

23 August 2022

Ms Jeanette Radcliffe
Committee Secretary
Senate Education and Employment Committees
Eec.sen@aph.gov.au

Dear Ms Radcliffe

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

Thank you for the opportunity to provide feedback on the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022.

Legal Aid NSW welcomes the introduction of paid family and domestic violence leave as part of the National Employment Standards, which will ensure that paid leave is available to all employees, regardless of who is their employer. The reforms will help reduce the financial burden on family and domestic violence victims and survivors who need to take time off work to deal with the impacts of violence and abuse, and who are often already economically disadvantaged.

Our only concern is around section 19 of the Bill, which proposes to insert section 106BA into the *Fair Work Act 2009* and how subsection (1)(b) of that provision might apply to casual workers:

106BA Payment for paid family and domestic violence leave

(1) If, in accordance with this Subdivision, an employee takes a period of paid family and domestic violence leave, the employer must pay the employee, in relation to the period:

- (a) for an employee other than a casual employee—at the employee's full rate of pay, worked out as if the employee had not taken the period of leave; or
- (b) for a casual employee—at the employee's full rate of pay, worked out as if the employee had worked the hours in the period for which the employee was rostered.

The Explanatory Memorandum makes clear at paragraph 48 that 'rostered' means:

The words 'hours in the period for which the employee was rostered' are intended to take their ordinary meaning. This would include any situation

where the employer makes available, by any means, a list of shifts to be undertaken by casual employees in advance. To avoid doubt in less formal rostering scenarios, new subsection 106BA(2) would clarify that, without limiting the ordinary meaning of rostered hours, an employee is taken to have been rostered to work hours in a period if the employee has accepted an offer by the employer of work for those hours. The offer and/or acceptance can, but need not, be in writing or by phone.

In our experience casual workers may not get rosters and often work according to a set pattern of hours and days. In fact, many of the most disadvantaged workers do not have any employment records at all. Further, despite many Awards requiring employers to give employees rosters, in our practice we find that many employers fail to comply with this obligation. We are concerned that such practices would make it difficult for casual employees to claim paid family and domestic violence leave through no fault of their own.

We also note that the need to take leave as a result of family or domestic violence might arise before the worker was given a roster or accepted an offer to work, and therefore such workers might not be able to claim paid leave for the coming period.

To ensure that casual workers are able to claim paid family and domestic violence leave as intended, we suggest that the proposed section 106BA be amended to make it clear that casual workers can access paid domestic violence leave as if the employee had worked their usual weekly hours or the hours in the period for which the employee was rostered.

Legal Aid NSW also recognises that many of the most disadvantaged workers are engaged outside of the traditional industrial relations system, such as workers in the gig economy and those engaged under sham contracts. Legal Aid NSW would support additional legislative reform to introduce similar protections for these marginalised workers.

Thank you again for the opportunity to provide feedback. If you have any questions or would like to discuss this matter further, please contact [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] on [REDACTED] or at [REDACTED].

Yours sincerely

Monique Hitter
Chief Executive Officer