

Submission by the Australian Nursing and Midwifery Federation

**Independent Review of the *Fair Work
Amendment (Paid Family and Domestic
Violence Leave) Act 2022 (Cth)***

14 June 2024



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Nursing &
Midwifery
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Introduction

1. The Australian Nursing and Midwifery Federation (ANMF) is Australia's largest national union and professional nursing and midwifery organisation. In collaboration with the ANMF's eight state and territory branches, we represent the professional, industrial and political interests of more than 326,000 nurses, midwives and care-workers across the country.
2. Our members work in the public and private health, aged care and disability sectors across a wide variety of urban, rural and remote locations. We work with them to improve their ability to deliver safe and best practice care in each and every one of these settings, fulfil their professional goals and achieve a healthy work/life balance.
3. Our strong and growing membership and integrated role as both a trade union and professional organisation provides us with a complete understanding of all aspects of the nursing and midwifery professions and see us uniquely placed to defend and advance our professions.
4. Through our work with members, we aim to strengthen the contribution of nursing and midwifery to improving Australia's health and aged care systems, and the health of our national and global communities.
5. The ANMF thanks Flinders University and the Independent Review Team for the opportunity to provide feedback to the Independent Review (the Review) on the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022* (Cth) (paid FDV leave).
6. Reflecting the demographics of the nursing, midwifery and care workforce, the ANMF's membership is predominantly female.¹ ANMF members are also diverse, with members from a range of social, cultural, and language backgrounds, and gender and sexual identities.
7. Given the disproportionate representation of women and diverse groups as victims of family and domestic violence (FDV), and the highly gendered and diverse demographics of health and care workforces, it is a harsh reality that many nurses, midwives and carers, including in the ANMF membership, have been directly affected by FDV. A recent study found that nurses,

¹ Nursing and Midwifery Board 2024, Registered nurses: Snapshot as at 30 June 2023, Australian Health Practitioner Regulation Agency, <https://www.ahpra.gov.au/About-Ahpra/What-We-Do/Data-access-and-research/Health-profession-demographic-snapshot-reports.aspx>, (accessed 3 June 2024).



midwives and carers were experiencing FDV up to 4.5 times higher than the general Australian community.² It follows that most ANMF members have provided treatment and support to victim survivors through the course of their work.

8. As such, the ANMF has long been an advocate for paid FDV leave as a national employment standard (NES). We commend the Government for introducing paid FDV leave as a matter of priority upon election. Notwithstanding this support, to ensure that the entitlement operates to its full intended effect and complements other important legislative and policy measures to combat the national gendered-based violence crisis, the ANMF **recommends**:
 - i. The quantum of paid FDV leave be increased to 20 days per year.
 - ii. Access to the entitlement be expanded to include all workers where there is an employment, employment-like or business relationship i.e. independent contractors (“gig workers”) and subcontractors.
 - iii. Consider the introduction of a broader ‘gender-based and sexual violence’ leave entitlement to ensure employees experiencing or managing the impacts of violence by a perpetrator unknown to them or known through a different relationship, for example coworker, have access to paid leave.
9. If a broader entitlement for gender-based and sexual violence is introduced, the ANMF **recommends** that the Government and Fair Work Commission review expanded definitions currently contained in industrial instruments (see below in the Northern Territory example, Question 1 [21] and Question 10 [42], to ensure they reflect the most accessible and already understood definitions in jurisdictions and workplaces.
10. Given the persistent social stigma of gender-based violence, which the ANMF believes is a cause of underreporting and underutilisation of paid FDV leave, we also **recommend** that the Government and Fair Work Commission implement other industrial relations reform to support victims to retain employment while seeking criminal, judicial and health support. This should include, but not be limited to, expanded personal and carer’s leave, paid leave for cultural and kinship care for First Nations workers, ability to take other forms of leave at half pay, and

² Elizabeth McLindon et al., “You can’t swim well if there is a weight dragging you down”: cross-sectional study of intimate partner violence, sexual assault and child abuse prevalence against Australian nurses, midwives and carers, *BMC Public Health*, no. 22/1731 (2022): 8. <https://doi.org/10.1186/s12889-022-14045-4>.



additional resources for culturally and linguistically diverse groups to understand and access the entitlement.

