



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

Flinders University

June 2024

Acknowledgements

We acknowledge the Traditional Owners of Country, recognise their continuing connection to land, water, and community, and pay respect to Elders past and present.

We acknowledge the victim-survivors of domestic, family, and sexual violence who we work with and their voices and experiences which inform our advocacy for justice, equality, and safety for women.

About Women's Legal Services Australia

Women's Legal Services Australia (**WLSA**) is the national peak body for 13 specialist Women's Legal Services in each state and territory across Australia, including two First Nations Women's Legal Services. We provide a national voice for Women's Legal Services to influence policy and law reform, and advocate to increase access to gender-specialist, integrated legal services for women.

About Women's Legal Services

Women's Legal Services provide high quality free legal services for women, including legal advice and representation, support services and financial counselling, community legal education, training for professionals, and engage in advocacy for policy and law reform. Some Women's Legal Services have operated for more than 40 years.

WLSA members include:

- Women's Legal Service Victoria
- Women's Legal Service Tasmania
- Women's Legal Service NSW
- Women's Legal Service WA
- Women's Legal Service SA
- Women's Legal Service Queensland
- North Queensland Women's Legal Service
- First Nations Women's Legal Service Queensland
- Women's Legal Centre ACT
- Wurringa Baiya Aboriginal Women's Legal Centre NSW
- Top End Women's Legal Service
- Central Australian Women's Legal Service
- Katherine Women's Information and Legal Service

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Executive Summary

Women's Legal Services Australia (**WLSA**) advocated for the introduction of paid family and domestic violence leave (**FDV leave**). We are pleased to contribute to this review of the operation and impact of the amendments to the *Fair Work Act 2009* that enshrined FDV leave as a universal entitlement in the National Employment Standards.

WLSA also recognises the key role that Ludo McFerran had in the recognition of family and domestic violence as a workplace issue and highlight her ongoing concerns with the implementation of the paid leave entitlement.¹ In her words, "Unless the entitlements are well implemented, employees informed of their rights, managers and HR personnel trained to manage issues such as confidentiality and safety, we will fail to make that difference for which the leave intended."

Women's Legal Services have expertise in domestic and family violence and the experiences of women with intersecting workplace issues. In our experience, paid FDV leave can be of significant assistance to women, but we have also seen that in many cases the availability of the leave is not well known by both employees and employers, or the process of applying for the FDV leave has been difficult and resulted in negative consequences for the employee.

We make the following recommendations for this Review to consider:

1. The Federal Government should fund an awareness raising campaign regarding the availability of paid FDV leave, including a public education campaign and the development of accessible and culturally appropriate resources.
2. The Federal Government should work with key stakeholders such as employers' associations, industry groups, unions, and key statutory agencies like the Fair Work Ombudsman, Fair Work Commission, the Federal Circuit and Family Court of Australia and SafeWork to promote the awareness and use of the existing Fair Work Ombudsman resources on FDV leave by employers.
3. Targeted education materials and resources should be developed and delivered through the Law Council of Australia in conjunction with the Federal and State/Territory Attorneys General to assist lawyers, judicial officers, and court staff who are not employment specialists, but who will be advising and interacting with women engaged in legal systems such as the criminal justice or family law system, as to the availability of FDV leave in their workplaces.
4. The Federal, State and Territory Governments should fund Women's Legal Services to deliver training to other frontline and community organisations on the paid FDV leave entitlement, how it works in practice, how to support a client who may want to access it, and how to refer to a specialist organisation if there are issues accessing the leave.
5. A wider range of examples should be provided in the Fair Work Ombudsman guidance material to demonstrate:

¹ Ludo McFerran (2022) "Opinion piece: Paid domestic violence and family violence leave: A turning point in the recognising DFV as a workplace issue?" Accessed 30 May 2024 at https://www.monash.edu/_data/assets/pdf_file/0006/3063327/McFerran-2022_Opinion-piece.pdf

