

18 August 2022

Ms Jeanette Radcliffe
Secretary
Senate Education and Employment Legislation Committee
Parliament House
Canberra ACT 2600

via email: eec.sen@aph.gov.au

Dear Ms Radcliffe

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

Thank you for the opportunity to comment on the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022* (the Bill). We wholeheartedly endorse efforts from the Australian Government (the Government) to support employees experiencing Family and Domestic Violence (FDV) and recognise the necessary discussion about FDV implications for the workplace. It is important the Government ensures this legislation best enables Australia's small and family business owners to support employees experiencing FDV.

To best achieve the intent of the Bill we recommend the Government produce clear and reliable guidance for managers and small business operators on how to best engage with and support their employees in the event of FDV.

Small business owners often have a unique relationship with their employees as both an employer and as an informal confidant. We are concerned that the nature and closeness of this relationship may impact on the employer's ability to provide the most suitable support and the management of the employee's distress and trauma, with potential implications for the small business owners own wellbeing and sense of personal security. Guidance and resources produced by FDV experts would best position small business operators to support their employees whilst minimising risk of their own emotional injury. Furthermore, the potential for a hotline service to assist a small business owner navigate the emotional and legal complexities of FDV in the workplace would provide the best support for small businesses dealing with what is an incredibly difficult circumstance for all involved.

There are several operational complexities the Bill poses that must be addressed to achieve successful implementation and ensure small business operators can best support their employees. While we accept that a change such as this will not be perfect from the outset and will require an educative approach to enforcement, many of these issues need to be considered to ensure successful implementation of the policy. Strong, and dependable guidance from the Fair Work Ombudsman (FWO) will be critical to ensure small business operators understand and apply their obligations.

Some issues that warrant consideration include:

- **Privacy matters and disclosure requirements.** Guidance on how small business operators can legally and practically discuss FDV issues with their employees will assist in ensuring support is available while maintaining an appropriate level of employee privacy. There is a challenge in ensuring the privacy of an employee experiencing FDV with the potential safety implications for other staff members. A failure to disclose the risks a violent partner may pose to staff could impact the responsibility of small business owners to provide a safe workplace for all employees. It is important that the government equip small business owners to navigate these concerns and help small business owners create the best environment for their employees.

A further complication of the application of this leave relates to a small business owner's reporting obligations following a disclosure. Noting specifically that these laws could apply to junior staff escaping family violence, it is important that small business owners are provided resources to respond to these disclosures effectively. Particular guidance could be given on when a small business owner or manager should file a police report and any potential liabilities they may face in the event they fail to do so.

We recommend the Committee seek further clarification on how a small business operator can navigate their disclosure requirements.

- **The leave application process, and payslip requirements.** How an employee gains access to FDV leave is important and further guidance from the FWO is necessary to avoid unintended negative consequences. The requirement to detail the type of leave on a payslip poses clear negative consequences if a coercively controlling partner has access to their partner's payslips and becomes aware that FDV leave has been taken by the employee. However, not detailing FDV leave may cause business owners concern if it leads to considerations of falsifying a payslip. Further guidance on the reporting requirements of this legislation is necessary to provide small business operators with clarity on their obligations.
- **Return-to-work planning.** Given the sensitivities associated with both disclosure and reporting requirements, bringing an employee experiencing FDV back into the workplace presents a variety of difficulties. We note that some people experiencing FDV may view the workplace as a place where they feel comfortable and will be keen to return to work. We also note that all employees deserve to feel safe and supported at work, and this may be challenged in the event the partner or former partner of an employee experiencing FDV attends the workplace. Adequate FWO guidance to small business owners will be critical in ensuring all employees feel safe and supported.

Many people meet their partner through the workplace, and this is true in small businesses. As such, consideration should be given to guidance for a small business owner dealing with a situation where both parties in the relationship work for the business.

- **Government wage-subsidy for extended periods of leave.** Small business operators want to provide the best support possible for employees experiencing FDV. However, the cost of replacing an employee at short notice is significant and disproportionately affects small businesses who do not have the resources of their larger counterparts. This impost includes paying the leave entitlement, the time an operator or manager spends finding a replacement, the wages of the replacement, as well as the potential opportunity costs of operating with a depleted workforce. We have previously made similar recommendations in the case of extended community service leave such as for volunteer fire fighters. A Government subsidy for periods of leave in excess of three days would assist small business operators to best support employees experiencing FDV.
- **Managing unsubstantiated leave.** While we do not anticipate this to make up a large proportion of leave taken, we are acutely aware of the challenges small business operators face

when validating the circumstances of their employees. Guidance from the FWO on how small business operators should react to disclosures of FDV as well as how to discuss FDV with their employees will enable small business operators and managers to support to their employees most effectively. While we do not want to increase any impost on employees experiencing FDV, and are not advocating for a particular evidentiary requirement, it is important to recognise the complexities for small businesses navigating these issues. Guidance from the FWO on how to best manage these issues will be necessary for the effective functioning of the entitlement.

We fully support Government efforts to assist employees experiencing FDV and provide these comments to help ensure the Bill is appropriately designed to achieve its desired intent. Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Mr Lachlan Bayliss on 02 5114 6131 or at lachlan.bayliss@asbfeo.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bruce Billson', written in a cursive style.

The Hon. Bruce Billson

Australian Small Business and Family Enterprise Ombudsman