



Australian Government

Australian Government Response to the Senate Standing
Committee on Education and Employment report:

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

February 2024

Overview

The Australian Government believes in the fundamental right of all people in Australia to feel safe in their homes and in their workplaces. The *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022* (Amendment Act) was an important step towards making sure that no employee is forced to make a choice between earning a wage and protecting the safety of themselves and their family.

The Amendment Act was the first parliamentary action of the Hon Tony Burke MP, Minister for Employment and Workplace Relations. This recognised the need to take quick action towards the Government's goal to end gender-based violence in Australia, set out by the *National Plan to End Violence against Women and Children 2022–32*.

The Government recognises the importance of ensuring that this leave entitlement operates effectively for employers as well as employees who are experiencing family and domestic violence. This is why the Government has committed to a statutory independent review of the operation of the Amendment Act to commence as soon as is practicable from February 2024.

Committee Recommendation 1

The committee recommends that the Australian Government commission an independent review of the provisions of the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022 (bill) to be undertaken 18 months after the commencement of Schedule 1. The committee further recommends that the review assess the adequacy of support and guidance available to business to assist with implementation of the bill.

Response: Agreed in-principle.

During parliamentary debate, the Government agreed to amendments to the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022 requiring the Minister to commission an independent review of the operation of the paid family and domestic violence leave provisions.

The review must commence as soon as practicable 12 months from the commencement of Schedule 1 of the Amendment Act on 1 February 2023. In accordance with the Amendment Act, it must consider:

- the impact of the amendments on small businesses, sole traders and people experiencing family and domestic violence, and
- both quantitative and qualitative research.

The review must be provided as a written report to the Minister within 3 months of commencement of the review, and be tabled in both Houses of Parliament within 15 sitting days from the report being given to the Minister.

The Government intends that the review will also consider the adequacy of support and guidance available to business to assist with implementation of the legislation, as recommended by the Committee.

Committee Recommendation 2

The committee recommends that the Senate pass the bill.

Response: Agreed.

The Senate passed the legislation on 26 October 2022 and it passed both Houses of Parliament on 27 October 2022. The Amendment Act received Royal Assent on 9 November 2022.

Coalition Senators' Recommendation 1

The Coalition Senators recommend:

- **Government provide greater details about the impact of the FDVL model on small and family businesses, particularly regarding casual workers, and provide additional assistance to ensure these businesses are not adversely affected by the administration of the scheme or worse off financially;**
- **the legislation be amended to clarify the reporting obligations for employers with respect to paid FDVL;**
- **the legislation be amended to ensure perpetrators of FDV cannot access the proposed new paid entitlement;**
- **a 12-month review, following the implementation of the legislation, which would seek both qualitative and quantitative research on the impact for small businesses; and**
- **a 12-month review, following the implementation of the legislation, which would assess the impact on sole business.**

Response: Noted.

In relation to the recommendations around the reporting obligations for employers and perpetrators not being able to access family and domestic violence leave, the Government's position was outlined during parliamentary debate (see Senate Hansard, 26 October 2022, pages 1565 and 1567-68). The Government made clear that the legislation does not impose any reporting obligations on employers and that an employee will only be able to access the leave if they are experiencing family and domestic violence.

As detailed in response to Committee Recommendation 1, the Amendment Act requires an independent review of the operation of the provisions be conducted. This review will provide Government with the opportunity to consider qualitative and quantitative research on the operation of the Amendment Act to understand the impact of the entitlement, including on small businesses and sole traders.

The Government recognises the importance of ensuring small business are equipped to understand and administer the paid family and domestic violence leave entitlement sensitively and lawfully. The Small Business Assistance package announced in the 2022–23 Budget provides \$3.4 million over 4 years to deliver a range of holistic supports to help small businesses implement paid family and domestic violence leave. This funding supports:

- the Fair Work Ombudsman to update and develop new resources and provide targeted workplace relations advice and education
- the Department of Employment and Workplace Relations to procure tailored workplace relations guidance and support for small business

- commissioning of an independent review to be undertaken as soon as is practicable from 1 February 2024, which will assess support to small business and examine the effectiveness and scope of the legislation.