11. The ANMF takes this opportunity to impress upon the Review that while essential, paid FDV leave is often accessed at ‘crisis point’ for victim survivors and their loved ones. More must be done in prevention and early intervention. Gender equality, as an underlying determinant of violence against women and children, must be seriously and meaningfully addressed by Government, acknowledging that we must have a shared understanding of the problem in order to achieve the goal of ending gender-based violence.³ As an organisation advocating for the rights of workers, the ANMF is of the firm belief that achieving gender equality must include investment in increasing the wages and securing decent employment conditions for female-dominated and diverse occupations.

12. The ANMF federal office consulted with our state and territory branches and a large health and aged care provider of residential and home care services throughout Queensland (the Queensland employer) in the preparation of this submission. The ANMF provided a copy of the Review’s survey questions to inform these consultations. The ANMF also sought information from the Northern Territory Commissioner of Public Employment (the NT Commissioner). The responses below reflect the experiences of ANMF staff working in member facing roles such as organiser and industrial officer, and of senior management at the Queensland employer. It also captures information provided by the NT Commissioner.

Question 1: Insights and/or experiences regarding how organisations have implemented the paid FDV leave entitlement and how employees have been able to access it.

13. Unions have long bargained for paid FDV leave in enterprise agreements and so the concept of the entitlement and how to implement it is widely understood in union workplaces. This experience was reflected in the feedback from the Queensland employer, who reported inclusion of paid FDV leave in agreements since they began working with the Queensland Nurses and Midwives Union (a branch of the ANMF) in approximately 2016. The Queensland employer advised that as their business used to provide FDV support services and as it still provides health and aged care services, it is by nature ‘tapped into’ the issues of FDV. Its management was very

³Australian Government, 'National Plan to End Violence Against Women and Children 2022-2023', Department of Social Services, Canberra, 2022, page 67, <https://www.dss.gov.au/the-national-plan-to-end-violence-against-women-and-children/the-national-plan-to-end-violence-against-women-and-children-2022-2032>, (accessed 3 June 2024).



supportive of the paid entitlement and union bargaining claim, even before it was in the NES.

14. Union representatives such as workplace delegates and health and safety representatives report feeling well-trained and equipped to have conversations with colleagues and management about the entitlement. They also report feeling confident in discussing other supporting policy and procedure, for example workplace Code of Conduct, incident reporting, and sexual harassment policy, with employers and colleagues. It is the experience of the union representatives that these conversations, while not always directly about FDV or the paid entitlement, foster an open and supportive workplace. In turn, this encourages victims or loved ones to come forward and access the entitlement.
15. While there is resounding support for the paid entitlement and positive experiences of its implementation, there are shared issues of concern from both a union and employer perspective. Both groups describe paid FDV as a 'last resort' entitlement. Owing to social stigma and fear of retribution from unsympathetic management or colleagues, there is a view that employees will delay or entirely avoid accessing the entitlement. ANMF branches and the Queensland employer all implored the need for more funding and resources for early intervention, citing that 'by the time a staff member needs FDV leave, things are at crisis point'.
16. The Queensland employer and NT Commissioner both report other arrangements and entitlements as being more widely accessed and exhausted before FDV leave is requested by the employee. ANMF branches advised that while a union delegate may suspect a colleague is experiencing FDV, they will either utilise other leave and arrangements first and before disclosing FDV or in many instances, never disclosing FDV experiences.
17. The Queensland employer advised that where there is suspected FDV, they will discretely offer such arrangements or try to raise awareness about paid FDV leave, while 'being very careful not to out' the employee. Any request for access to other arrangements and entitlements, and to paid FDV leave, are always at the employee's request and in consultation with them. The Queensland employer advised they always 'try to work on a case-by-case basis, led by the staff member and their requests and needs'.
18. The ANMF strongly supports an employee-initiated approach, while acknowledging the



employer's responsibility to foster supportive workplaces where employees feel safe to come forward, and for the employer to meet any duty of care where they suspect an employee is unsafe or in danger.

19. Most feedback received for this submission advised of the following other arrangements and entitlements commonly accessed for reported or suspected FDV:

- i. adjusting rosters so that the employee has varied start and finish times. This offers protection from stalking and intrusion at the workplace.
- ii. not rostering at night and ensuring start and finish times are during busy periods when there will be more activity and colleagues present.
- iii. providing escorts to cars and transport.
- iv. utilising security where appropriate, noting that a residential aged care facility is a home and there are limitations as to what security can be used.
- v. offering additional personal/carer's leave, paid wherever possible.
- vi. reinstating personal/carer's leave used for FDV, if the FDV has been disclosed later and after other entitlements were exhausted.