- a. an employer who does not require any evidence to be provided;
 - b. the types of evidence that can be used;
 - c. a broader range of behaviours that could be considered domestic and family violence, including systems abuse; and
 - d. examples of systems abuse that can occur, including an explanation of why someone is experiencing domestic and family violence may also be accused of systems abuse.
6. The evidence requirement should be removed from section 107(3) of the Fair Work Act so that there is a presumption in favour of granting FDV leave without the need to provide evidence, provided the notice requirements are met.
 7. The Federal Government should set up a scheme (similar in nature to the Fair Entitlements Guarantee), where an employee who cannot access paid FDV leave from their employer can apply for the equivalent payment.
 8. There should be recognition that FDV leave is part of a broader package, and governments need to fund the development and rollout of the broader package.
 9. The current FDV leave provision should be extended to also cover sexual violence.

A bare legal entitlement is worthless if it does not translate into tangible, accessible benefits for employees, or as Ludo McFerran succinctly puts it: “the turning point becomes a dead end.”

Awareness of the availability of paid FDV leave

Amongst employees/our clients

In our experience, employees have a low level of literacy or awareness of their basic employment entitlements and the source material of these entitlements. For example, our clients generally do not know whether their employment is covered by a Modern Award or Enterprise Agreement.

Generally, awareness of other forms of traditionally available leave such as personal, compassionate and annual leave are quite strong, however we note these entitlements have been in place for some time and we still see some confusion and misunderstandings about accessing these entitlements.

This means that unless there are active efforts by government to raise awareness of paid FDV leave through an awareness raising campaign, we expect that there will continue to be a low level of awareness of paid FDV leave.

This is our experience even among clients who we would expect to have a good baseline understanding of their entitlements (i.e. clients who have lived in Australia their whole lives, speak English as their first language and there are resources available to them to inform themselves). For women who may have immigrated to Australia and have less understanding of their entitlements due to language and other barriers, these vulnerabilities are greater.

Recommendation 1

The Federal Government should fund an awareness raising campaign regarding the availability of paid FDV leave, including a public education campaign and the development of accessible and culturally appropriate resources.

Amongst employers

Since the introduction of this entitlement as an element of the National Employment Standards in February 2023, Women's Legal Services have advised numerous women who have struggled to be able to access FDV leave based on their employer's misconceived ideas of when the leave is to be used and who is eligible to use it. One particularly shocking story from one of our clients, which has been anonymised, is detailed below:

Case Study – Sophie's story

Sophie was employed by a large government department. She was experiencing family and domestic violence and getting family law and social work support from a Women's Legal Service. The employment team gave Sophie advice about accessing FDV leave.

She approached her manager and requested the leave and was told that she was not eligible for this kind of leave because she had not accessed the 'Escaping Violence Payment' from Centrelink. Sophie decided not to challenge this decision and had to access unpaid leave for future FDV related appointments and court events. She was later transferred onto the crisis line operated by the employer due to her 'lived experience' of violence.

A key theme among the women assisted by Women's Legal Services is that when they have disclosed their experiences of family and domestic violence their employers have not suggested to them that they access FDV leave or made them aware of this entitlement. We suggest this is due to a general lack of awareness of employers to this entitlement. This is true across small business, private industry, Commonwealth and State Government Departments.

The Fair Work Ombudsman website contains a page setting out the legal elements of the paid FDV entitlements. It contains a short YouTube video on the leave, and links to an employer guide, fact sheet and courses on difficult conversations in the workplace for employees and managers. In our experience these resources are not well known.

Interestingly, we have found that often when women have made their employer aware of the FDV entitlement, and directed them to the FWO resources, the leave was granted without any further issues.

Recommendation 2

The Federal Government should work with key stakeholders such as employers' associations, industry groups, unions, and key statutory agencies like the Fair Work Ombudsman, Fair Work Commission, the Federal Circuit and Family Court of Australia and SafeWork to promote the awareness and use of the existing Fair Work Ombudsman resources on FDV leave by employers.

Amongst legal practitioners

Women's Legal Services offer a range of different types of legal advice, representation and support services to women experiencing violence, including in the areas of family law, family violence, child protection, victims' compensation, migration law, sexual assault, employment law, discrimination law, and sexual harassment. Our services provide an integrated and multi-disciplinary approach to service provision, which generally consists of a team of social workers, financial counsellors, First Nations caseworkers and other support staff who work alongside solicitors in an integrated practice model to offer wrap around support to women experiencing family, domestic and sexual violence.

