

FAIR WORK COMMISSION

FAMILY AND DOMESTIC VIOLENCE LEAVE REVIEW 2021 (AM2021/55)

Submission of the Local Government Association of the Northern Territory, Local Government New South Wales, Municipal Association of Victoria, and Western Australian Local Government Association in relation to the Local Government Industry Award 2020

Introduction

1. This joint submission is made on behalf on the following Local Government Associations (**Associations**):
 - (a) Local Government Association of the Northern Territory;
 - (b) Local Government New South Wales;
 - (c) Municipal Association of Victoria; and
 - (d) Western Australian Local Government Association (**WALGA**).
2. We refer to [Statement \[2021\] FWCFB 2047](#) dated 15 April 2021 and [Statement \[2021\] FWCFB 6028](#) dated 19 October 2021. This submission does not support some of the proposed variations to the modern awards sought by the Australia Council of Trade Unions (**ACTU**) and others.
3. This joint submission regarding family and domestic violence leave (**FDVL**) entitlements is made in the context of the current Local Government Industry Award 2020 (**LG Award**) and any future proposed changes to that award.

Issues considered by the FDVL Review

4. As per Statement [2021] FWCFB 2047, the Fair Work Commission's (**FWC**) Family and Domestic Violence Leave Review 2021 (**FDVL Review**) will be considering the following issues:
 - (a) whether employees should be able to access paid personal/carer's leave for the purpose of taking FDVL;
 - (b) the adequacy of the unpaid FDVL entitlement; and
 - (c) whether provisions should be made for paid FDVL.
5. WALGA has prepared a brief submission on behalf of the Associations to provide a response to each of the issues considered by the FDVL Review and the modern award variations sought by the ACTU.
6. WALGA has sought feedback from all WA Local Governments on the issues covered by the scope of the FDVL Review, including through a short survey administered by WALGA. This engagement and survey were undertaken as FDVL is an important issue for the sector.
7. Approximately half of the WA Local Government respondents surveyed currently provide employees with five days' paid FDVL per annum for full-time and part-time employees. This is primarily provided as an entitlement pursuant to an enterprise agreement or policy.

8. Although approximately half of the WA Local Government respondents provide paid FDVL, the utilisation rate for accessing this type of leave is low, with 71% of respondents reporting that in the last 12 months, no employees accessed this entitlement.

FDVL Review – Whether employees should be able to access paid personal/carer’s leave for the purpose of taking FDVL

9. A majority of WA Local Governments believe that employees should be able to access paid personal/carer’s leave for the purpose of taking FDVL and would be supportive of any proposed changes made to enable this.
10. This position is supported by the other Associations.

FDVL Review – The adequacy of the unpaid FDVL entitlement

11. Approximately half of WA Local Governments believe that the current National Employment Standards (**NES**) entitlement of five days’ unpaid FDVL is inadequate, and a majority of WA Local Governments believe employees should be provided with a paid FDVL entitlement.
12. This position is supported by the other Associations.

FDVL Review – Whether provisions should be made for paid FDVL

13. The majority of Local Governments believe that full-time and part-time employees should be provided with five days of paid FDVL per annum as a minimum entitlement.
14. A few of the reasons provided by Local Governments in support of the provision of paid FDVL include:
 - (a) The threat of loss of income is not an issue that employees in this situation should have to deal with.
 - (b) Income and financial security are necessary to escape a family and domestic violence situation.
 - (c) Employers should provide a supportive and compassionate working environment.
 - (d) Family and domestic violence is a serious societal issue that Local Governments should be recognising and addressing.
15. There are several reasons why Local Governments do not support the provision of 10 days’ paid FDVL as a minimum entitlement, at this point in time. These reasons include the following:
 - (a) Employees already have adequate leave entitlements, including various forms of paid and unpaid leave.
 - (b) The potentially significant budget and cost implications of providing 10 days’ paid FDVL to employees.
 - (c) The operational impact of the provision of 10 days’ paid FDVL.
 - (d) That Local Governments support employee access to personal/carer’s leave and other forms of paid and unpaid leave in circumstances of family and domestic violence.
16. Local Governments recognise the importance of the provision of paid FDVL. Although the Associations are advocating for 5 days’ paid FDVL as a minimum entitlement, Local Governments are still open to use their discretion to provide more than 5 days’ paid FDVL if they wish to do so.

