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Committee Secretary Senate Education and Employment Committee
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Parliament House Canberra
ACT 2600
By email to: eec.sen@aph.gov.au

Dear Secretary,

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

Australian Lawyers for Human Rights (**ALHR**) appreciates the opportunity to provide comment in relation to the proposed *Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022 (the Bill)* which would establish an entitlement for ten days paid domestic and family violence leave, for all employees

About ALHR

ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and specialist thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.

Summary

ALHR commends the Fair Work Commission's review decision to introduce ten days paid leave (applicable to Award employees) and the Federal Government's intention to extend this leave to all employees, as part of the National Employment Standards (NES) contained in the Bill.

ALHR supports the passing of this Bill in its entirety (subject to comments below) to ensure all workers in Australia regardless of the nature of their employment (full-time, part-time or casual) or the size of their employer have equal access to adequate paid leave for the purpose of navigating and managing systems and services necessary due to domestic and family violence (**DFV**). ALHR also

welcomes the expansion of the definition of domestic and family violence to cover former intimate partners and unrelated household members.

International Human Rights Law

Under international human rights law, it is well established that domestic and family violence is a violation of human rights, with grave and far-reaching repercussions for victims, survivors and their children.¹

'It has been recognised that domestic and family violence violates a wide range of human rights and fundamental freedoms, including the rights to life, not to be subject to torture or to cruel, inhuman or degrading treatment or punishment, equal protection according to humanitarian norms in time of international or internal armed conflict, liberty and security of person, equal protection under the law, equality in the family, the highest standard attainable of physical and mental health, and right to just and favourable conditions of work'

The *United Nations Convention on the Elimination of All Forms of Discrimination against Women* requires governments to take appropriate measures to eliminate discrimination against women (which includes violence against women) in all areas of life including in employment, and to ensure that women have access to safe and healthy conditions. While people of all genders experience DFV, ALHR submits that Australia should look to its international human rights law obligations for the provision of principles that guide the provision of paid DFV leave for all employees in Australia.

Domestic and Family Violence and Employment

Undeniably, domestic and family violence can happen to anyone, anytime, regardless of their socio-economic and cultural background. It affects people in all aspects of their lives, including their workplaces. The former Sex Discrimination Commissioner, Elizabeth Broderick, declared in 2015 that: "One thing is certain – domestic and family violence is a workplace issue."²

The 2011 [National Domestic Violence and the Workplace Survey](#)³ of Australian workers found that 30% of respondents had experienced domestic and family violence with '[n]early half those who had experienced domestic violence reported that the violence affected their capacity to get to work; the major reason was physical injury or restraint (67%), followed by hiding keys and failure to care for children.' Therefore, a holistic rights-based response to address and reduce DFV and its impacts is required.

Employers need to understand the impacts DFV can have on employees, their performance, attendance and wellbeing, and workplace legislation should establish a framework which promotes employees' provision of appropriate support to employees.

ALHR rejects the proposition that small businesses are ill-equipped to support their workers. Businesses of all sizes in Australia should be held to reasonable standards of care for their employees, including the provision of appropriate support and flexibility to employees experiencing DFV. As Ms Broderick stated:

¹ [Domestic violence is a workplace issue \(humanrights.gov.au\)](#) p.1 and See CEDAW Committee, General Recommendation No. 19: Violence against Women, UN Doc. A/47/38 (1992), para 7.

² [Domestic violence is a workplace issue \(humanrights.gov.au\)](#)

³ [Key Findings National Domestic Violence and the Workplace Survey 2011.pdf \(unsw.edu.au\)](#)

“[O]ur workplaces assist in keeping employees safe, providing economic independence that supports women’s choices, and playing a leadership role in the community. Furthermore, workplaces can also ensure perpetrators are not able to make use of work resources such as email and phone to carry out their abuse. Workplaces can play their part in addressing this significant issue.”

It is for these reasons that unions, lawyers and domestic violence advocates have long called for paid leave to address the evident impact DFV has on employees in paid employment.