We have noticed that within our own services there is limited awareness of this new leave entitlement or that the leave can be used in order to engage with support services like our own. Our employment and discrimination teams have done extensive training with our family law, migration, sexual violence and social work teams to ensure that they not only understand the entitlement, but advise women that they are able to access this kind of leave, and offer them a support letter from our services.

We recognise that many women only engage with our services on a one-off basis to receive legal advice and so we think it is important that they are made aware of this entitlement, whether by one of our specialist employment lawyers or a family lawyer.

Law societies should include free professional development opportunities as part of their Continuing Professional Development work for family lawyers or other lawyers who may interact with people experiencing family and domestic violence to explain the leave and how they may be able to assist the client to access the leave, such as by providing support letters.

Our employment and discrimination teams have also developed basic letters of advice that family lawyers can provide to clients explaining the entitlement and a draft support letter which family lawyers can tailor for their client. The distribution of these kinds of resources as part of these workshops may also be helpful.

It would also be beneficial for courts that are making apprehended domestic or family violence orders, or dealing with family law matters that may involve domestic or family violence, to be able to provide fact sheets to people involved in that court process about the paid DFV leave entitlements and/or direct them to the currently available resources on the Fair Work Ombudsman's website.

Recommendation 3

Targeted education materials and resources should be developed and delivered through the Law Council of Australia in conjunction with the Federal and State/Territory Attorneys General to assist lawyers, judicial officers, and court staff who are not employment specialists, but who will be advising and interacting with women engaged in legal systems such as the criminal justice or family law system, as to the availability of FDV leave in their workplaces.

Amongst first responders and other professionals

Women's Legal Services have assisted a number of women who work as first responders or in other professions that involve direct engagement with women, such as paramedics, doctors, nurses, midwives, teachers and early childhood educators. Overwhelmingly these women have not been aware of their own entitlement to access FDV leave, let alone had enough understanding of the leave to be able to suggest it to women they meet through their work.

We know that it is common for women to disclose their experiences of violence to trusted first responders or other professionals and therefore it is important that all workers who directly engage with women have an understanding of FDV leave so that they can recommend it to women that they speak to. Public awareness campaigns or additional funding for community legal education campaigns could be a helpful way to ensure that these workers have the knowledge they need to empower the women they engage with directly.

Case Study - Training the frontline responders

Women's Legal Centre ACT has developed and run community legal education sessions with partner organisations such as the Canberra Child and Family Centres and the Domestic Violence Crisis Service. These sessions ran for under an hour and are designed to equip staff with an understanding of paid FDV leave, who is eligible for it and the tools to refer women to seek legal advice if they have issues accessing the leave. This has led to referrals from these agencies and an increase in women accessing FDV leave.

We have found that without community legal education, frontline responders often do not tell women of this entitlement to FDV leave or offer women the kinds of evidence they may require to access FDV leave unless prompted by the woman. This means that even when women have accessed services that could provide them with evidence or a support letter for the purposes of accessing leave, they do not get the evidence they require and often do not have the time or energy to go back and seek evidence. This leads women to continue to utilise other kinds of paid leave because accessing FDV leave is just too difficult.

Recommendation 4

The Federal, State and Territory Governments should fund Women's Legal Services to deliver training to other frontline and community organisations on the paid FDV leave entitlement, how it works in practice, how to support a client who may want to access it, and how to refer to a specialist organisation if there are issues accessing the leave.

Issues with evidentiary requirements

Intrusive evidence requests

Section 107 of the *Fair Work Act* (Cth) provides that employees must only provide their employers with evidence to support their accessing leave 'if required by the employer'. Therefore, Women's Legal Services have been surprised that given the nature of this leave entitlement, more employers have not chosen to grant employees this leave without requiring them to provide evidence.

The most common experience of our employees is that employers will not grant them access to FDV leave without evidence, and that once this evidence has been provided, they are subject to intrusive requests for further detailed and highly sensitive information.

