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Committee Secretary
Senate Education and Employment Committees
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ARA SUBMISSION IN RELATION TO FAIR WORK (DOMESTIC AND FAMILY VIOLENCE LEAVE) BILL 2022

INTRODUCTION

The Australian Retailers Association (ARA) welcomes the opportunity to provide comments to the Senate Education and Employment Committee in relation to the *Fair Work (Domestic and Family Violence) Leave Bill 2022* (the Bill).

The ARA is the oldest, largest and most diverse national retail body, representing a \$400 billion sector that employs 1.3 million Australians and is the largest private sector employer in the country. As Australia's peak retail body, representing more than 120,000 retail shop fronts and online stores, the ARA informs, advocates, educates, protects and unifies our independent, national and international retail community.

We represent the full spectrum of Australian retail, from our largest national and international retailers to our small and medium sized members, who make up 95% of our membership. Our members operate across all categories - from food to fashion, hairdressing to hardware, and cosmetics to computers.

The ARA has committed to addressing gender inequality in our sector. Establishing a more supportive approach to victim-survivors of family and domestic violence is one of the actions called out in the ARA's [Gender Equality Position Statement](#), launched earlier this year with strong input and support from many of our enterprise members and retail leaders.

We have previously written to Minister Burke and Attorney-General Dreyfus, as well as Senator Michaelia Cash and Adam Bandt MP in relation to the Bill. Our comments to this Committee reflect our previous correspondence and have been developed in close consultation with our members, particularly our Advisory Committee on Workplace Relations.

PRINCIPLES TO UNDERPIN A WORKABLE SCHEME

The ARA is strongly supportive of paid leave and other measures to support victim-survivors of family and domestic violence. However, we submit that the scheme's design could be improved to minimise business costs, complexity and risks without detrimental impact on employees who are victim-survivors of family and domestic violence.

We suggest that the following principles should inform the design and implementation of the Bill, including guidance for employers.

Principle 1

Needs of employees should be foremost in design and implementation of the scheme.

- Employees will have a heightened need for privacy and confidentiality. This need may be compromised in situations where victim-survivors and perpetrators work in the same work environment.
- Employees may be subject to coercive control by an alleged perpetrator and may not have autonomy over their pay or bank account, in which case leave payments made through an employer's payroll may not be accessible by the employees or used for the intended purpose.

- Employees in an ongoing abusive situation may wish to take leave on multiple occasions where they are not well enough to attend work. Likewise, they may need leave to attend court, make a police report or organise care for children. The design of the scheme needs to account for these ad hoc events, as well as a block of leave to help employees leave an abusive situation.
- Employees may have a recurring need for leave if they return to an abusive situation after attempting to leave. In this situation, an annual provision may be needed if the employee is not supported by other interventions that seek to end the cycle of abuse.

Principle 2

Costs of the scheme should be shared by government and business.

- Employers could find the cashflow implications of this type of leave problematic. Some employers may choose to make a provision in their annual planning, and keep some cash in reserve, based on an assumption about the number employees who may need to take domestic violence leave and the duration of this leave. This provision and reserve could constrain cashflow and growth. Other employers may choose not to make a provision for this type of leave, which could present cashflow problems for the employer and employee if a request for domestic violence leave is lodged.
- Employers have limited experience in managing this type of leave. Unlike annual leave, other forms of personal leave and long service leave, employers who take this approach could make provision for domestic violence leave that (based on experience in Victoria) could be disproportionate to the amount of leave taken. The accounting treatment of this leave provision could be problematic.
- Government should fund a safety net at minimum wage, leaving businesses to top-up leave payments as needed. This additional leave liability for employers would be in addition to the labour costs of covering for the employee taking leave, which would also be borne by the employer. In the case of small businesses, particularly in retail and hospitality, that rely on casual labour, the cost of providing paid leave could impact substantially.

Principle 3

Experts in domestic violence need to be the arbiters.

- Employers should not be the arbiters of whether domestic violence has taken place or not. With sick leave, a leave entitlement is usually paid on the assessment of a healthcare professional and substantiated by a medical certificate. This avoids employers being placed in the position of needing to determine whether leave is justified. In the case of family and domestic violence, we believe guidance is needed so that employers can readily rely on evidence from appropriate professionals, police or court issued documents.
- Employees should have access to support services that employers are not equipped to provide. We believe that government should support specialist community and non-governmental organisations to provide support services for employees who utilise this leave.

RECOMMENDATIONS

Reflecting on the above principles and observations, we recommend that the Committee consider the following recommendations to amend the Bill.

ARA Recommendations

1. Funding	The scheme should be jointly funded, with government funding a safety net at the minimum wage and businesses topping-up payments as needed. This will assist the capacity of our smaller members to absorb the costs of paying leave entitlements under the scheme, given the ongoing pressure on cashflow and higher costs of doing business for small business retailers.
2. Commencement Date	The commencement of the scheme be delayed for all businesses until 1 July 2023, to allow businesses sufficient time to plan for the change, in line with the start of the financial year. We note the impacts and risks for

	business from introducing the scheme mid-way through the current financial year, particularly given the unanswered questions about the accounting treatment of this leave that could impact small business profitability and cashflow.
3. Guidelines on evidence	Employers, particularly small businesses, need guidance on what forms of evidence can be required from an employee requesting leave and we suggest that this be aligned to what is currently used for unpaid leave, including police or court issued documents as well as medical certificates, where appropriate.
4. Community Support	Agencies and community organisations with expertise in domestic and family violence need to be funded to provide ongoing support services to employees, so that this initiative is part of a broader policy approach to dealing with domestic and family violence.
5. Treatment of Casuals	Clarification and guidance needs to be provided around how the legislation will apply to casual employees. If paid leave is made available to casual employees, this will impact significantly on small businesses that tend to rely on casual employees but also have fewer staff members. For example, a small café who provides paid leave to a casual employee will most likely have to employ another staff member to cover the first employee's shifts, increasing labour costs substantially.
6. Statutory review after 12 months	The ARA recommends that the Bill is amended to include a statutory review process to be undertaken 12 months after implementation of the legislation.

Thank you again for the opportunity to comment on the Bill. We welcome the introduction and passing of this legislation, noting our recommendations outlined above for amendments to the Bill.

Any queries in relation to this submission can be directed to our policy team at policy@retail.org.au.

Yours sincerely,



Paul Zahra
Chief Executive Officer