Working with Women Alliance

Review of the Closing Loopholes Acts

Submission to the Department of Employment and Workplace Relations

March 2026

Acknowledgment of Country

The Working with Women Alliance acknowledges the Traditional Custodians of the land on which we work and live.

We pay our respects to Aboriginal and Torres Strait Islander Elders past and present, and we value the enduring connection Aboriginal and Torres Strait Islander people have to this land.

We value Aboriginal and Torres Strait Islander histories, cultures, and knowledge.

About WwWA

The Working with Women Alliance (WwWA) represents two key portfolios: National Women's Safety (NWS) and National Women's Equality (NWE).

The WwWA connects the critical areas of gender-based violence prevention and the advancement of women's economic equality and leadership, bridging these important policy fields for greater impact.

We work with members and stakeholders, including the Australian Government, to provide expertise and advice on gender equality and women's safety.

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Executive Summary

The Working with Women Alliance (WwWA) has long supported paid family and domestic violence (FDV) leave as a critical lever for women's economic security, ensuring that individuals experiencing violence are able to remain safe while maintaining employment. Access to paid leave recognises that safety and financial security are inseparable and that women should not have to choose between their livelihoods and their lives.

While WwWA welcomes the Government's leadership in this area, further refinement is required to ensure consistent and equitable access across sectors, particularly casual and contracted workers.

Removing Evidentiary Requirements

We reiterate the concerns raised by Women's Legal Services Australia (WLSA)[i] regarding the evidentiary burden associated with accessing family and domestic violence (FDV) leave. Under Section 107 of the *Fair Work Act 2009* (Cth), employees are only required to provide evidence if requested by their employer. However, in practice, most employers continue to require evidence before granting leave, and in many cases, employees who do provide evidence face intrusive follow-up requests for highly sensitive information. This approach is inconsistent with the purpose of FDV leave and fails to account for the distress caused by repeatedly disclosing traumatic experiences. While clearer guidance could assist employers to understand that they are not obliged to request evidence, the most effective reform would be to amend Section 107(3) to remove the evidentiary requirement altogether. This would establish a presumption that the leave is appropriate and ensures employees' privacy and safety are properly protected. Given the low uptake of FDV leave and the critical purpose it serves, the risk of misuse remains minimal.

Uptake Discrepancies

While paid FDV leave is a critical workplace protection, it is important to note that it is not working for everyone - significant discrepancies remain in awareness and uptake across different workforce groups. The Independent Review of the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022* found that casual employees have markedly lower awareness and utilisation of the entitlement, opting instead for cancelling shifts.[ii] Only 20% of casual workers and just 27% of employers were aware that this entitlement applied to casual work.[iii] This inequity is compounded by the fact that women are more likely to be employed casually.[iv] Uptake is also low among small and microbusinesses,[v] particularly family-run

operations, where providing paid FDV leave can present financial and operational challenges. While the Government has accepted recommendations from the Independent Review[vi] to improve access and awareness, WwWA is concerned about the progress of such strategies and what impact, if any, they are having on improving the reach and equity of this entitlement.

Including sexual violence

Expanding the provisions of paid FDV leave to include sexual violence is essential to recognising its serious and lasting impacts on women's safety and financial wellbeing. To remain consistent with broader national objectives, the National Plan to End Violence Against Women and Children 2022-2032 defines sexual violence 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.[vii] Women who have experienced sexual violence face poorer employment outcomes and higher financial stress, with those aged 24–30 being 7% less likely to hold full-time employment.[viii] The ACT public service has already integrated sexual violence into paid FDV leave provisions[ix] so workers can access support regardless of the context in which violence occurs. Their comprehensive clause, providing up to 20 days of paid leave, demonstrates best practice in recognising and responding to the impact of violence.

Expanding Eligibility

Eligibility for FDV leave should be expanded to include family members and support persons who are supporting a victim-survivor. The current framework overlooks the complex and interconnected ways in which FDV is experienced and responded to within families and communities. Family members and close friends often play a critical role in supporting victim-survivors, including by accompanying them to court, providing transport or childcare, and offering safe accommodation. Research indicates that over 60% of victim-survivors rely on practical support from their family and social networks in response to intimate partner violence,[x] and that community support is vital to their wellbeing and broader systemic change.[xi] Workplace policies should therefore reflect these realities by allowing any employee who needs to take action in response to the impacts of FDV - whether for themselves or in support of someone - to access this leave. Expanding eligibility in this way would promote trauma-informed, community-centred responses and ensure workplaces better reflect the realities of how FDV affects and is addressed within society.