Case Studies – Requiring detailed information

Daisy was employed by an ACT Government Department. She tried to access FDV leave and provided her employer with a support letter from the Women's Legal Centre ACT. The support letter had been written by her family lawyer which explained that she was being assisted by a WLSA service, which is a FDV specialist service. Daisy provided this to her employer in an attempt to access the leave while she attended court events and did safety planning with one of our social workers. She was told that her employer would not accept the evidence she had provided as it did not have particular dates that she would require the leave.

Mai provided a support letter from the Domestic Violence Crisis Service and her employer requested further information on what the leave was being used to do, and what dates specifically she would be doing those things. This client decided to transfer to another team rather than dealing with the managers who had decided not to approve her paid FDV leave because there was insufficient evidence to support it.

Another client works for a Commonwealth government employer. She requested to take FDV leave and provided appropriate evidence. She has since been asked for excessive detail about the violence and her personal situation before her employer will approve the application. This has made her feel even more unsafe, as she is concerned that if her employer tried to take supportive action, this may alert her partner to the fact that she had told people about her circumstances or was accessing support. It has also made her incredibly uncomfortable to disclose so much personal information to her employer which she does not feel is necessary. She has been found the threat of not being able to access paid leave without the provision of excessive information to be a coercive experience which is understandably triggering for a person who has been subject to family and domestic violence which is inherently based on a dynamic of power and control.

Employers generally would benefit from greater understanding that they can choose not to request evidence, and that where evidence is provided, it does not need to be detailed. In our experience, there is commonly a lack of consideration for the fact that it may not be suitable or necessary for an employee to provide evidence on each occasion that they wish to access leave. For example, clients of Women's Legal Services should be able to provide a single support letter which states that they are a client of ours and use this for ongoing appointments or court dates as notified by the employee. Employers should not require separate evidence of each specific date of leave as it adds an unfair burden on women who are doing their best to keep themselves and their families safe and maintain their employment.

Both of the examples given on the Fair Work Ombudsman's web page for family and domestic violence leave make no mention of any evidence requirement. The optionality of evidence in support could be more explicitly addressed in the examples to demonstrate that an employer does not need to require evidence, it is only if they require it, and the type of evidence that can be relied on.

Example: Accessing paid leave for employees

Amy is a full-time employee who started working for a cleaning business on 1 March.

From 1 March, Amy is entitled to 10 days of paid family and domestic violence leave.

In June, Amy uses 2 days of paid leave to deal with the impact of family and domestic violence by accessing police services and attending counselling. ***She has told her manager about this, and her employer does not need any further evidence from her.***

Her leave balance reduces to 8 days.

Amy's entitlement to paid family and domestic violence leave renews to 10 days on 1 March in the following year. This is the anniversary of her start date with her employer.

Example: Workplace policies about family and domestic violence leave

Jo is entitled to 10 days of paid family and domestic violence leave each year under the NES.

Jo's employer also has a family and domestic violence leave policy that provides all employees with an entitlement to 2 days of paid family and domestic violence leave each year. ***The policy gives examples of the evidence needed in support that includes a support letter from a lawyer or DV Crisis service that says she is getting assistance.***

Jo's entitlement under the NES is more generous than their employer's policy. This means Jo is entitled to 10 days of paid family and domestic violence leave each year.

A further option is to remove the requirement in section 107(3) to provide evidence. This would mean there is a presumption that the leave is appropriate and would remove concerns about the provision of evidence, and the related issues of how to store confidential information so that it cannot be misused or accessed inappropriately. If an employer thought that FDV leave was being abused, then they could ask for evidence to support it. If not satisfied with that evidence they could initiate disciplinary proceedings as they could with any form of leave abuse.

Given the limited number of women have accessed this leave entitlement, we think the risk of abuse is very low given that there would still be the notification requirement in section 107(1) and (2) in order to access the leave.

Misuse of information provided

Section 106C of the *Fair Work Act* clearly provides that there are strict obligations for employers to treat information provided by an employee relating to FDV as strictly confidential. Despite this, given the lack of understanding we have found employers have about FDV leave in general and their obligations, there is a real risk for women experiencing violence that accessing this kind of leave may lead to their information being mishandled.

