Working with Women Alliance

Review of the Closing Loopholes Acts Draft Report

Submission by the Working with Women Alliance (WwWA)

May 2026

Dr Gemma Killen

Executive Director

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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Endorsement

This submission is endorsed by Working Women's Centre Australia and reflects our shared priorities in strengthening access to paid family and domestic violence leave.

Executive Summary

The Working with Women Alliance (WwWA) welcomes the opportunity to respond to the Draft Report of the Closing Loopholes Review and acknowledges the substantial work undertaken in preparing this report and engaging with stakeholders across the review process. We appreciate the care and attention given to the experiences of victim-survivors and to strengthening the operation of paid family and domestic violence leave in practice.

WwWA supports the overall direction of the draft recommendations and agrees that further reform is needed to ensure the entitlement operates in a way that is accessible and responsive to the lived experiences of victim-survivors. WwWA emphasises that paid family and domestic violence leave is not an ordinary workplace entitlement. It is a critical mechanism that enables victim-survivors to maintain employment, preserve financial security and take steps toward safety and recovery. For that reason, the design and implementation of the entitlement must minimise barriers to access and reflect the realities of how family and

domestic violence is experienced, including by workers facing intersecting forms of disadvantage and insecurity.

WwWA supports the intent and direction of the draft recommendations in Chapter 6. Our recommendations below seek to make the existing recommendations more specific and strengthen their operation in practice, as well as identify additional reforms needed to improve access to and uptake of paid family and domestic violence leave. The Alliance welcomes the opportunity to provide further advice and acknowledges the substantial work undertaken in preparing this report and engaging with stakeholders across the review process. We appreciate the care and attention given to the experiences of victim-survivors and to strengthening the operation of paid family and domestic violence leave in practice.

Recommendations

Data

1. Make recommendation 45 stronger by including specifically what data should be collected and how
2. Recommend using WGEA data as part of the evaluation framework, including requiring employers to respond to survey questions on employee uptake and awareness of PFDVL
3. Use WGEA data to identify non-compliant employers and inform regulatory action where employers are failing to provide or meaningfully implement the entitlement

Evidentiary requirements and scope

4. Amend section 107(3) of the Fair Work Act to remove the evidentiary requirement entirely
5. Ensure any simplified legislative test of 106B(1) does not narrow access and continues to cover employees who are affected by, managing, or responding to the impacts of FDV, including ongoing recovery needs
6. If evidence requirements are retained, only one form of evidence should be sufficient, and legislation should make clear that letters or notes from community legal services and specialist FDV services are appropriate evidence

Awareness

7. Implement targeted, intersectional awareness-raising efforts focused on workers and settings where barriers to access are highest
8. Ensure awareness initiatives explicitly include LGBTQIA+ people, people with disability, and young people, alongside the cohorts already identified in the report

Casual employees

9. Strengthen recommendation 50 by recommending a specific barrier-removing measure, such as the rostering practice proposed in the report

Additional recommendations raised outside of the draft recommendations

10. Expand the scope of the scheme to include sexual violence
11. Expand the eligibility of the scheme to include support persons
12. Develop a government-led mechanism for small, family and micro-business contexts.

Recommendations made in the report

Data (Recommendation 45)

WwWA supports Recommendation 45 and strongly endorses the regular collection of evaluative data on paid family and domestic violence leave. Robust monitoring is essential to ensure the entitlement is operating as intended and delivering meaningful access for employees experiencing family and domestic violence. A stronger recommendation would set out more clearly what data should be collected and how.

WwWA concurs the reports recommendation that the government explicitly draw on Workplace Gender Equality Agency (WGEA) datasets as part of this evaluation framework. WGEA is uniquely positioned to provide insight into whether paid family and domestic violence leave is being implemented across workplaces, and whether employers are meeting their obligations in practice. This data should be used not only to assess implementation, but also to identify employers who are failing to provide the entitlement and be used to inform regulatory action to bring those employers into compliance. Reporting could go beyond whether an employer has a paid family and domestic violence leave policy on paper. Employers should also be required to report on employee uptake, including the average amount of leave used. This distinction matters. An employer may state that the entitlement exists yet take little or no action to ensure employees know it is available or feel safe to access it. WwWA considers that strengthened reporting of this kind should form part of a broader shift toward a positive duty on employers, like that of the Sex Discrimination Act, to ensure that the entitlement is actively promoted to employees.

A more specific recommendation would also support the collection of data on use of the entitlement on average, and this average across different cohorts of workers as priority cohorts who experience disproportionate rates of family and domestic violence. Better data will allow government to refine implementation so that paid family and domestic violence leave operates as a real safeguard and aligns with policy intent.

Evidentiary requirements (Recommendation 46, 47, 48)

WwWA supports the intent of the above recommendations in trying to simplify access to paid family and domestic violence leave. These recommendations recognise the barriers that evidentiary requirements create for victim-survivors. Where evidence is retained, one form of evidence should be sufficient, and the Act and accompanying guidance should make clear that referral notes or letters from community legal services and specialist family and domestic violence services are appropriate evidence. However, WwWA reiterates that the most effective and trauma-informed approach would be do remove the evidentiary requirement entirely.

