

**From:** Lindsay Benfell [<mailto:Lindsay.Benfell@cpsu.org.au>]

**Sent:** Thursday, 24 August 2017 8:50 AM

**To:** Chambers - Hatcher VP

**Cc:** PRIDEAUX, Jillian ([Jillian.Prideaux@apsc.gov.au](mailto:Jillian.Prideaux@apsc.gov.au)); Sophie Ismail; @Award Review; SPACCAVENTO, Marco ([Marco.Spaccavento@Apsc.gov.au](mailto:Marco.Spaccavento@Apsc.gov.au))

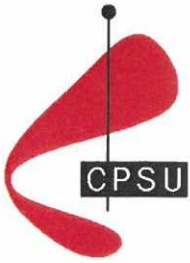
**Subject:** Correspondence from CPSU re Casual and Part time employment and Government Industry Award

Dear Vice President

Please find attached correspondence from the CPSU re the 4 yearly review oOf modern awards and the Australian Government Industry Award. A copy has been sent to the Australian Public Service Commission.

Lindsay Benfell

**Lindsay Benfell** | Senior Industrial Officer | Community and Public Sector Union | **ph**  
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24 August 2017

Vice President A Hatcher  
Fair Work Commission  
Sydney

By email: [chambers.hatcher.vp@fwc.gov.au](mailto:chambers.hatcher.vp@fwc.gov.au)

Cc: Jillian Prideaux at Australian Public Service Commission  
(APSC): [Jillian.Prideaux@apsc.gov.au](mailto:Jillian.Prideaux@apsc.gov.au), ACTU Industrial Officer Sophie Ismail:  
[sismail@actu.org.au](mailto:sismail@actu.org.au)

Dear Vice President Hatcher,

**Re: Casual employment and part –time employment (AM2014/196 and AM2014/197)**

We are writing in relation to the above mentioned matters and in particular the decision of the Full Bench regarding Casual employment and part-time employment as part of the 4 yearly review of modern awards (*[2017] FWCFB 3541*).

In August 2016 the Commission made the Australian Government Industry Award 2016 (*[2016] FWCFB 5706*) which is an modern industry award and we are seeking confirmation that the Australian Government Industry Award 2016 (“the AGIA”) is to be considered to be part of the Casual Employment and Part-time Employment proceedings of the 4 yearly review of modern awards.

The union recently wrote to the President as head of the Full Bench dealing with Family and Domestic Violence Leave and Family Friendly Work Arrangements seeking confirmation that the AIGA is included in the proceedings he was presiding over. Following that the Statement and Directions issued by the President in relation to the Family and Domestic Violence Leave and Family Friendly Work Arrangements (*[2017] FWCFB 4047*) on 3 August 2017, confirmed that the AIGA is to be part of those proceedings but examination of how any ‘model clause’ that may result from those proceedings will be applied to the AGIA will be left until the award stage for that award. A copy of that Statement and Directions are attached for your convenience.

The CPSU is seeking clarity on whether consideration of how any 'model clause' that may result from the Casual Employment and Part-time Employment proceedings fits the AGIA be left to the award stage, as has been the view of President Ross in the Family and Domestic Violence Leave matter. If that is not appropriate, the CPSU can provide written submissions about the suitability of the proposed model casual conversion clause and minimum engagement for casuals in the context of the AGIA to the Full Bench within 7 days.

The CPSU has read and supports the ACTU submission of 2 August 2017 in relation to the casual conversion model term and daily minimum casual engagement. We have reviewed the model clause in the context of the AGIA and note there are issues peculiar to the award (e.g. AGIA establishes a 36.75 hour week for full time employees and no daily minimum engagement for casuals).

The CPSU has met with the Australian Public Service Commission (APSC) on 16 August 2017 about the review of award matters, and we advised our intention to seek the inclusion of the AGIA in the current proceedings for casual and part time employment. The APSC is copied into this correspondence.

Yours sincerely

A handwritten signature in black ink, appearing to read 'L Benfell', written in a cursive style.

Lindsay Benfell

**Senior Industrial Officer**

[2017] FWCFB 4047

**FAIR WORK COMMISSION**

# STATEMENT AND DIRECTIONS

*Fair Work Act 2009*

s.156 – 4 yearly review of modern awards

## **4 yearly review of modern awards–Family & Domestic Violence Leave and Family Friendly Work Arrangements**

(AM2015/1 and AM2015/2)

JUSTICE ROSS, PRESIDENT

DEPUTY PRESIDENT GOOLEY

COMMISSIONER SPENCER

MELBOURNE, 3 AUGUST 2017

*4 yearly review - Family & Domestic Violence Leave Clause and Family Friendly Work Arrangements*

[1] A Mention was held in relation to the Family & Domestic Violence Leave and Family Friendly Work Arrangements matters on 21 July 2017. A transcript of those proceedings is available on the Commission's website at [Transcript – 21 July 2017](#).

