

INDEPENDENT REVIEW OF THE FAIR WORK AMENDMENT (PAID FAMILY AND DOMESTIC VIOLENCE LEAVE) ACT 2022 (CTH)

A submission in response to the independent statutory review conducted by Flinders University

Executive Summary

The Australian Retailers Association ('ARA') welcomes the opportunity to make a submission to Flinders University in response to its independent statutory review on the Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022 (*Cth*).

The ARA is the oldest, largest and most diverse national retail body. We represent a \$420 billion sector that employs 1.4 million Australians – making retail the largest private sector employer in the country.

Our members operate across the country and in all categories - from food to fashion, hairdressing to hardware, and everything in between. For this very reason, we are deeply invested in representing the retail sector within policy reviews, processes and/or decisions that could alter, harm or change the retail sector.

The review conducted by Flinders University considers the operation and impact of the amendments to paid Family and Domestic Violence Leave and invites stakeholder comments, which will inform a final report on these findings to Government.

Contained within this submission is examples of how retailers have implemented the reforms, how the reforms have impacted employers and employees and any challenges in implementing or accessing paid Family & Domestic Violence Leave.

The ARA believes it is integrally important to highlight that retailers care about their employees and their well-being, and this is evidenced, time and time again through ethical and moral-based business practices.

ARA's Position

Retailers are committed to working with employees to ensure that their well-being is preserved, they are a part of safe environments, and their human dignity is at all times uplifted. This is reflected through retailers' endorsement of positive workplace relationships, adherence to legislation and industrial instruments and the implementation of beneficial workplace policies.

The issue of domestic violence within Australia is prevalent¹ and requires redress. The Australian government has previously adopted an approach to increase paid family and domestic leave to 10-days replacing an initial 5-day entitlement. Although the entitlement has been expanded, community organisations report there has been little change to the instances of violence arising from family and domestic relationships within Australia. Simultaneously, retailers report minimal instances of employee-utilisation of this entitlement, despite organisational education and engagement on the legislative reforms.

This highlights the fact that such an issue is complex, and deeply entrenched in social, cultural and systemic factors, and for this reason, requires a relevant cause of action to be taken to address these factors. Actions which likely lie outside the scope of *just* the employer-employee relationship.

¹ Australian Institute of Health & Wellbeing | [Family and domestic violence - Australian Institute of Health and Welfare \(aihw.gov.au\)](https://www.aihw.gov.au)

The Terms of Reference

1. How the reforms have been implemented

Retailers have reported that the reforms have predominantly be implemented by formulating a communication plan, updating employment contracts, and appropriately refiguring payroll and leave systems.² Retailers have also ensured that leaders and managers communicate the expansion of this entitlement to employees ensuring the entitlement and its accessibility was highlighted to team members.³

Some retailers also reported already having similar workplace policies in place before the legislative reforms, so in implementing the reforms, employers would amend workplace policies as required, and utilise the legislative change to re-educate employees about their workplace entitlements.⁴

Many retailers have also shared because of these amendments, workplace policies and guidelines were adopted or amended to ensure that access to this leave by an employee would be kept confidential and the employees privacy maintained.⁵

The general consensus among retailers that the ARA engaged to inform this submission was that educating and communicating to employees about this amended entitlement and the importance of confidentiality was at the forefront of implementing these reforms at the workplace level.

2. How the reforms have impacted employers and employees experiencing family and domestic violence

Retailers have had a mixed response as to the impact of the reforms on employers and employees experiencing family and domestic violence.

Many retailers have highlighted little or no direct impact of the legislative reform on their organisation, specifically attributing this to the fact that the employee-utilisation rates of this leave has remained consistent or in some cases, employees have not utilised this entitlement at all.⁶

These same retailers have highlighted that due to the under-utilisation of this entitlement, there is an absence of data on whether these reforms have resulted in changes on staff retention or employee well-being.⁷ For this reason, retailers believe it is difficult to discern or predict the negative impact on businesses and equally, the benefit for employees in having the expanded entitlement as of yet.

Interestingly, some retailers have also reported value being derived from the legislative reforms, specifying the legislative change and debate in the social community has been leveraged by businesses to appropriately invest in '*ways of working/appropriate behaviour and Mental Health First Aid Training*'.⁸

Other retailers have reported positive impacts on the workplace practice and culture surrounding employees that have faced family or domestic violence. For instance, one retailer reported providing '*greater support resources for counselling, (the development of) EAP services that are more*

² ARA MEMBER SURVEY | ARA Response - Independent Review of Fair Work Amendment - Paid Family & Domestic Violence Leave

³ ARA MEMBER SURVEY | ARA Response - Independent Review of Fair Work Amendment - Paid Family & Domestic Violence Leave

⁴ ARA MEMBER SURVEY | ARA Response - Independent Review of Fair Work Amendment - Paid Family & Domestic Violence Leave

⁵ ARA MEMBER SURVEY | ARA Response - Independent Review of Fair Work Amendment - Paid Family & Domestic Violence Leave

⁶ ARA MEMBER SURVEY | ARA Response- Independent Review of Fair Work Amendment - Paid Family & Domestic Violence Leave

⁷ ARA MEMBER SURVEY | ARA Response- Independent Review of Fair Work Amendment - Paid Family & Domestic Violence Leave

⁸ ARA MEMBER SURVEY | ARA Response - Independent Review of Fair Work Amendment - Paid Family & Domestic Violence Leave

*specialised and skilled for this specific need*⁹ as a result of the reform.