Removing the need to provide evidence would go some way to minimise the misuse of that information.

Case Study - Sophie's Story

The example of Sophie's story above meant that a woman who had disclosed experiences of family violence for the purposes of getting FDV leave ended up having to speak to traumatised clients about their experiences of violence because her employer wanted to leverage her 'lived experience'. Sophie felt obliged to take on this task as she recognised the benefit to clients but felt her personal information had been misused and somewhat weaponised against her.

When Sophie later got a new manager, she provided evidence to her in another attempt to access FDV leave. Sophie found that her manager had left the sensitive information on her desk where it could easily be seen by colleagues passing by. Her manager had also told her colleagues that she was accessing leave to deal with 'family issues' which the client felt was a betrayal of her trust and we advised her this was a breach of her employers' obligations to keep the matter confidential. Again, due to the financial pressures on Sophie and a wish to have her work life be calm while her home life was so turbulent, she decided not to take action against her employer for this failure to appropriately handle her information.

Narrow interpretation of the law and the nature of domestic and family violence

Section 106B of the *Fair Work Act* provides that the leave is intended to be used where an employee is experiencing family and domestic violence and "*the employee needs to do something to deal with the impact of the impact of the family and domestic violence*". We understand the legislation has been deliberately drafted in a broad way to encapsulate the diverse experiences of domestic and family violence. This is important as it means that all people experiencing domestic and family violence should be able to access this entitlement.

Often, the complex dynamics of power and control in violent relationships can mean that the person who is predominately the perpetrator of violence may utilise 'systems abuse' such as reporting a victim's self-defence as a violent act to the police or taking out a protection order against a victim in order to further punish or isolate a victim.

An example of this which we have seen on multiple occasions across Australia is that a perpetrator of violence has called the police following a violent interaction in which our client has defended herself and they have alleged that this was an unprompted assault. The client is then charged by police and has had to appear in court.

The employee may then also need to inform their employer or professional regulatory bodies of the charge, which poses a threat to their employment. In these circumstances our clients are both experiencing violence and dealing with the impacts of violence but can face prejudice when explaining why they need to access the leave, or an employer who says that they cannot make any decisions where there are pending applications and cross-applications.

A greater awareness of family and domestic violence more broadly may be important in ensuring that employers are equipped to apply leave in these kinds of complex scenarios. This could include through specific examples on the Fair Work Ombudsman's website or fact sheet which relate to more diverse experiences of violence.

Recommendation 5

A wider range of examples should be provided in the Fair Work Ombudsman guidance material to demonstrate:

- an employer who does not require any evidence to be provided;
- the types of evidence that can be used;
- a broader range of behaviours that could be considered domestic and family violence, including systems abuse; and
- examples of systems abuse that can occur, including an explanation of why someone is experiencing domestic and family violence may also be accused of systems abuse.

Recommendation 6

The evidence requirement should be removed from section 107(3) of the Fair Work Act so that there is a presumption in favour of granting FDV leave without the need to provide evidence, provided the notice requirements are met.

Alternative pathway to FDV leave

For employees of small businesses and particularly family-owned businesses, it can be difficult for women to access paid FDV leave when the perpetrator may be also their manager or a colleague. For these clients, access to some other avenue for paid FDV leave would be beneficial, to ensure they do not have to apply directly to their employer.

Issues with applying for FDV leave also arise for labour hire employees who are hosted with another organisation. Many labour hire arrangements are set up so that the employee is a casual employee of the labour hire company and paid a day or hourly rate only when they are working on the engagement for the 'host'. In many cases they still have obligations to their host that are akin to employment obligations to notify of absences, and the true employer is providing little more than a payrolling function. These workers need to apply to their employer for paid FDV leave, but in most cases the employer will not be paid if the worker does not perform the engagement for the host. The host has no obligation to provide paid FDV leave to that worker, and the employee may not want to have to disclose to two parties – the employer and the host – that they are experiencing family and domestic violence.

Case Study - Small Business

A Women's Legal Service client was employed as a bookkeeper by her partner who owned a small business. He was arrested for an act of family violence that he committed against her. She emailed him using her work account and requested ten days of FDV leave, which he approved; however, he terminated her employment as soon as she returned from leave.