Some stakeholders may claim that like with any other entitlement, employees must provide evidence when accessing. However, paid FDVL is not an ordinary entitlement, but a safeguard that can have life and death implications. The risk that some employees may misuse the entitlement is minimal when compared to the risks faced by women whose safety depends on being able to access leave quickly and without barriers. A system that presumes good faith

access to the entitlement better reflects the purpose of paid family and domestic violence leave and aligns with the realities of how victim-survivors experience and respond to violence.

Recommendation 46 proposes simplifying the entitlement by reducing the legislative test to whether an employee is "experiencing family and domestic violence." While we support the principle of this, strong consideration is needed to ensure that the revised language does not inadvertently narrow access in practice. Limiting the framing to "experiencing" violence risks encouraging a restrictive interpretation that focuses on recent or immediate incidents of harm. Victim-survivors often require leave to manage the ongoing impacts of violence, including attending court, engaging with legal processes, securing a new residence, or support to recover from past trauma. These needs may arise after the immediate incident of violence. WwWA is concerned that a plain reading of "experiencing" could lead employers to incorrectly assume that the entitlement only applies where violence is current or immediate. WwWA therefore recommends that any simplified formulation preserves the breadth of the intent of the entitlement and explicitly captures circumstances where an employee is affected by, managing, or responding to the impacts of family and domestic violence.

Across this set of recommendation, we maintain that the continued inclusion of evidentiary requirements is inconsistent with a trauma-informed approach. Requiring victim-survivors to provide evidence to their employer reinforces existing power imbalances and creates a structural barrier to access. Many victim-survivors are reluctant to disclose experiences of violence in the workplace due to concerns about stigma, privacy, career progression and personal safety. This barrier is particularly pronounced for migrant and refugee women as they are more likely to be in casual or insecure employment, subject to visa conditions, and experiencing financial or housing instability. These intersecting vulnerabilities compound the risk for a cohort that is already disproportionately affected by family and domestic violence. The requirement to provide evidence, particularly at the discretion of the employer, risks deterring employees from accessing the entitlement altogether.

The discretionary nature of the current framework also introduces significant inconsistency. The concept of what is "reasonable" will vary across workplaces, sectors and individual decision-makers. In smaller workplaces, these pressures may be more pronounced. For example, an employer facing operational pressures may view certain forms of leave, such as attending counselling or taking time to manage the impacts of violence, as unreasonable if it disrupts business operations. This variability undermines the consistency and accessibility of the entitlement and creates uncertainty for employees. Improved guidance alone will not address the underlying structural issues created by evidentiary requirements.

The requirement to obtain evidence can also create direct safety risks. Victim-survivors may be required to access medical services, support providers or legal processes to obtain documentation, which may leave traces that can be found by a perpetrator. This includes physical documents, appointment records, or digital footprints such as Medicare history. These risks are well documented and run counter to the purpose of the entitlement, which is to support safety and stability.

Although the Act provides that evidence is only required if requested, in practice employers frequently request evidence as a default condition of access. Employees who do provide evidence may then face further intrusive requests for additional information. This approach is inconsistent with a trauma-informed framework and requires victim-survivors to repeatedly disclose highly sensitive experiences.

Removing the evidentiary requirement would establish a clear presumption that access to paid family and domestic violence leave is appropriate when requested. This approach would strengthen privacy protections, reduce barriers to access, and better reflect the low risk of misuse associated with the entitlement. Evidence to date indicates that uptake of paid family and domestic violence leave remains low, reinforcing the conclusion that misuse is not a material concern. WwWA therefore recommends that section 107(3) of the Fair Work Act be amended to remove the evidentiary requirement entirely. In the absence of such reform, any retained evidentiary framework should be tightly constrained, clearly limited in application, and accompanied by strong safeguards to minimise harm to victim-survivors.

Raising awareness (Recommendation 49)

WwWA supports this recommendation and encourages government to design awareness-raising efforts that meet victim-survivors where they are at through coordinated and targeted campaigns that reflect the realities of different workplaces and cohorts. Recommendation 49 already recognises the need for tailored initiatives for workers in insecure and low-paid work, with a particular focus on casuals, and for materials customised for culturally and linguistically diverse employees, migrant workers, First Nations employees, and workers in regional, rural and remote areas. We urge LGBTQIA+, people with disability and young people in their own right to be included in these focus areas as they also face disproportionate rates of violence.

WwWA considers that this intersectional approach should be central to implementation, so that awareness efforts are directed to the cohorts and settings where barriers to access are highest, and the impact of targeted outreach is likely to be greatest. For example, universities are a highly casualised sector in which women, including culturally and linguistically diverse women, are overrepresented in insecure work and may face additional barriers to awareness, disclosure and safe access to paid family and domestic violence leave. Targeted outreach in settings such as these would help ensure awareness-raising efforts reach cohorts facing the greatest barriers to access. Targeting awareness efforts to priority cohorts and settings will help ensure outreach has the greatest impact where barriers are most acute.