All retailers we engaged with noted a positive impact to workplace policies when and if an employee was to utilise this leave entitlement. For instance, as previously noted, workplace policies would be altered to afford employees accessing this leave entitlement confidentiality and privacy. Some retailers would also record the leave as *'special leave'* on employee-systems to maintain privacy for employees.

While another reported *'we limit the information about a team member accessing the entitlement to only a few key and required personnel. We have created a process for leave to be input without breaching confidentiality, and we do not disclose the leave type on a team member's payslip.'*¹⁰

The impact of these legislative reforms is therefore diverse and varied. In many cases, retailers report not yet knowing what the impact will be until an employee utilises the entitlement, while others note positive changes in workplace practices and policies which apply to employees experiencing family and domestic violence, resulting from this reform.

3. Any challenges in implementing or accessing paid Family and Domestic Violence Leave.

Stemming from the ARA's engagement with retailers, the challenges in implementing or accessing paid family and domestic violence were varied.

Some retailers reported an inadequacy of current government information-based resources on the reforms available noting current resources were *'reasonably useful, but not enough to suggest we would not seek further advice'*.¹¹ This resulted in some retailers having to consult legal advice, requiring additional out-of-pocket costs to fully understand the application of the entitlement.

In terms of other challenges as to the implementation or accessibility of this paid leave entitlement, little is still known. As previously noted, many employees have still not utilised the entitlement or in some cases, the full 10 days of leave, thereby the actual impact on businesses is not yet fully known.

4. Other relevant comments

When engaging with retailers as to the current scope of the entitlement, and their thoughts, we noted a general consensus that the current leave entitlements were appropriate and sufficient. One retailer noted a belief that the *'the scope is appropriately broad and it covers all employees'*¹² while another noted a belief that the current scope is *'reasonable'*.¹³

While another noted the value of extending the scope of the entitlement to casual employees as it *'would allow those who may be more financially vulnerable to benefit from the entitlement and access help and support.'*¹⁴

This feedback showcases employer support for the reformed legislation now that the legislation has been enacted. Simultaneously, the belief that the current entitlements are reasonable and broad, which beneficially may help employees that face financial vulnerability.

⁹ ARA MEMBER SURVEY | ARA Response - Independent Review of Fair Work Amendment - Paid Family & Domestic Violence Leave

¹⁰ ARA MEMBER SURVEY | ARA Response - Independent Review of Fair Work Amendment - Paid Family & Domestic Violence Leave

¹¹ ARA MEMBER SURVEY | ARA Response - Independent Review of Fair Work Amendment - Paid Family & Domestic Violence Leave

¹² ARA MEMBER SURVEY | ARA Response - Independent Review of Fair Work Amendment - Paid Family & Domestic Violence Leave

¹³ ARA MEMBER SURVEY | ARA Response - Independent Review of Fair Work Amendment - Paid Family & Domestic Violence Leave

¹⁴ ARA MEMBER SURVEY | ARA Response - Independent Review of Fair Work Amendment - Paid Family & Domestic Violence Leave

Conclusion

The paid and domestic violence paid leave reforms have been actively implemented by retailers. This has been evidenced through ensuring that all employees have access to education, training and support related to these entitlements. Simultaneously, workplace policies, and procedures have been adopted by retailers to ensure that employees can access this paid leave discreetly and confidentially.

Retailers have also recorded a mixed response to the implementation of these reforms. Some retailers have highlighted that in some circumstances, these reforms have spurred great beneficial enterprise process and culture changes for employees. However, in some circumstances, retailers have also faced challenges to the implementation of these reforms citing the available government resources have been insufficient.

However, the general consensus among retailers is that there remains an underutilisation of these entitlements, despite strong business and leadership support, and for this reason, it is still difficult to discern the true impact of these reforms on businesses, or employees facing family and domestic violence.

The ARA recognises the issue of family and domestic violence within Australia is multi-faceted. For this reason, it is easily discernible, that the Government should take a broad approach to redressing this societal issue, inclusive of examining other pathways of policy intervention relevant to other socio-economic or cultural factors, that lie outside the employee-employer relationship.