She attempted to take action in the Fair Work Commission, however the employer did not choose to engage, and she did not wish to pursue proceedings against him.

Other clients who have been employed by family businesses have not been able to access this kind of leave due to safety concerns or because their employment relationship is so informal that their employer likely would not recognise any leave entitlement they may have.

Recommendation 7

The Federal Government should set up a scheme (similar in nature to the Fair Entitlements Guarantee), where an employee who cannot access paid FDV leave from their employer can apply for the equivalent payment.

A broader package for workplace safety

As Ludo Mc Ferran noted²:

I also worry that we have reduced this all down to leave. The domestic violence clause was developed as a package, including paid domestic violence leave but also workplace safety strategies, the referral of employees to domestic violence support services, the provision of training for staff managing the workplace response, and the protection from adverse action or discrimination. I think one reason that there are renewed calls for the leave to not be named 'domestic violence' is a misunderstanding of how domestic violence does impact in the workplace and why we need to address safety for all staff.

A range of additional measures were developed as part of a package which include FDV leave. WLSA supports these measures, however they must be funded and resourced appropriately. Otherwise, Women's Legal Services and other community organisations are engaging in unfunded work to develop and deliver the additional measures on top of their existing core functions.

This includes:

- development of workplace safety strategies;

² Ibid.

- good referral pathways to adequacy funded domestic violence support services (including men's behaviour change programs);
- training for staff on FDV awareness and responding to disclosures, as well as managing the workplace response; and
- protection from adverse action and discrimination (noting this has been addressed in the recent legislative changes to the *Fair Work Act*).

Case Study - Training for Employers

Women's Legal Centre ACT was engaged and paid by the ACT Government to design and deliver training to public sector managers to support them to better respond to staff who were affected by domestic and family violence. This was coupled with the introduction by the ACT Government of paid FDV leave provisions for Territory public servants.

Between 2020 and 2021 Women's Legal Centre trained approximate 700 ACT Public Service managers. Given ACT Public Servants make up approximately 11% of the Territory's labour force, this training had the potential to change the story for many people in Canberra affected by violence.

Anecdotally the Centre has seen very few people employed by the ACT Government who have issues with accessing paid FDV leave.

"It was really good training – lots of verbal interaction. I was glad you didn't just stand up on your soap box, it felt like you were talking to us as one of us." – ACT Manager's training on DFV participant

Recommendation 8

There should be recognition that FDV leave is part of a broader package, and governments need to fund the development and rollout of the broader package.

Including sexual violence

Sexual violence is a broad term recognised in the National Plan to End Violence against Women and Children 2022 – 2032 as sexual activity that happens where consent is not freely given or obtained, is withdrawn or the person is unable to consent due to their age or other factors.³

³ National Plan to End Violence against Women and Children 2022 – 2032, p34.

According to the Australian Institute of Health and Welfare⁴:

Sexual violence can have long-term impacts on a person's education, employment and financial security. A study conducted by Townsend et al. (2022) adopted a life course approach to determining the prevalence and impact of sexual violence among women. The data show that women aged 24–30 in 2019 who had experienced sexual violence were:

34% less likely to have obtained a qualification beyond year 12 than those who had not experienced violence

7% less likely to be in full-time employment compared with those who had not experienced violence (Townsend et al. 2022).

.....

Financial stress was measured in the ALSWH by asking respondents whether they had felt stressed about money in the 12 months prior to the survey. If a respondent answered that they were 'very stressed' or 'extremely stressed', they were identified as experiencing financial stress.

Women who had experienced sexual violence were more likely to experience high financial stress compared with women in the same cohort who had not experienced violence – 43% higher for women aged 24–30 in 2019, 30% higher for those aged 40–45 and 45% higher for those aged 68–73 (Townsend et al. 2022).

.....

The prevalence of sexual violence is highly gendered:

14% (2.8 million) of people aged 18 years and over have experienced sexual violence since the age of 15.

1 in 9 women (11% or 1.1 million) have experienced sexual violence by a male intimate partner since the age of 15

1 in 20 (4.9% or 489,000) women have experienced sexual violence by a male friend or housemate.

