

18 August 2022

Committee Secretary
Senate Education and Employment Committees
PO Box 6100
Parliament House
Canberra ACT 2600

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

To Whom It May Concern:

The Association of Digital Service Providers Australia New Zealand (DSPANZ) welcomes the opportunity to make this submission on behalf of our members and the business software industry. We broadly support the introduction of a Paid Family and Domestic Violence (PFDVL) entitlement and the impact that it will have on employees.

In this submission, we have identified a number of areas that require clarification to help ensure that Digital Service Providers (DSPs) correctly understand the entitlement and therefore can support their end users (i.e. employers, payroll managers) when managing PFDVL.

How to Deduct PFDVL

The entitlement to take PFDVL is expressed in days but the entitlement to payment for PFDVL is expressed in hours which calls into question whether deductions should be made in days or hours.

If deductions from the 10 days of PFDVL are to be taken in days, the chosen definition of a “day” may negatively impact certain workers. For example, someone working a shift crossing over midnight may be required to take two days of PFDVL if a “day” is taken to be a calendar day.

It is not clear how deductions should be made when taking part days. Clarification is needed on whether part days, as per Section 106A (4) (c), will continue to be treated in the same i.e. only through agreements between the employer and employee. Further, guidance on how part days should be calculated would be appreciated to ensure that it is handled in a consistent manner by software i.e. should it be pro-rated.

It is worth noting that previous ambiguity around the use of calendar days and the language used between the entitlement and the payment of personal/carer’s leave was only recently resolved by the Mondelez High Court decision. DSPs would prefer to avoid

returning to a situation where entitlements are described in days and payments are described in hours.

While clarification on the above is beneficial for employers, it is also useful for DSPs and how they calculate or reflect this in their software.

Interaction with Other Leave Types

Unpaid Leave

While it may be clear in the Bill and Explanatory Memorandum that the PFDVL entitlement will not be impacted by periods of unpaid leave, any guidance should be clear on how deductions should be made for days that are unpaid.

Further, the new section 106BA(3) could be interpreted to mean that hours/days should be deducted from a casual employee's entitlement irrespective of whether they are rostered to work. On the other hand, if an employee could undertake activities covered by this legislation outside of their rostered hours, they would not be entitled to PFDVL in the first place based on 106B(1)(c). We would appreciate clarification on the above to ensure that the PFDVL entitlement is applied correctly in these circumstances.

Other Accruing Leave

The Bill currently does not provide information about PFDVL and other accruing leave types such as annual leave and long service leave. For example, if an employee on annual leave experiences family and/or domestic violence, are they deemed to be on annual leave or PFDVL. DSPs would appreciate clarification either in the Bill or any guidance on how PFDVL interacts with these leave types and therefore how they should treat it.

Displaying PFDVL on a Pay Slip

Currently, DSPs are required to ensure that employers using their software report PFDVL correctly through Single Touch Payroll (STP). However, it is common practice for DSPs and/or employers to display this leave as Ordinary Hours on a pay slip to protect employees who may be subject to financial abuse. DSPs would like to continue reporting and recording PFDVL in this way to protect employees.

DSPs would appreciate confirmation and/or guidance on whether displaying leave (including PFDVL) as Ordinary Hours is the correct approach as leave is generally not considered as a "separately identifiable entitlement" under Fair Work Regulations 2009 - Reg 3.46.

Casual Employee Entitlement to PFDVL

While we understand that the intent of section 52 is to clarify that casual employees cannot be treated adversely based on their unavailability for shifts, the document's

structure could be confusing for those that do not read the explanatory memorandum in addition to the bill.

As casual employees have been made distinct from other employees of small or large employers, this could lead to the interpretation that casual employees in small businesses are entitled to paid leave as at February 2023 or even backdated to their original commencement of employment.

Implementation Dates

While DSPs have appreciated the consideration of the time needed to update payroll software, many DSPs will not code the entitlement in their software until the amendment is ratified. However, as we do not know when it will be ratified, there may be less time for implementation than what is currently being considered.

We would also like to note that 1 July 2023 would allow for a more seamless implementation and management of PFDVL for DSPs as well as employers and their trusted advisors. If it moves forward on 1 February / 1 August, i.e. in an existing financial year, it has the potential to cause issues for accountants, budgets and financial reporting.

DSPANZ welcomes the opportunity to provide further feedback or insights to help ensure that the PFDVL entitlement can be implemented correctly by all payroll software providers to ensure businesses comply with the legislation correctly. For more information, please contact Simone Dixon or Maggie Leese.

About DSPANZ

Digital Service Providers Australia New Zealand is the gateway for the government into the dynamic, world class business software sector in Australia and New Zealand. Our 90+ members range from large, well-established companies through to new and nimble innovators who are working at the cutting edge of business software and app development on both sides of the Tasman.

Yours faithfully,

Simone Dixon,
Vice President & Director,
DSPANZ