Casual employees (Recommendation 50)

WwWA supports this recommendation.

Expansion of the definition of perpetrator (Recommendation 51)

WwWA supports this recommendation.

Double threshold definition (Recommendation 52)

WwWA supports this recommendation.

Additional issues for consideration

Including sexual violence

WwWA continues to call for this entitlement to be inclusive of sexual violence. WwWA does not agree with the premise that that extending paid family and domestic violence leave to workers dealing with the impacts of sexual violence would "effectively create a new leave entitlement". That framing rests on an unduly narrow conception of the existing entitlement. The purpose of paid family and domestic violence leave is not limited to facilitating escape from violence within a prescribed relationship. It is intended to support workers to manage the consequences of violence, maintain employment, preserve financial security, and take steps toward safety and recovery. Many of the actions a worker may need to take in response to sexual violence (including accessing medical care, counselling, legal assistance, police processes, safety planning, or time for recovery) are functionally the same as those already contemplated by the leave. In that context, extending coverage to sexual violence is more accurately understood as broadening the operation of an existing protective entitlement, rather than creating a wholly new category of leave.

WwWA also does believe that this issue falls within the scope of the review. The Terms of Reference empower the reviewer to consider whether the amendments are operating appropriately and effectively, identify unintended consequences, and consider whether further legislative amendments are necessary to improve their operation. A gap in coverage for employees affected by sexual violence is properly understood as a question about the effectiveness and reach of the existing entitlement. The decision to treat this issue as outside scope appears to draw an arbitrary distinction, particularly given that the review otherwise engages with proposals to clarify, simplify and broaden the operation of paid family and domestic violence leave, including by expanding the categories of perpetrators covered by the entitlement.

The exclusion of sexual violence from the scope of paid family and domestic violence leave is also inconsistent with the broader policy architecture established by the National Plan to End Violence Against Women and Children 2022–2032, which treats sexual violence as a core form of gender-based violence requiring a coordinated national response. Greater coherence across these policy settings is needed to ensure workplace protections reflect the wider framework that already recognises the serious impacts of sexual violence on women's safety and economic security.

Expansion of eligibility to support persons and family members

WwWA reiterates that paid family and domestic violence leave should be expanded to include employees who are supporting a victim-survivor, including family members, close friends, carers and other support persons. This issue was raised by multiple stakeholders during the review process, and the report acknowledges support for expanding eligibility to support persons and carers. WwWA considers that this is a missed opportunity. Extending eligibility in this way would better reflect the social and relational realities of family and domestic violence, strengthen the support available to victim-survivors, and promote a more

trauma-informed and community-centred approach. A workplace entitlement designed to respond to family and domestic violence should recognise that safety and recovery are often made possible through the practical support of others.

Expansion of eligibility to employee-like workers

WwWA acknowledges the current limitations on access to workplace protections and entitlements for employee-like workers, including in relation to paid family and domestic violence leave. While the report addresses this cohort through its specific recommendations on the employee-like framework, WwWA considers that a broader review by government is also required to ensure employee-like workers are not left without access to essential workplace protections because of the form of their engagement. As working arrangements continue to evolve, government should take a more comprehensive approach to examining how core safety-net entitlements, including protections relevant to family and domestic violence, can be extended or adapted so that employee-like workers receive meaningful and equitable protection in practice.

Small, family and micro-business contexts

The review already recognises that small business employers may face distinct implementation challenges, and that victim-survivors in priority cohorts, including migrant workers, culturally and linguistically diverse women, and workers in insecure employment, can face heightened barriers to access. These barriers can be especially acute where the workplace is very small, where work and personal relationships are closely enmeshed, or where there is no meaningful separation between the employee and the person to whom disclosure must be made. In family-like or micro-business operations, a worker may be required to disclose directly to an owner, relative, or another person with whom they have close day-to-day contact. In those settings, privacy can be difficult to preserve and the risks associated with disclosure may be significantly heightened. This is particularly concerning where those risks intersect with cultural and linguistic barriers, insecure migration status, casual employment, financial dependence, or social isolation. The result may be that the entitlement exists in law but remains inaccessible in practice for workers who need it most.

WwWA therefore considers there is a clear role for government to act as a practical lever to facilitate access in these settings. This would be consistent with the report's broader recognition that tailored approaches are needed for vulnerable cohorts and that small business requires specific support and guidance in implementing paid family and domestic violence leave. It also reflects the same policy logic underpinning the introduction of government-funded paid parental leave, which emerged in response to uneven access across employers, particularly for women in smaller or less resourced workplaces, and was directed to supporting workforce participation and addressing issues of national economic and social interest. A similar approach is warranted here to ensure that women's access to paid family and domestic violence leave does not depend on the size or nature of their workplace.