Sexual violence can take many forms, including assault, abuse and harassment. Experiences vary across population groups and in different settings, and there can be long-term physical, psychological, financial, legal, and spiritual consequences for individuals and communities.

One way to understand sexual violence is as an abuse of power, most often perpetrated by men against women, children, young people and other men. The impact of sexual violence can be compounded by negative attitudes pertaining to sex, race, age, culture and religion, as well as by inequalities stemming from class, geographic location, language or ability. Attitudes, beliefs, laws and social structures that allow or support inequalities contribute to the ongoing problem of sexual violence in society (NASASV 2021).

Workplaces have a role to play in supporting workers who have experienced sexual violence, and shaping community attitudes to violence.

⁴ Australian Institute of Health and Welfare, Sexual Violence, <https://www.aihw.gov.au/family-domestic-and-sexual-violence/types-of-violence/sexual-violence> accessed on 5 June 2024.



In the ACT, FDV leave has been extended to also include sexual violence leave, with the ACT Public Service recognising the impact violence and abuse have in the workplace, no matter where the violence occurs.⁵

Case study: ACT Public Service Employment Portal content

The ACT Public Service (ACTPS) does not tolerate domestic, family and sexual violence in any form. The ACTPS is committed to supporting victim-survivors of domestic, family and sexual violence. Violence and abuse impact the workplace regardless of where it occurs. Even if there are no impacts on the workplace, domestic, family and sexual violence is never OK.

The ACTPS recognises that workplaces have an important role in preventing and responding to domestic, family and sexual violence in our communities. Employers have a legal responsibility to create safe work environments. But beyond this, workplaces significantly influence our attitudes, beliefs and behaviours in both our personal and professional lives.

A comprehensive clause addressing Family, Domestic or Sexual Violence Leave has been included in ACT public sector enterprise agreements, with staff able to access up to 20 days of paid leave.

The clause sets out very detailed examples, without being exhaustive, of what the leave may be used for and the types of evidence that may be utilised. Any documentation that is provided in support is to be returned to the employee after being sighted by the Manager, reducing the chance of breaches of confidentiality.

⁵ ACT Government, ACTPS Employment Portal, <https://www.cmtedd.act.gov.au/employment-framework/actps-domestic-family-and-sexual-violence-toolkit> accessed 5 June 2024.

**Example: ACT Public Sector Health Professional Enterprise Agreement 2023 - 2026
– Family, Domestic or Sexual Violence leave**

E23 - Family, Domestic or Sexual Violence Leave

Purpose

E23.1 Leave under this clause is available to employees to enable them to deal with the impact caused by family, domestic or sexual violence. The ACTPS is committed to assisting employees experiencing family, domestic or sexual violence to remain in work, maintain their physical and financial security and access relevant services.

Eligibility

E23.2 Family, domestic or sexual violence leave is available to all employees:

E23.2.1 Experiencing family, domestic or sexual violence; or

E23.2.2 Supporting an immediate family member experiencing family, domestic or sexual violence.

Entitlement

E23.3 An employee experiencing family, domestic or sexual violence has access up to a maximum of 20 days or shifts per calendar year of paid leave. Family, domestic or sexual violence leave is non-cumulative.

E23.4 Family, domestic or sexual violence leave is in addition to other leave entitlements and is not to be used as a substitute for personal leave. However, where supporting evidence is not immediately available the head or service must, grant paid leave under clause E5 - of this Agreement (Personal Leave in Special, Extraordinary or Unforeseen Circumstances), subject to available credit. If the employee subsequently produces supporting evidence, the personal leave will be re-credited and the leave taken will be converted to family, domestic or sexual violence leave.

E.23.5 Family, domestic or sexual violence leave is to be used for, but not limited to, the following actions required as a consequence of family, domestic or sexual violence occurring:

E23.5.1 Attendance at appropriate medical appointments for referral to other appropriate counselling or support services.

E23.5.2 Obtaining legal advice

E23.5.3 Attending counselling appointments.

E23.5.4 Seeking assistance from other relevant support services.