Recognising DV Experiences

The legislation recognises that family and domestic violence means violent, threatening or other abusive behaviour that seeks to coerce or control an employee.[xii] However, the examples listed of reasons for using paid FDV leave[xiii] focus solely on addressing the impacts of violence, including safety planning, seeking medical treatment or legal advice, attending court, or going to the police. These are all critical, but they overlook the experiences of domestic violence. Situations where a perpetrator may intimidate or interfere with a victim-survivor's capacity to work directly affects their ability to maintain employment. The legislation or examples provided should be amended to be more explicit in acknowledging that paid FDV leave applies not only to responding to the impacts but also managing and surviving the experiences of FDV.

Access for all forms of employment

There is limited clarity on how paid FDV leave applies to workers engaged in other forms of employment beyond full time, part-time and casual work – contractors and subcontractors for example. Though some businesses may offer paid FDV leave through employment contracts or workplace policies, there does not appear to be guaranteed and consistent access for workers outside the standard employment categories outlined. Such ambiguity means workers have unequal access to accessing support. To uphold the intent of paid FDV leave as a core workplace protection, it should be clear that these entitlements apply to all workers engaged by a business, ensuring that no individual is excluded based on the form of their employment engagement.

Recommendations

1. Amend section 107(3) to remove the evidentiary requirement.
2. Report on the progress of Government initiatives to improve awareness of and access to paid FDV leave.
3. Expand eligibility for FDV paid leave to include family members and support persons who are supporting a victim-survivor.
4. Expand the provisions of FDV leave to include sexual violence.
5. Explicitly acknowledge that paid DV leave applies to managing and surviving experiences of DV.
6. Explicitly include all types of employment engagement.

The Alliance welcomes the opportunity to provide further advice and looks forward to continued engagement on these important reforms.

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[i] Women's Legal Services Australia, 2024, *Independent Review of the Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022 (Cth)*, https://www.wlsa.org.au/wp-content/uploads/2024/06/WLSA-submission-Independent-Review-of-the-Fair-Work-Amendment-Paid-Family-and-DV-Leave-Act-2022-Cth-FINAL.pdf
[ii] Seymour, K., Marmo, M., Cebulla, A., Ibrahim, N., Esmaeili, H., Richards, J., & Sinopoli, E, 2024, *Independent review of the operation of the paid family and domestic violence leave entitlement in the Fair Work Act 2009*, Flinders University of South Australia, https://www.flinders.edu.au/content/dam/documents/fair-work/FU_Independent_Review_2022_FWA_Final_Report.pdf
[iii] ibid.
[iv] WGEA, 2022, *Australia's Gender Equality Scorecard*, https://www.wgea.gov.au/sites/default/files/documents/WGEA-Gender-Equality-Scorecard-2022.pdf
[v] Seymour, K., Marmo, M., Cebulla, A., Ibrahim, N., Esmaeili, H., Richards, J., & Sinopoli, E, 2024, *Independent review of the operation of the paid family and domestic violence leave entitlement in the Fair Work Act 2009*, Flinders University of South Australia, https://www.flinders.edu.au/content/dam/documents/fair-work/FU_Independent_Review_2022_FWA_Final_Report.pdf
[vi] Department of Prime Minister and Cabinet, 2024, *Paid Family and Domestic Violence Leave helping workers cope in crisis*, Australian Government, https://ministers.pmc.gov.au/gallagher/2024/paid-family-and-domestic-violence-leave-helping-workers-cope-crisis
[vii] Department of Social Services, 2022, *National Plan to End Violence against Women and Children 2022–2032*, Australian Government, https://www.dss.gov.au/system/files/resources/national-plan-end-violence-against-women-and-children-2022-2032.pdf
[viii] AIHW, 2026, *Family, domestic and sexual violence*, https://www.aihw.gov.au/family-domestic-and-sexual-violence/responses-and-outcomes/economic-financial-impacts
[ix] ACT Government, 2023, *ACTPS Domestic, Family and Sexual Violence Toolkit*, https://www.cmtedd.act.gov.au/employment-framework/actps-domestic-family-and-sexual-violence-toolkit
[x] Ella Kuskoff and Cameron Parsell, 2023, *Bystander Intervention in Intimate Partner Violence: A Scoping Review of Experiences and Outcomes*, https://pmc.ncbi.nlm.nih.gov/articles/PMC11155209/
[xi] Cris M Sullivan, 2017, *Understanding How Domestic Violence Support Services Promote Survivor Well-being: A Conceptual Model*, https://pmc.ncbi.nlm.nih.gov/articles/PMC5760592/
[xii] Fair Work Ombudsman, *Family and domestic violence leave*, Australian Government, https://www.fairwork.gov.au/leave/family-and-domestic-violence-leave#paid
[xiii] Transitioning Well, HR Legal, 2025, *About Family and Domestic Violence Leave Entitlements*, https://prod-fdvl-cms-assets.s3.amazonaws.com/filer_public/b2/0c/b20cd1a2-f4d5-4f07-b319-0859e5ce0c28/about-changes-to-fdv-entitlements-2025.pdf