The necessity of International Labour Convention 190

ALHR notes that even if the Bill is passed, it requires the *International Labour Convention 190 – Violence and Harassment Convention 2019 (ILO)* to come into force in Australia, before the Federal Government can effectively legislate what is essential human rights law, namely to enable paid family and domestic violence leave, and notice of termination provisions, for employees not otherwise covered by the NES. The Explanatory Memorandum provided is useful to understand the amendments proposed by the Bill, however, it does not specify what the alternative is for workers not otherwise covered, in the event the ILO does not come into force.

Impact on Small Business

The Bill proposes a staggered commencement with its applicability to small business employees commencing some six months after the commencement of the Bill. It is said that this is to ‘recognise the unique needs of small business with limited human resources, [and to allow them] an additional transition period of six months’⁴ (Explanatory Memorandum, page 2).

ALHR understands the purpose of the staggered commencement, however, we are concerned about the disparity in rights for small business employees whilst awaiting the provisions to come into effect, despite the availability of five days unpaid leave.

ALHR therefore submits that the Bill should be accompanied by a small business support package which is appropriately funded and resourced to provide:

- support for small businesses preparing for the amendments to take effect; and,
- in the interim, financial assistance to affected employees experiencing DFV.

The Council of Small Business Organisation Australia (COSBOA) recommends in its submission to the Senate Education and Employment Committee, a similar payment system to the paid maternity leave system..

ALHR notes that any scheme will need to protect victims of DVF with a design that ensures prompt access to assistance and privacy protections during what is already a very difficult,traumatic and often dangerous time for the victim and any dependents.

We submit that, given the unique challenges and dangers faced by people experiencing DFV, a scheme enabling small business employers to seek reimbursement would be appropriate. This may raise privacy concerns in relation to the number of parties involved, yet, in order to change our culture and understanding of DFV, its impact on employees and businesses, ALHR suggests that the Government should provide employers with the tools to better respond to DFV. ALHR submits that the Australian Government should approach the issues raised from within a human rights framework. The purpose of the paid DFV leave is for it to be available in the mainstream to all

⁴ Explanatory Memorandum, page 2

employees regardless of their status, just like other paid leave entitlements, and to reduce the financial pressure on employees affected by DFV. ALHR submits that ten days paid DFV leave should apply equally to all workers, to reflect the principles of equality and non-discrimination, Workers should not experience different workplace rights and protections based **on whether their employer is a large or small business, or dependent on how long they have been working for their employer.** .

However, without delaying the implementation of the Bill, ALHR supports the Government exploring the financial and resourcing implications on small businesses and the potential implementation of a separate scheme to support small business employers to understand and manage their legal obligations, and provide financial assistance.

ALHR submits that small business employers will derive significant benefits when able to retain experienced staff if they are supported in accommodating employees affected by DFV.

We refer to the comprehensive submission of the Australian Sector Union (**ASU**) and financial calculations put forward by the ASU on this point.

Recommendations

- 1. Ten days paid DFV leave should apply equally to all workers. Workers should not experience different workplace rights and protections based on whether their employer is a large or small business, or dependent on how long they have been working for their employer.**
- 2. ALHR supports the implementation of the Bill as stated with further consideration to alternatives where the ILO Convention 190 does not come into force.**
- 3. ALHR supports exploration of the options of a Government-funded DFV scheme, or at least some financial assistance for small businesses which may be experiencing financial hardship.**
- 4. ALHR suggests that financial support be available, in the interim, for small business employees affected by DFV prior to the commencement of relevant provisions to cover small business employers .**

If you would like to discuss any aspect of this submission, please email me at: president@alhr.org.au.

Yours faithfully,

Kerry Weste
President
Australian Lawyers for Human Rights

Any information provided in this submission is not intended to constitute legal advice, to be a comprehensive review of all developments in the law and practice, or to cover all aspects of the matters referred to. Readers should take their own legal advice before applying any information provided in this document to specific issues or situations.