



THE LAW SOCIETY
OF NEW SOUTH WALES

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15 August 2022

Dr James Popple
Chief Executive Officer
Law Council of Australia
DX 5719 Canberra

By email: john.farrell@lawcouncil.asn.au

Dear Dr Popple,

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

Thank you for the opportunity to contribute to a possible Law Council submission to the Senate Education and Employment Legislation Committee, in relation to the Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022 (Cth) (“the Bill”). The Law Society’s Employment Law and Family Law Committees have contributed to this submission.

The Law Society supports amending the *Fair Work Act 2009* to provide for 10 days of paid family and domestic violence (“FDV”) leave in the National Employment Standards (“NES”). The prevalence of FDV and its devastating impacts on victims, the broader community and the Australian economy are well documented in the findings of the *Family and domestic violence leave review 2021*.¹ The Law Society supports expanding the existing NES leave entitlements for employees experiencing FDV to better reflect employment’s role as a “crucial pathway for women escaping violent relationships”,² and to enhance the financial security and independence of FDV victims.

Extending FDV leave entitlement to casual employees

Extending the proposed FDV leave entitlement to casual employees is somewhat complicated by the limited leave entitlements currently provided to casual employees under the NES. Presently, casual employees are entitled to two days unpaid carer’s leave and two days unpaid compassionate leave per occasion; five days unpaid FDV leave in a 12-month period; and unpaid community service leave.

The proposed FDV leave entitlement is significantly more expansive than other rights under the NES, both in duration, and as a paid entitlement. In contrast, paid personal/ carer’s leave and compassionate leave, which are likewise serious and extenuating in nature, are not available to casual employees under the NES.

¹ [2022] FWCFB 2001, [419]-[443].

² Australia’s National Research Organisation for Women’s Safety (“ANROWS”), *Paid Domestic and Family Violence (DFV) Leave: Summary of the Evidence* (Report, 2019) 1.

Nevertheless, the Law Society suggests consideration be given to a range of factors, which may justify the more expansive FDV leave entitlement for casual employees, as distinct from other forms of leave. Importantly, women who have been victims of FDV are more likely to be employed in casual and part time work than women with no experience of FDV.³ FDV disproportionately impacts women⁴ and is considered to be a cause and consequence of gender inequality.⁵ In this regard, paid FDV leave is seen as a crucial measure to limit the financial effects of FDV on women and to minimise disruption to employment.⁶

The Law Society supports the proposed sections 106BA(1)(b) and 106BA(3), which effectively provide that casual employees exercising their FVD leave entitlements are only entitled to be paid for the period in which they were actually rostered to work. In our view these provisions reasonably limit the impact of FDV leave on employers, while safeguarding a vital benefit to casual employees.

We also suggest consideration be given to whether a minimum period of employment should apply before casual employees are eligible for paid FDV leave under section 106BA(1)(b), to account for the more temporary and flexible nature of casual work. Such a requirement should not, however, prevent a casual worker from seeking unpaid FDV leave during that period.

If you wish to discuss these issues or require further information, please contact Nathan Saad, Policy Lawyer, on (02) 9926 0285 or email nathan.saad@lawsociety.com.au.

Yours sincerely



Joanne van der Plaats
President

³ *Family and domestic violence leave review 2021* [2022] FWCFB 2001, [436].

⁴ *Ibid* [419].

⁵ *Ibid* [436].

⁶ ANROWS, above n 2.