Measures now in place to support small business implement the leave entitlement include:

- The Fair Work Ombudsman has updated material and developed new information and resources in consultation with small business, advocacy, and employee representatives. Updates include information about the new paid family and domestic violence leave changes, covering when the leave applies, payment for the leave, notice and evidence requirements, how to record the leave on a payslip and privacy issues. Small businesses can also contact the Fair Work Ombudsman's Small Business Helpline and Employer Advisory Service for additional assistance.
- Through an open market process, the Government procured a stand-alone website providing guidance and support for small business to understand their obligations to provide paid family and domestic violence leave, administer the leave entitlement sensitively and lawfully, and competently manage associated issues. The website, www.10dayspaidFDVleave.com, was developed in partnership with small business representatives and family and domestic violence sector experts.
- A podcast titled '*Small business, big impact: how to support employees experiencing family and domestic violence*' was launched on 1 August 2023 to provide practical and accessible advice for small businesses so they can appropriately support their employees when they apply for family and domestic violence leave. In addition, information and support is available through 1800RESPECT, the national domestic, family and sexual violence counselling, information and support service on 1800 737 732 or via 1800RESPECT.org.au.

Together, these measures ensure small business can access the right advice at the right time to provide support to their employees experiencing family and domestic violence.

Australian Greens Senators' Recommendation 1

That any financial support package provided by the government be contingent on recipient businesses offering paid FDV leave to employees at the earliest possible opportunity.

Response: Noted.

The Government recognises that small businesses may need extra support to implement the entitlement as they often have more limited resources and may not have access to payroll and human resources expertise. To reflect this, the paid family and domestic violence leave entitlement did not commence for employees employed by small businesses until 1 August 2023, 6 months later than the commencement date for employees employed by non-small business employers.

The Small Business Assistance package announced in the 2022–23 Budget provided \$3.4 million to provide support measures to small business, as outlined above. This measure does not include delivery of funding directly to small businesses implementing the new leave entitlement, but rather provides support to ensure they have guidance and relevant materials to help them implement the entitlement.

Australian Greens Senators' Recommendation 2

That the 18 month review of the Bill consider the definition of family and domestic violence in the *Fair Work Act 2009* in the context of harmonisation initiatives, and consider whether to expand leave entitlements to family, domestic and sexual violence.

Response: Noted.

The review of the amendments made by the Amendment Act will be independent of government and capable of considering the definition of family and domestic violence for the purposes of the leave entitlement, including whether the definition should be revised.

The Government notes that the *Fair Work Act 2009* contains a definition of family and domestic violence in subsection 106B(2) that applies for the purposes of the Act, including an employee's entitlement to paid family and domestic violence leave. The Government has committed to progressing a national definition of family and domestic violence that includes coercive control. A national definition of family and domestic violence will help inform a common understanding of family and domestic violence nationally and across jurisdictions.

Progression of a national definition requires a coordinated approach from Commonwealth, state and territory governments and will progress separately to the statutory independent review of the Amendment Act.

Australian Greens Senators' Recommendation 3

That resources developed by the Fair Work Ombudsman to support implementation of the Bill provide clear guidance to employers regarding evidentiary requirements, including:

- requests for documentation should be kept to a minimum.
- employers should be flexible about what documentation is sufficient.
- approval of leave should not be deferred while waiting for evidence to be provided.
- employers must have clear processes to prevent disclosure of any documentation requested. Ideally, evidence could be sighted by the employer and returned to the employee, rather than kept on file. The employee file can record that appropriate documentation was provided without any further detail.

Response: Noted.

As part of the Small Business Assistance package announced in the 2022–23 Budget, the Government provided the Fair Work Ombudsman with \$2.2 million over 4 years to update its workplace relations advice and education tools and resource its advice and education channels.

The Fair Work Ombudsman website, www.fairwork.gov.au/leave/family-and-domestic-violence-leave, has free information and resources available now on evidentiary requirements for the new entitlement. This includes:

- a fact sheet with information on key aspects of the new entitlement, including when the leave can be taken, how it is paid, notice and evidence requirements, privacy and pay slip rules, as well as an example about accessing the entitlement

- online learning courses on difficult conversations in the workplace, record keeping and payslips, workplace flexibility and the Fair Work Information Statement. These have been updated with information about paid family and domestic violence leave.

The Fair Work Ombudsman also updated its small business *'Employer Guide to Family and Domestic Violence'* ahead of the extension of the entitlement to employees of small businesses from 1 August 2023. The guide promotes best practice by helping employers to understand their responsibilities to employees experiencing family or domestic violence. The guide also includes information on how to support employees experiencing family or domestic violence, manage family and domestic violence issues in the workplace, and develop a workplace response to family and domestic violence.

