include the needs of dependents, the person's geographical location and other intersectional considerations such as age, cultural heritage, disability etc. The eligibility criteria enables the person:

- to access services which have specific operating hours that clash with their work hours e.g. banks, legal services, Courts, real estate agents, medical/dental services, schools etc, and
- where their movements are monitored by the offender, as part of the power and control dynamic of family and domestic violence, to do these things without offender knowledge.

Unions NSW agrees with the eligibility criteria of the entitlement and recommends it remain.

10 days paid leave

The entitlement allows for 10 full days leave per annum regardless of employment status. Unions NSW agrees with this component of the Standard. However, increasing over time the Standard to 20 days paid leave is recommended. Leaving a violent relationship is a highly detailed and often dangerous process. This can be compounded by intersectional disadvantage, geographical location, the impacts of trauma, and the needs of any dependents. Feedback to Unions NSW suggests that for some women, planning their escape includes consideration of timing the escape to coincide with their anniversary of employment so they can access re accredited leave. Unions NSW holds concerns for the safety of women who may be staying longer in violent situations. They may do this to minimise the financial impact on their family, or so they can undertake the required actions without the offender becoming aware, through monitoring of payslips and payroll systems, that they have taken personal or unpaid leave.

Re allocation on the anniversary of employment

Leaving family and domestic violence is rarely quick, easy, or straight forward. Family Law Court matters, recovery from trauma and establishment of safety from a persistent offender can take years. For some, the process may include reconciliations each with hope of change, and the subsequent realisation that escape must again be actioned. Unions NSW supports the reallocation of any leave taken on a person's anniversary of employment as a measure to ensure their continued support as they move to safety and recovery. Further, Unions NSW supports employees being able to apply for their following years allocation to be drawn upon when their circumstances are substantial.

The standard be available from the commencement of employment

Unions NSW supports this criterion. Those experiencing family and domestic violence may be in situations where waiting for an entitlement to be available may be a detriment to their safety.

The entitlement is paid at the full rate including allowances

Many living with family and domestic violence will experience invasive monitoring by the offender of all aspects of their life. This often includes financial monitoring and control. Any change in expected income will be noticed. It is critical to the person's safety that the offender is not alerted to the persons plans. The expected pay including any allowances must be paid.

Confidentiality

Unpaid Family and Domestic Violence leave has been available in the National Employment Standards since 2018 and then as a paid standard since 2022. Anecdotal evidence suggests many are choosing not to access the entitlement. The common reasons cited is concerns about confidentiality. For some, there is fear the offender may become aware of their plans, especially where the offender works for the same employer, or where there are workplace friendships that extend beyond the workplace. For others there are concerns their personal life may become common workplace knowledge. Unfortunately, many victim blaming attitudes continue to exist in relation to family and domestic violence. This is often reinforced by offenders where they will seek to blame the person experiencing their violence for what is occurring. For some, the concern that they may in some way be found to be inadequate or at fault may stop them from accessing the entitlement. Unions NSW recommends that actions be taken to educate employers on their confidentiality obligations and that penalties be imposed where they are negligent in their responsibilities.

Evidence for Eligibility

The evidential requirement is *if required, evidence that would satisfy a reasonable person*. Unions NSW considers this to be onerous. The person may be very unsafe, be facing many barriers and have multiple actions they need to attend to. Further these impacts may continue over an extended period. Unions NSW has engaged with People and Culture Units of large employers who have decided that the additional impact on the person of requiring evidence is detrimental to the support they are providing to valued employees during a difficult time in their life. The Units have also identified that evidence options other than a change of address or next of kin may not be readily available. They also identified that these options are not evidence of family or domestic violence. Less than 20% of people leaving a violent relationship engage with Police, and many have not informed their Doctor of their circumstances. The People and culture Units have taken the position that, given the many barriers and tasks the person faces, any additional requirement other than the person's word, is not required. Unions NSW considers this to be best practice.

Unions NSW thanks you for the opportunity to participate in this review and seeks to reiterate the importance of the paid Family and Domestic Violence Leave Standard as National Employment Standard with no reduction in the measures currently in place.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Karen Willis', with a long horizontal stroke extending to the right.

Karen Willis
Gender Equity Officer