E23.5.5 Attending court proceedings.

E23.5.6 Attending prosecution appointments.

E23.5.7 Attending police appointments.

E23.5.8 Attending to Protection Order matters and Domestic Violence Order matters however termed.

E23.5.9 Attending to issues arising through urgent property damage.

E23.5.10 Seeking veterinary assistance for pets injured.

Example: ACT Public Service Enterprise agreement clause – Family, Domestic or Sexual Violence leave

E23.5.11 Accessing alternative accommodation.

E23.5.12 Accessing alternative childcare or schooling for children.

E23.5.13. Any other reason relating to recovering from the effects of experiencing family, domestic or sexual violence where personal leave is not applicable.

Note: An employee, accessing leave under this provision, may require additional time for travel and recovery following attendance at appointments, proceedings etc.

E23.6 Family, domestic or sexual violence leave may be taken as consecutive or single days, or as part days.

E23.7 For confidentiality and privacy reasons family, domestic or sexual violence leave will be attributed as coming under “where leave cannot be granted under any other provision” which is included and identified within “Other Leave Types” in Annex D of this Agreement.

Evidence and conditions

E23.8 Employees wishing to access family, domestic or sexual violence leave should discuss making an application with their manager or supervisor or an appropriate HR Manager as soon as reasonably practical.

E23.9 As a general rule, a leave application should be submitted by an employee for approval by the head of service before the commencement of the leave. However, retrospective applications may be approved provided that appropriate evidence is provided as soon as reasonably practicable upon the employee’s return to the workplace.

E23.10 Evidence of the occurrence of family, domestic or sexual violence is required to access leave for family, domestic or sexual violence purposes.

E23.11 Evidence may include any of the following:

E23.11.1 A document issued by the Police or a court.

E23.11.2 A written referral, issued by a registered medical practitioner or registered nurse, to a counsellor trained in providing support in family, domestic or sexual violence situations.

E23.11.3 A document issued by a counsellor who is trained in providing support to people experiencing the effects of family, domestic or sexual violence.

E23.11.4 Written confirmation from an Employee Assistance Program provider or from a family, domestic or sexual violence support service that the employee is experiencing family, domestic or sexual violence issues. P

E23.12 Managers are to keep all information concerning the leave application strictly confidential. This includes, after sighting any supporting documentation, returning that documentation to the employee.

E23.13 Having considered the requirements of this clause the head of service may approve an employee’s application to access family, domestic or sexual violence leave. A decision not to approve the leave must be taken in accordance with subclause E3.1.

Example: ACT Public Service Enterprise agreement clause – Family, Domestic or Sexual Violence leave - continued

Rate of payment

E23.14 Family, domestic or sexual violence leave is granted with pay.

E23.15 For an employee other than a casual employee, the rate of payment for family, domestic or sexual violence leave is the employee's full rate of pay, worked out as if the employee had not taken the period of leave.

E23.16 For a casual employee, the rate of payment for family, domestic or sexual violence leave is the employee's full rate of pay, worked out as if the employee had worked the hours in the period for which the employee was rostered or expected to be rostered.

E23.17 Family, domestic or sexual violence leave may be granted at half pay where there are extenuating circumstances.

Effect on other entitlements

E23.18 Leave with pay for family, domestic or sexual violence purposes counts as service for all purposes.

Interaction with other leave types

E23.19 Where family, domestic or sexual violence leave credits have been exhausted, the head of service may grant an employee leave without pay or other forms of paid leave, such as annual leave or long service leave.

E23.20 Employees should utilise personal leave for an illness or injury, or to seek treatment for an illness or injury, caused by family, domestic or sexual violence.

E23.21 Leave entitlements under clause E5 - of this Agreement (Personal Leave in Special, Extraordinary or Unforeseen Circumstances) may be used by an employee who is seeking leave to support a person who is experiencing family, domestic or sexual violence.

Employee Assistance

E23.22 Reasonable adjustments must be facilitated to ensure the employee's individual safety in the workplace including different work locations, removal or change of phone listing, changes to their work email address and other practicable workplace adjustments.

Recommendation 9

The current FDV leave provision should be extended to also cover sexual violence.