20. The NT Commissioner advised that '[public sector] employees who are victims of domestic and family violence can access various flexible work options and other support under a range of provisions:

- i. Miscellaneous leave (By-law 18). Employees can access this by-law for other reasons such as career breaks, blood donation, community service and other purposes.
- ii. Working part-time.
- iii. Flexible working arrangements.
- iv. Leave without pay (By-law 16).
- v. Recreation leave at half pay.
- vi. Long service leave at half pay.
- vii. Personal leave.'

21. These provisions are in addition to the 'Domestic, Family and Sexual Violence Leave' clause in the *Northern Territory Public Sector 2021 - 2025 Enterprise Agreement*. Under the clause, there is no limit on paid leave, and all leave taken under this clause is expressly in addition to any other



type of leave.⁴ The ANMF strongly supports this broader definition of, and uncapped access to, FDV and sexual violence leave. However, the ANMF does not support leave without pay being offered in favour of paid entitlements and arrangements, as suggested by the NT Commissioner.

22. We also caution as to part-time work being utilised by an employer to manage the impacts of FDV on employment. Care work is perceived as low value ‘women’s work’ resulting in low pay and part-time has become a default type of employment for working carer’s, owing to the presumption that working (women) carer’s only want or need part-time work to be able to balance care responsibilities. To genuinely reduce the scourge of FDV requires addressing the financial disadvantages and structural inequities resulting from low paid and insecure work, which compound to make it harder to leave abusive relationships, remain in employment, access support and rebuild one’s life.

Question 2: Thoughts and/or experiences regarding the scope of the paid family and domestic violence leave entitlement and whom it covers.

23. ANMF branches and the Queensland employer both reported that it is more common for employees supporting a loved one experiencing FDV to access the entitlement or other arrangements. This was described as ‘mothers assisting their daughters to leave violent relationships and to help with the grandchildren while the daughter attends police, court and medical appointments’.
24. The Queensland employer also advised that in these circumstances, it is more common for employees in administrative and other non-direct care roles to request FDV leave. As non-direct employees are also more likely to be older women, they may feel more societal pressure or obligation to provide support and request FDV-related leave. The ANMF shares the view of the Queensland employer that the higher rates of access by non-direct care employees is partly attributable to the professional duty of care that nurses, midwives and carer’s have for their residents and patients. A nurse, midwife or carer who is also a victim of FDV or supporting a victim may be less likely to seek time off work as they do not want to leave patients without care.

⁴Northern Territory Government, ‘Northern Territory Public Sector 2021 - 2025 Enterprise Agreement’, Clause 84, page 73, https://ocpe.nt.gov.au/_data/assets/pdf_file/0009/1058859/proposed-ntps2021-2025-enterprise-agreement.pdf, (accessed 3 June 2024).



25. There were mixed experiences as to the willingness of employers to provide paid FDV leave to employees supporting loved ones. The Victorian branch of the ANMF described how recently, a nurse and ANMF member was supporting her daughter to escape a violent relationship. The employer repeatedly refused to provide paid FDV leave. The nurse had exhausted all other paid leave i.e. personal/carer's leave and annual leave and was using unpaid leave to help her daughter. Eventually, the employer paid FDV leave, but only after the ANMF intervened.
26. These examples speak to the need to invest in early intervention, prevention and reduction of social stigma. Such measures should include mandatory training for management and human resource staff to understand the impact of FDV and how to facilitate supportive work environments. The ANMF takes the opportunity to call for investment in the attraction and retention of nursing, midwifery and care workforces of adequate size and skill to provide safe rostering and backfill for colleagues on leave.

Question 3: Thoughts and/or experiences of how confidentiality has been managed in the context of access to paid FDV leave.

