

## Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022

Working Women's Centre, S.A., Working Women Queensland  
and N.T. Working Women's Centre  
Submission to the Senate Education and Employment Legislation Committee

### Introduction

1. The Working Women's Centre, S.A., Working Women Queensland and NT Working Women's Centre (WWCs) welcome the opportunity to make this submission to the Senate Education and Employment Legislation Committee on the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022.
2. The WWCs are not-for-profit advocacy, legal and industrial relations centres that provide free legal and industrial advice, information, support and representation to vulnerable, non-unionised workers about their rights at work. We provide community education, policy advocacy and workplace training. We predominately service people identifying as women and we are experts in gender-based workplace issues.
3. The WWCs are broadly supportive of the amendment the *Fair Work Act 2009* (the Act) to provide for ten days of paid family and domestic violence leave in the National Employment Standards (NES). We welcome the inclusion of casuals to the entitlement for paid leave. The recognition that family and domestic violence is also an economic and workplace issue as well as a matter of criminal and social justice is very welcome.
4. The effect of this holistic recognition of family and domestic violence is to spotlight its impact on the rights of citizenship of those affected by it. Citizenship is defined as an interrelated set of rights and demands a corresponding obligation on States to respect, protect and fulfil rights.<sup>i</sup> The State therefore has the obligation to ensure that all citizens have the equal right to participate in employment with safety and fairness.
5. The impact of family and domestic violence on women's workplace participation was documented by a national survey which found that their participation rates dropped, and their employment levels and incomes were significantly affected<sup>iiiii</sup>.
6. The WWCs have some concerns about certain elements of the amendment which are addressed below. We offer recommendations in relation to those concerns.

### Proposed extension to 10 days paid leave.

7. The extension from 5 days unpaid to 10 days paid leave each year is welcome. However, the experience of family and domestic violence is not a matter of a single incident and the dealing with the consequences can take large amounts of time, including during the usual working day. Accessing legal services, the police, and the courts, health and

counselling services, refuges and housing services are time consuming activities exacerbated by their unpredictable availability and by potential threats from the perpetrator.

8. The time constraints are particularly demanding for those in rural, regional and remote areas where access to any of these services is limited by distance, fewer resources and privacy issues.

9. The worker experiencing family and domestic violence may therefore require more than 10 days in order to be able to undertake these activities.

### Case Study 1

*Elsie\* identifies as an Aboriginal and Torres Strait woman. She experienced Family and Domestic Violence from her ex-partner. She lives and works in a remote community. She needs to travel to the city for hospital treatment, for her serious injuries after being assaulted by him. 10 days is not enough time for her to adequately her situation.*

### Case Study 2

*Our client Kayla worked as a beauty therapist in a beauty salon. She was experiencing severe violence from her partner. The workplace was aware she was experiencing domestic violence and on one occasion the workplace had to call the police on her behalf. She had sustained injuries from the violence which required her to take time off work to recover and attend medical appointments. She provided the employer with copies of her medical certificates. She was dismissed from her employment after two and half months' service and was advised that the reason for the dismissal was because she took "too much time off to be reliable to meet the performance criteria.*

**10. The WWCs recommend** that the 10 days paid leave be identified as the minimum entitlement, in recognition of the complexity of dealing with the everyday effects as well as the long-term consequences of family and domestic violence. If the leave was framed as a minimum entitlement, then the parliament needs to legislate a framework for the worker to access further paid and unpaid leave in circumstances where it is reasonable.

### **Risk of further discrimination**

11. The gendered discrimination against women experiencing family and domestic violence is clearly evident in the erosion of their citizenship rights as equal workers. The result is that the welcome extension of paid leave proposed in this amendment puts women at further risk of discrimination.

12. Since the introduction of five days' unpaid leave on 12 December 2018, by the *Fair Work Amendment (Family and Domestic Violence Leave) Act 2018* (the **Amendment Act**)<sup>iv</sup> the WWCs records of their inquiries and cases since the unpaid leave took effect

demonstrates that women workers who seek to deal with the consequences of family and domestic violence face further discrimination by employers.

13. Women experiencing family and domestic violence may be described as paranoid, unreliable (Kayla above, for example) or difficult to manage. They may be demoted, have their hours reduced or have their employment terminated.