The Fair Work Ombudsman has also developed information in multiple languages.

Australian Greens Senators' Recommendations 4 and 5

4. That s106B be amended to:

- **expand s.106B(1)(a) to include [sic] apply to an employee who 'has experienced, or is experiencing, family and domestic violence';**
- **amend s.106B(1)(c) to read 'it is impractical or unsafe for the employee to do that thing outside the employee's ordinary hours of work' (emphasis added);**
- **expand the examples provided in Note 1 to s.106B(1) to include arranging for the care of children, securing alternative housing, and addressing long term physical and mental health issues relating to the family and domestic violence; and**
- **clarify that the examples provided in Note 1 are not exhaustive.**

Response: Noted.

See response to Australian Greens recommendation 5 below.

5. That the Bill be amended to provide an entitlement for unpaid FDV leave where employees have exhausted their annual 10 days of paid leave. This could be modelled on the Western Australian Government provisions, or explicitly provide for at least 4 additional days of unpaid leave. Employers may also, at their discretion, provide additional paid FDV leave, in advance or by agreement.

Response: Noted.

Parliament considered elements of these recommendations by way of non-Government amendments moved by the Australian Greens in the Senate (see Senate Hansard, 26 October 2022, pages 1560 and 1665). The amendments were not agreed to by the Senate.

In relation to the proposed amendments to s 106B, the Government recognises the policy concerns underlying the recommendation, but considers the existing language of the provision is sufficiently clear to address them, as set out in the Government's contribution to the parliamentary debate.

The Government's priority for the Amendment Act was to ensure that no-one should have to choose between their pay and safety. The Amendment Act achieves this objective and is world-leading in terms of scope and entitlements for paid family and domestic violence leave. The Amendment Act builds in a requirement for an independent review of the legislation as soon as is practicable 12 months after commencement of the reforms.

The independent review will provide a critical opportunity to consider the effectiveness and scope of the legislation and the impact it has had on people experiencing family and domestic violence.

Australian Greens Senators' Recommendation 6

That the *Fair Work Act 2009* (Cth) be amended to include 'experiencing family and domestic violence' and requesting FDV leave as protected characteristics under s.35(1) [sic].

That the 18 month review examine any evidence of gender discrimination resulting from the Bill and consider whether family and domestic violence should be a protected attribute under the *Sex Discrimination Act 1984* (Cth).

Response: Noted.

The Government notes that an employee's access to paid family and domestic violence leave is already protected under the *Fair Work Act 2009*. The general protections provision in section 340 of the *Fair Work Act 2009* prohibits a person taking adverse action against another person because they have a workplace right, whether or not they seek to exercise this right. A person has a workplace right if they are entitled to a benefit under a workplace law, which includes the new paid family and domestic violence leave entitlement.

The *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Closing Loopholes Act) passed Parliament on 7 December 2023. The Closing Loopholes Act amended the *Fair Work Act 2009* to strengthen existing workplace protections against discrimination for employees who have been, or continue to be, subjected to family and domestic violence, including by:

- making 'subjection to family and domestic violence' a new protected attribute under section 351 of the *Fair Work Act 2009*, thereby prohibiting a national system employer from taking adverse action against an employee or prospective employee on that basis (e.g. dismissing an employee or not hiring a prospective employee)
- prohibiting employers who are not covered by Part 3-1 (General Protections) of the *Fair Work Act 2009* from terminating an employee's employment on the basis of their 'subjection to family and domestic violence'
- prohibiting modern awards and enterprise agreements from including terms that discriminate against employees because of, or for reasons including, their subjection to family and domestic violence
- requiring the Fair Work Commission, when performing its functions or exercising its powers under the *Fair Work Act 2009* in relation to a matter, to take into account the need to respect and value the diversity of the workforce by helping to prevent and eliminate discrimination on the basis of subjection to family and domestic violence.

While the *Sex Discrimination Act 1984* does not directly prohibit discrimination on the grounds of someone experiencing family and domestic violence, the Government notes the work of the Australian Human Rights Commission in conciliating human rights and discrimination complaints and promoting Australians' rights and freedoms. The Government also notes the current work of the Parliamentary Joint Committee on Human Rights, which is considering Australia's human rights and anti-discrimination framework.