27. All parties who provided feedback for this submission supported strict confidentiality and privacy for employees experiencing, or supporting others experiencing, FDV. The Queensland employer and NT Commissioner both report having strict privacy policy and procedures in place, with information 'locked down' and only accessible by human resource and payroll officers who need the information to carry out their role. The NT Commissioner advised that the NT Government HR and payroll systems do not capture specific leave types, in order to protect the confidentiality of victims.
28. The ANMF branches and Queensland employer both had a view that employees who access Employee Assistance Programs (EAP) may be disclosing FDV. There was a shared view that this is positive and that the confidentiality measures in place by EAP providers are effective in protecting individual privacy. Only de-identified information is shared back to the employer. This provides confidence to union representatives in referring colleagues and members to the EAP.

Question 4: Impacts of this legislation on you or the organisation/ community you represent.

29. The concerns of some employers and employer representatives that paid FDV leave would



cause unmanageable financial pressure or lead to nefarious claims and absences by employees have not been realised. While there may be a financial impact via the use of other arrangements to assist employees, these costs are likely to already be factored into employer operations, for example other paid leave, or have minimal financial impact, for example providing security escorts or making roster adjustments.

30. On balance, where FDV-related costs are incurred by an employer, these are likely to be positively offset by the attraction, retention and well-being benefits gained by employees from paid FDV leave.⁵ It is particularly important to call attention to the net positive outcome for employers of feminised industries and occupations, where their workforce is statistically more likely to be victim survivors, loved ones of victim survivors and working with (alongside or providing direct care to) victim survivors.

Question 5: Experiences of the organisation/community as to how the reforms affected how workplaces manage or respond to family and domestic violence.

31. It is the experience of ANMF branches that the constitution of management and executive structures, such as boards, has a determining impact on the responsiveness and support for paid FDV leave. As was described to us, ‘what management and the board look like, matters’. If a workplace has a predominantly female and/or culturally and linguistically diverse workforce, both of which are highly likely in health and care settings, but management and executives are all or mostly white males (also likely), then (anecdotally) employer support for the entitlement is lower.
32. The ANMF received multiple reports that workplaces where the leadership is all male will be ‘strongly opposed’ to the entitlement and ‘actively create work environments that are judgemental and not supportive’. These workplaces tend to already have a poor culture and do not encourage or promote diversity. In practice, this can be expressed as deliberately excluding migrant or first nations employees from career progression and training opportunities. ANMF representatives believe that this significantly discourages these employees from making an FDV

⁵ Bankwest Curtin Economics Centre, ‘Family and Domestic Violence Leave Review Report’, Perth, prepared by for the Australian Council of Trade Unions, 30 July 2021, page 8, <https://bcec.edu.au/publications/family-and-domestic-violence-leave-review/>, (accessed 7 June 2024).



disclosure and accessing support.

33. Branches of the ANMF that have coverage of a high number of regional, rural and remote health and care services report acute resistance to the entitlement. In part, this is because leadership is often made up of community members. In small communities, this creates a risk that male managers involved in bargaining and human resources are also perpetrators of FDV, or an employee's perpetrator is known to management via familial or social connection. The financial and social impacts that these close and unavoidable connections have on employees prevents disclosure and entrenches victim survivors in unsafe employment and community environments.

Question 6: The NES provide minimum standards for employees. Paid family and domestic violence leave is an NES entitlement and therefore does not apply to sole traders, volunteers or sub-contractors. Views of the organisation/community you represent about this coverage.

34. As outlined above at Question 1, insecure work is common in feminised and low paid health and care work. In health and care sectors, namely in disability support and home and community aged care, insecure work is apportioned to an increasing rate of sole traders, sub-contractors and independent contractors, otherwise known as 'gig-workers'. In non-direct employment models i.e. gig work, work is poorly regulated and individuals do not have access to the protections and entitlements of traditional employment.⁶
35. Given the intersection with care work being predominantly undertaken by women and women of diverse backgrounds, the paid FDV leave entitlement is not accessible to some of the most vulnerable workers and those statistically more likely to be victims of FDV. The ANMF strongly recommends that the entitlement be provided to all employees, including where there is an 'employee-like' relationship as in gig-work, and where there is a connection to federal funding, as is the case for workers delivering Government-funded NDIS and aged care packages.
36. The ANMF recognises the important role of volunteers in health and care workplaces, including in services providing FDV supports. Formal volunteers are more likely to be women and over the

⁶ Macdonald, F. 'Unacceptable Risks: The Dangers of Gig Models of Care and Support Work', The Centre for Future Work at the Australia Institute, May 2023, page 6, <https://futurework.org.au/wp-content/uploads/sites/2/2023/05/Unacceptable-Risks-WEBBr.pdf>, (accessed 11 June 2024).



age of 55.⁷ This means that volunteers are also more likely to be victim survivors, or supporting victims, of FDV. While the ANMF always advocates for paid employment, we recognise that volunteering is an admirable choice people make and that volunteers play a critical role in essential services. In light of this and the demographics of volunteers, the ANMF supports an extension of FDV leave to formal volunteers.