14. Women are less likely to be supported when the perpetrator is in the same workplace, or they cause trouble in the workplace. For example:

#### Case Study 3

*Amy commenced a relationship with a senior manager in her office. When he became abusive, she reported him to the police, took some time off to deal with court proceedings in both criminal and family law, and asked to be put on shifts that he was not on. The employer said they could not accommodate her request and refused any actions to protect her.*

#### Case Study 4

*Megan worked as a dancer in an adult entertainment industry. Megan was experiencing physical and psychological violence from her partner. He started calling the business, harassing the owner. The managers cancelled Megan's shifts because they said she couldn't come to work with bruises because customers would see, and also because her partner "was causing trouble" by calling up to harass the managers trying to find out where Megan was. The manager told Megan, "come back when this has settled down". She did not have an income and was not able to obtain other work. A few months later Megan contacted the manager who advised they did not have work for her.*

#### **15. The WWCs recommend**

- a. that the *Sex Discrimination Act 1989* be amended to include express protections for workers experiencing family and domestic violence and taking leave
- b. that Chapter 3 of the *Fair Work Act 2009* be amended to include express protections from experiencing family violence, applying for or accessing leave provision for family and domestic violence leave.

#### **Evidence requirement**

16. The Amended Bill retains the requirement that the employee provide the employer with evidence as identified in Section 107 of the *Fair Work Act (2009) Cth*. The range of forms of family and domestic violence may take raises the question: what constitutes evidence that would satisfy a reasonable person?

17. Financial, religious, sexual abuse and coercive control do not have simple or visible effects, which are readily documented. A common characteristic of family and domestic

violence is that the violence itself becomes an obstacle to being able to provide such evidence. For example, phone and internet usage may be controlled by the perpetrator as is access to necessary services.

18. The requirement for evidence from an external source highlights the gendered assumption that women are not able to participate as full citizens with equal rights and responsibilities. Where a man's word is accepted as his bond, a woman's is not. From the comprehensive research on domestic violence through to the most recent investigations of police responses to family and domestic violence, the failure to believe the woman's word is almost universal.

19. The experience is compounded for those with English as a second, third, or more languages, and even more adversely for Aboriginal and Torres Strait women. The politics of race severely disadvantage women experiencing family and domestic violence, especially where sexism, racism, colonialism and poverty intersect. The difficulties are multiplied for those who live in regional and remote communities where workplaces are small.

20. **The WWCs recommend** that the requirement to provide evidence for the request for up to 10 days' paid leave be abolished. The woman's word that she requires paid leave to attend to matters consequent on her experiences of family and domestic violence should be endorsed by this amendment.

#### **Start date for small business**

21. The start date for the amendment to come into effect has been extended to 12 months for small business in order to ensure that employers and workers understand the changes. The WWCs endorse the commitment to improving the working conditions for those experiencing family and domestic violence.

22. The WWCs believe that 6 months is sufficient time for all employers to understand and implement the proposed changes. The right to 5 days unpaid leave has existed for at least 3 years, so the concept of leave to support those experiencing family and domestic violence has become well known. In addition, the issue itself has become much more visible, even though through the reporting of the most violent cases.

23. The issue of managing such leave with the more limited cash flow resources available to small business in comparison to larger organisations has become more manageable and understood with the unpredictable demands for flexible responses by all employers caused by Covid-19.

24. The WWCs have recognised the demands on small business and have developed and offered training and education on these changes. For example, WWC SA offers a standard 3-hour workshop *Recognise and Respond to Domestic and Family Violence in the Workplace* (WR accreditation standard) and uses existing workplace policies to equip teams with the tools to handle disclosures of DFV appropriately in a trauma informed way. It is planning a

webinar to assist small businesses to understand their employees' entitlement to domestic and family violence leave. Topics will include how to support staff experiencing domestic or family violence; criteria for accessing the leave; questions about evidentiary requirements; and employers' obligations under discrimination laws and the Fair Work Act 2009 (Cth).

**25. The WWCs recommend**

- a. that the effective start date of the Amended Bill for all workers and employers be the same;
- b. that appropriate and effective training and education be made available for workers and employers, for trade unions and for employer organisations, and for the relevant industrial agencies.

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\*all case study names are pseudonyms

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<sup>i</sup> Franzway S. et al (2018) The sexual politics of gendered violence and women's citizenship. Bristol: Policy Press, p.3

<sup>ii</sup> Ibid.

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<sup>iv</sup> <https://www.holdingredlich.com/new-nes-entitlement-to-family-and-domestic-violence> (access 17/8/2022)