Australian Greens Senators' Recommendation 7

That the Government ensure that the Bill is part of a broad suite of reforms to implement the new National Plan to End Violence Against Women and Children. At a minimum, this should include:

- **Increasing funding to frontline services to \$1 billion annually to meet expected demand.**
- **Measures to address the housing crisis that makes it difficult for women fleeing abusive relationships to find new accommodation.**
- **Increasing income support payments so women without stable employment (and access to paid FDV leave) can still have the financial security to leave abusive relationships.²⁷**
- **Reviewing the Escaping Violence Payments and streamlining administrative processes for accessing Centrelink crisis payments.**
- **Requiring employers to accept reasonable requests for flexible working arrangements.**

Response: Partially agree.

Ending violence against women and children is a national priority. Paid family and domestic violence leave joins the range of tools available to address violence against women and children. The Government acknowledges the resistance and resilience of victim-survivors of family and domestic violence and is committed to providing the national leadership and investment needed to address family and domestic violence.

This is demonstrated through the Government's investment of \$2.3 billion to support the implementation of the *National Plan to End Violence against Women and Children 2022–2032* since October 2022. This investment will guide efforts and actions over the next decade towards the vision of ending gender-based violence in one generation.

Building on the \$1.7 billion in the October 2022–23 Budget, the Government has invested a further \$589.3 million in the 2023–24 Budget to support the National Plan including:

- \$159.0 million over 2 years from 2023–24 to extend the National Partnership on Family, Domestic and Sexual Violence Responses with state and territory governments. This funding will continue to bolster frontline family, domestic, and sexual violence supports to ensure women and children can access support when they need it
- \$38.2 million in additional funding to extend the current Escaping Violence Payment Trial and the Temporary Visa Holders Experiencing Violence Pilot until 31 January 2025, which will provide much needed support for individuals leaving violent relationships
- \$2.8 million over 3 years from 2023–24 to develop a National Model of Care to assist the sector in providing appropriate supports and services that meet the safety and recovery needs of children and young people in emergency accommodation settings
- \$24.3 million over 4 years from 2023–24 (and \$5.9 million per year ongoing) to pilot an additional referral pathway for the Support for Trafficked People Program and restructure the program to better meet the needs of victim-survivors, while increasing ongoing funding to address current and projected demand.

Key measures in the [October 2022–23 Budget](#) included:

- \$169.4 million in funding for state and territory governments for 500 new frontline and community sector workers nationally to support women and children experiencing family, domestic, and sexual violence
- \$30 million for measures under Safe and Supported: The National Framework for Protecting Australia's Children 2021–2031. The measures support outcomes under the Safe and Supported Action Plans, which were released on 31 January 2023. The measures also support the need for prevention and early intervention to prevent and protect children from violence, as identified in the National Plan
- \$100 million over 5 years from 2022–23 to continue funding under the Safe Places Emergency Accommodation Program through the Safe Places Emergency Accommodation Inclusion Round (Inclusion Round). The Inclusion Round will increase the number of new and appropriate emergency accommodation places across Australia, with a focus on providing support for First Nations women and children, women and children from culturally and linguistically diverse backgrounds, and women and children with disability
 - The Safe Places program is a capital works grants program funding the building, renovation or purchase of new emergency accommodation for women and children experiencing family and domestic violence. The Government invested \$72.6 million over 2020–21 to 2024–25 in the program.

Housing

The Government is supporting the delivery of more social and affordable housing through its \$10 billion Housing Australia Future Fund (HAFF). The HAFF will fund 30,000 new social and affordable housing properties. 4,000 of those social housing dwellings will be allocated for women and children experiencing family and domestic violence and older women at risk of homelessness. In addition to other acute housing needs, the HAFF will also fund \$100 million in the first 5 years for crisis and transitional housing options for women and children experiencing family and domestic violence and older women who are at risk of homelessness.

The Government has funded the Keeping Women Safe in their Homes (KWSITH) program since 2015–16. In the October 2022–23 Budget, a further \$41.7 million was allocated to continue KWSITH to 2026–27. The KWSITH program supports women and their children to stay in their own home, or a home of their choice, where it is safe and appropriate to do so, through a range of safety responses such as risk assessments, safety planning, home security audits and upgrades. The KWSITH program supports greater housing stability by providing women with an alternative to homeless shelters and emergency accommodation, and reduces some strain on emergency accommodation providers.