37. In operational terms, we believe an entitlement could be made available to formal volunteers who have undertaken requisite screening and are captured in employer systems, such as regular transport drivers and social support volunteers who may appear on rosters. Rather than a paid entitlement, the volunteer could be provided leave with a commitment that they will not lose their position, as well as having other supports such as security escorts made available to them. This would have minimal impact on businesses.

Question 7: Any sources of information the organisation/community you represent, has drawn on to help to understand, access and/or administer the paid family and domestic violence leave entitlement.

38. Unions are a primary and essential resource to understanding and implementing paid FDV leave. This is because the paid FDV leave entitlement came into being through the hard work of union campaigning and bargaining. Before it was in the NES, paid FDV leave was bargained into enterprise agreements by union organisers, industrial officers and workplace delegates. Given this history, employers regularly consult with unions as to the drafting of FDV leave clauses and policy for their workplaces. Unions, as discussed further at Question 10, are often able to secure additional pay and other arrangements in agreements to support employees experiencing FDV and other forms of gender-based violence.

Question 8: Utility of supports and resources provided by the Government in understanding, accessing and/or administering the paid FDV leave entitlement.

39. ANMF branches and the Queensland employer advised that there are not enough resources available for employers of, and employees from diverse cultural, linguistic, gender identity, sexuality and other backgrounds. In conjunction with cultural norms and stigma that can be

⁷ Volunteering Australia, 'Key Volunteering Statistics', March 2024, pages 6-7, <https://www.volunteeringaustralia.org/wp-content/uploads/Volunteering-Australia-Key-Volunteering-Statistics-2024-Update.pdf>. (accessed 11 June 2024).



particular and particularly acute for such groups, the lack of dedicated resources prevents these employees from discussing any family or intimate matters, but especially FDV, with employers, colleagues and community.

40. Employers and ANMF branch staff would both benefit from cultural awareness and safety training, with dedicated resources and materials for assisting diverse employees experiencing FDV. Currently, employers and union representatives rely on local diaspora and/or community services to assist them in supporting vulnerable employees. This approach is not sustainable nor is it fair for diaspora community to undertake these additional, resource- and emotion-intensive responsibilities.

41. Resources and training must be made available by Government, in languages other than English and a range of formats, to raise awareness and understanding of the paid FDV entitlement, other available entitlements and arrangements, and other social and health supports. Government would need to coordinate dissemination of the resources and fund any training, given the resource intensity in both cost and time to produce and distribute such materials.

Question 9: Any specific challenges experienced by your organisation in accessing and/or administering the paid FDV entitlement.

42. As outlined in responses to above questions.

Question 10: Any other feedback, for example, unintended consequences or benefits of the entitlement, possible areas for change or further refinement etc.

43. Our branches consistently bargain for additional days and conditions above the NES. For example, the ANMF Victorian branch typically secures no less than 15 days paid FDV leave, with most agreements providing for 20 days paid FDV leave. FDV leave is paid at Ordinary Time Earnings **plus** allowances and other applicable penalties, to ensure the employee does not incur any financial disadvantage when accessing FDV leave. In the Northern Territory, the expanded definition of family, domestic and sexual violence leave means that leave for gendered violence and harassment within the workplace, which anecdotally is more commonly reported than FDV, is captured by the clause.



Conclusion

44. Paid FDV leave is an important social policy measure, borne from the union movement. Its introduction to the NES demonstrates to employers, employees and communities that the Government recognises the complex and interrelated issues between FDV and employment, gender equality, health and wellbeing, social participation and financial security. However, paid FDV leave alone is not enough to prevent FDV, support victims to come forward early and as often as needed, and ensure employees retain work while managing the impacts of FDV on their own or loved one's lives.
45. Bargaining outcomes beyond the NES and the feedback shared in this submission demonstrate that the paid FDV leave entitlement can and should be expanded in quantum, definition and eligibility.