

LUCAS

15 August 2022

Committee Secretary
Senate Standing Committee on Education and Employment for Inquiry
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee

I write regarding the Senate Standing Committee on Education and Employment for Inquiry into the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022.

Lucas Restaurants is an owner managed Australian business operating 8 restaurants across Victoria and New South Wales. Lucas Restaurants currently has 1281 employees made up of full-time, part-time and casual employment. Of that, 63% of our workforce is made up of casual employees.

Lucas Restaurants recognises that family and domestic violence is a serious issue within the community which has devastating impacts on the health, wellbeing, and safety of victims. We believe no-one should have to experience family or domestic violence in any capacity and believe that we as a community should provide support and comfort for any persons who experience or are victims of this behaviour. We also recognise that our employees may experience or be affected by family and domestic violence during their course of employment with us and that we have a role in ensuring a safe working environment through such periods.

Hospitality sector

Lucas Restaurants has concerns regarding certain provisions set out in the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022. Such provisions in the introduction of 10 paid days of Family and Domestic Violence Leave will cause further financial and operational challenges to not only our business, but the hospitality sector in general. An industry that has been severely impacted by the coronavirus pandemic with over 93% of businesses within this sector considered a small business. Our industry has and continues to experience financial hardship and operational challenges due to increases in labour and food costs, as well as skill and staff shortages at a level never experienced before, causing business closures to varying degrees.

Certain provision within the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022 will create further significant financial challenges to our business and the industry.

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Extension to casual employees

It is important to note the provisional views in the Family and Domestic Violence Leave Review set forward by the Fair Work Commission on 16 March 2022 were in line with existing National Employment Standards (NES) entitlements and did not include casual employees. The cost implications and operational challenges facing the industry with the inclusion of casual employees would be detrimental.

On 27 March 2021, the Fair Work Act was amended with changes to casual employment. These changes provided the definition of a casual employee as, ***a person is a casual employee if they accept an offer for a job from an employer knowing that there is no firm advance commitment to ongoing work with an agreed pattern of work.***

Casual employees are not rostered on a systematic or regular basis, which would contradict the 'casual' definition. By its very definition, employees are rostered on an 'as needed' basis to satisfy business requirements. Therefore, rostering of casual employees is genuinely uncertain. There is no guarantee when casual employees would be required to work.

Base rate

We agree with the Fair Work Commission's provisional views that Family and Domestic Violence leave entitlements for full-time and part-time employees should be paid at the employee's 'base rate of pay' as defined in s.16 of the Fair Work Act.

Casual employees receive a casual loading to compensate them for the lack of entitlements including paid annual and sick leave. The casual loading paid to casual employees is extra money that is paid above the base hourly rate that full-time and part-time staff are paid for doing the same job. If the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022 does extend to casual employees, the calculation for such payments should be based on the employee's base rate.

Hospitality businesses simply cannot afford to pay casual employees for up to 10 days leave with loadings, allowances, and penalties in addition to having to pay an additional casual employee the same entitlements to cover the period of FDV leave.

Upfront payment

The Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022 also provides for the 10 days paid leave to be available to employees upfront at the start of each anniversary of their employment. It is important to acknowledge that all paid leave types under the Fair Work Act's provisions are accrued over the period of employment and we believe that the introduction of paid family and domestic violence leave should remain in line with the current provisions.

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Conclusion

In summary, the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022 has been established by the Government without considering the fair and reasonable research and consultation conducted by the Fair Work Commission.

Again, we recognise and acknowledge that family and domestic violence is a serious matter and that we as a community must do all we can to support and care for any persons who experience family or domestic violence. The Government must consider the significant financial hardship and operational challenges the hospitality industry currently faces and review the provisions within the Bill. If the current Bill proceeds as it, it will further decimate the industry by further closures of hospitality businesses.

Sincerely,

Shaun McDonald
HR Director | LUCAS Restaurants