National Partnership on Family, Domestic and Sexual Violence Responses (FDSV National Partnership)

Investment of \$159.0 million over 2 years announced in the 2023–24 Budget builds on the \$270.7 million provided over 2 years from 2021–22 under the FDSV National Partnership, and the \$169.4 million committed in the October 2022–23 Budget for 500 workers and innovative perpetrator response initiatives. Under the FDSV National Partnership, funding is conditional on contributions from states, in recognition that responding to violence is a shared responsibility of all Australian governments and that states have primary

responsibility for frontline services, and to ensure that critical services are able to meet demand. States are responsible for distributing the funding under the FDSV National Partnership to services based on needs in their jurisdictions.

Social security

The National Plan notes that Australia's social security system supports victims and survivors to not only leave a violent relationship, but also to establish a life free from violence. Examples of support include the Crisis Payment, Rent Assistance, and higher single rates of social security payments. The Government has committed to review the adequacy of income support payments at each Budget.

Services Australia provides assistance and support to victim-survivors guided by the Agency's Family and Domestic Violence Strategy. To reinforce this commitment, a range of strategies have been implemented to ensure the safety of customers and their families, including providing staff with regular training and guidance materials to help identify when customers may be experiencing violence. Training and guidance materials are regularly reviewed to ensure they are up to date and appropriate.

Child Support

As part of the 2023–24 Budget, the Government has committed \$5.1 million to implement the Government's response to key Child Support recommendations made by the Joint Select Committee on Australia's Family Law System including:

- establishing a Child Support Stakeholder Consultation Group with key stakeholders who will perform an important advisory role for Government on policy and service delivery issues that affect the operation of the Child Support Scheme and positive outcomes for separated parents
- reviewing Child Support collection arrangements, and commissioning an evaluation of separated families to understand the issues vulnerable parents (including parents experiencing family and domestic violence) experience, and barriers to address those issues if the Child Support collection arrangement breaks down
- reviewing the interactions between the scheme and Family Tax Benefit (FTB) to ensure these programs are working effectively together to support separated parents, including vulnerable parents, and their children
- reviewing compliance with Child Support assessments, with a focus on collection and enforcement.

Income support payments

As part of the 2023–24 Budget, the Government delivered a \$14.6 billion cost of living package, which includes the following measures which increased income support payments:

- \$4.9 billion to increase the rate of working age payments by \$40 per fortnight and move single JobSeeker Payment recipients aged 55 years and over after 9 continuous months on payment to the higher single rate. This will benefit around 580,000 women
- \$1.9 billion to extend Parenting Payment (Single) to parents until their youngest child is aged 14 years. This will benefit around 52,000 women

- \$2.7 billion to increase Commonwealth Rent Assistance maximum rates by 15 per cent.

The new rates commenced on 20 September 2023, further indexation of eligible payment rates also took place as usual on 20 September 2023.

Escaping Violence Payment (EVP)

Economic abuse involves control, exploitation or sabotage of finances which affects a person's ability to obtain, use, or maintain economic resources, threatening their economic security and potential for independence. The EVP trial provides support packages of up to \$5,000 to eligible individuals to establish a home free from violence. The EVP trial reduces the financial barriers for individuals experiencing violence to leave an abusive relationship. An extension of the trial until the end of January 2025 was announced in the 2023–24 Budget. The trial is being independently evaluated and this will provide the Government with an evidence base to consider the future of the program.

Right to request flexible working arrangements

The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* has strengthened the right to request flexible working arrangements in the National Employment Standards. These amendments commenced on 6 June 2023.

The right to request flexible working arrangements has been expanded to employees who are pregnant as well as situations where an employee, or a member of their immediate family or household, experiences family and domestic violence. This amendment aligns the coverage of family violence with the entitlement to paid family and domestic violence leave in the National Employment Standards.

The amendments make the right to request flexible working arrangements an enforceable right and allow the Fair Work Commission to deal with disputes about requests, including by arbitration. However, arbitration is a last resort and the Commission must attempt conciliation or mediation before arbitration unless there are exceptional circumstances.

Employers may only refuse a request on reasonable business grounds.

There is also a fair and transparent process for responding to requests for flexible working arrangements, based on the Commission's model term for flexible working arrangements in modern awards.