17. The Associations submit that the LG Award should be varied to provide five days of paid FDVL per annum for full-time and part-time employees as a minimum entitlement.

Submissions made in the FDVL Review

18. We refer to the ACTU's submissions to the FDVL Review dated 30 July 2021 to vary modern awards to include 10 days' paid FDVL, among other things. We have addressed each proposed variation to the modern awards sought by the ACTU below.

ACTU Submission – 10 days' paid FDVL

19. At this point in time, the Associations do not support the ACTU's proposed variation to introduce 10 days of paid FDVL as a minimum entitlement.
20. The Associations submit that five days of paid FDVL per year is an adequate paid minimum entitlement for employers to provide to full-time and part-time employees.

ACTU Submission – Rate of pay for FDVL for full-time and part-time employees

21. The Associations oppose the ACTU's claim for paid FDVL to be payable at an employee's ordinary hourly rate including applicable shift loadings and penalties.
22. The Associations submit that any paid FDVL entitlement should be payable at the employee's base rate of pay for the employee's ordinary hours of work in the period excluding shift loadings and penalties.
23. This is consistent with how annual leave and personal/carer's leave is payable pursuant to sections 90 and 99 of the *Fair Work Act 2009 (FW Act)*.

ACTU Submission – Rate of pay for FDVL for casual employees

24. The Associations do not support the provision of paid FDVL to casual employees and submit that casual employees should only be entitled to unpaid FDVL.
25. However, in the event the Full Bench decides to introduce a paid FDVL entitlement for casual employees in the LG Award, the Associations submit that the payment should include the employee's minimum hourly rate and the casual loading only and exclude all other penalty rates and shift loadings.
26. This position is supported by the current casual terms in the LG Award. Casual employees are paid a casual loading of 25% of the minimum hourly rate pursuant to clause 11.1 of the LG Award as compensation instead of paid leave under the LG Award and the NES.
27. If the Full Bench deems casual employees should be entitled to paid FDVL, the Associations submit that casual employees should only be entitled to paid FDVL if they had hours of work rostered in the period in which they will be taking leave.

ACTU Submission – Access to five days' unpaid FDVL on each occasion after exhaustion of any paid FDVL entitlement

28. The Associations oppose the variation proposed by the ACTU that if an employee exhausts their paid FDVL entitlement, they should be entitled to five days' unpaid FDVL on each occasion they are required to take FDVL.

29. The Associations submit that a reasonable entitlement would be for employees to access up to five days of unpaid FDVL per annum if they have exhausted their paid FDVL entitlement, as is currently provided for in the NES.
30. By capping the entitlement to unpaid leave, rather than providing unlimited unpaid leave on a per occasion basis, this allows Local Governments to budget and plan their operations appropriately to accommodate these entitlements.
31. In addition, various Local Government enterprise agreements currently provide for unpaid leave to be granted at the discretion of the CEO.

ACTU Submission – Additional note in section 106B(1) of the *Fair Work Act 2009*

32. The Associations agree with the ACTU's proposed variation to the note in section 106B(1) of the FW Act regarding unpaid family and domestic violence leave. The Associations submit this is a reasonable addition as an appointment with a medical, financial or legal professional is an example of an action that an employee may need to take in order to deal with the impact of family and domestic violence.

ACTU Submission – Extension of the definition of FDVL

33. The Associations agree with and support the ACTU's proposed variation that the definition of Family and Domestic Violence should be expanded to include violent, threatening or other abusive behaviour by a member of a person's household.

Conclusion

34. In summary, Local Governments recognise that FDVL is an important issue for the sector and believe that full-time and part-time employees should have access to five days' paid FDVL per year as a minimum entitlement.
35. The decision to introduce a paid entitlement to FDVL ought to be considered in light of the context that family and domestic violence is a community issue that extends beyond the scope of employment and should be considered alongside social security benefits, including:
 - (a) The Crisis Payment for Extreme Circumstances Family and Domestic Violence.
 - (b) The new Escaping Violence Payment which provides women and children escaping domestic and family violence up to \$5,000 of emergency payments.
 - (c) Centrelink payments and pensions.



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