[2] After the Mention we issued a Statement (the 24 July Statement). The 24 July Statement sought submissions in relation to a number of issues and submissions were received from the following parties:

- (i) National Road Transport Association – 27 July 2017
- (ii) Australian Meat Industry Council – 28 July 2017
- (iii) Australian Public Service Commission – 28 July 2017
- (iv) Australian Council of Trade Unions – 28 July 2017
- (v) Australian Industry Group – 28 July 2017
- (vi) Australian Chamber of Commerce and Industry – 28 July 2017

[3] This Statement deals with following issues in respect of the Family and Domestic Violence Leave matter:

- (i) the list of materials set out at Attachment A to the 24 July Statement;
- (ii) the inclusion of the *Australian Government Industry Award 2016* in this matter and the review of modern enterprise awards;
- (iii) a list of issues to be addressed in relation to the preliminary views;
- (iv) the implementation of any outcome of the Family and Domestic Violence Leave matter in particular modern awards; and

[4] The Statement also deals with the revised directions for the Family Friendly Work Arrangements matter.

**AM2015/1–Family and Domestic Violence Leave Clause*****(i) The list of materials set out at Attachment A to the 24 July Statement***

[5] Attachment A to the 24 July Statement set out a list of submissions and evidence filed in the Family and Domestic Violence Leave matter. Parties were asked to provide any amendments or additions to the list by close of business on Friday 28 July 2017.

[6] The ACTU [submission](#) noted that three of the documents appearing on the Commission's website required amendment. The documents mentioned at paragraphs 6 and 8 of the ACTU's submission have been replaced. The remaining document mentioned at paragraph 9 of the submission will be replaced when a corrected version is filed.

[7] A revised list of submissions and evidence is at Attachment A to this Statement. The submissions in relation to the constitution of the Full Bench have been removed from the final list. This document will be updated as additional material is filed in accordance with the directions for the hearing and determination of this matter. The Commission's research area has also been asked to provide a reference list of relevant data, reports and articles. The reference list will be completed and published in due course and parties will have an opportunity to comment on that material in their reply submissions.

***(ii) The Australian Government Industry Award 2016 and the review of modern enterprise awards***

[8] In [correspondence](#) dated 19 July 2017, the CPSU raised the question of whether the *Australian Government Industry Award 2016* would be included in the current proceedings, given that it was made after the commencement of the claim. At the 21 July 2017 Mention, the Commission suggested that the CPSU have discussions with the ACTU and the APSC about how the review of that award would proceed and whether the ACTU intended for the claim to include all modern awards [1](#).

[9] The ACTU submit that there is no sound reason to exclude the *Australian Government Industry Award* from the proceedings, nor is there any basis upon which to require a party to mount a positive case for its inclusion [2](#).

[10] The APSC [submit](#) that the inclusion of specific clauses for family and domestic violence leave is not necessary in the *Australian Government Industry Award*, but that if these proceedings are intended to apply to all industry awards [3](#) then the award should be included.

[11] We confirm that the *Australian Government Industry Award* will be considered as part of the ACTU application and any outcome in this matter may apply to the award. Accordingly, parties with an interest in that award are invited to make submissions in the proceedings.

[12] The inclusion of any model term(s) arising from this matter will also be considered during the review of the remaining enterprise and State reference public sector modern awards. The review of those instruments will occur after the current technical and drafting processes for the Group 1 to 4 awards are substantially complete (see [\[2014\] FWCFB 5537](#) at [16]–[18]).

***(iii) List of issues to be addressed***

[13] The 24 July Statement confirmed that there had been general agreement at the Mention that it would be of assistance to the parties and the Commission if some guidance was provided about the issues to be addressed in any submissions filed in respect of the preliminary views expressed by Deputy President Gooley and Commissioner Spencer in their decision of 3 July 2017 (see [3] of the 24 July Statement). The Statement set out some examples of the issues which may be addressed.

[14] The submissions filed addressed the list of issues. A consolidated list of issues, taking into account each of the submissions, is set out at Attachment B to this Statement.

[15] As noted in the 24 July 2017 Statement and at the Mention, the purpose of the list of issues is to provide guidance to the parties as to the matters to be addressed in their written submissions. However, it is important to note that a party's submissions are *not* confined to the issues identified.

**(iv) Award implementation**

[16] The [APSC](#) and [NatRoad](#) both made submissions in relation to certain award and industry-specific matters. As we have mentioned, the APSC submit that it is not necessary to include specific clauses in respect of family and domestic violence leave in the *Australian Government Industry Award*. NatRoad submits that consideration should be given to an industry specific approach in the modern awards in which it has an interest.

[17] In the event that the Full Bench confirms the preliminary views in respect of unpaid leave and access to personal/carer's leave for the purpose of taking family and domestic violence leave, the likely outcome will be a model term.

[18] If any party wishes to contend that such a model term should *not* be inserted into a particular award or that a tailored industry specific approach should be adopted, then they should set out their position in accordance with the Directions set out at Attachment C to this Statement. At this stage such a position need only be identified in summary terms, by reference to particular modern awards. Any awards so identified will be the subject of further proceedings after the resolution of a model term.

[19] To be clear, if a model term(s) is determined as part of these proceedings and we are satisfied that such a term is necessary to achieve the modern award objective then it will be inserted into each modern award except those modern awards which a party has indicated a preference for a different approach, in accordance with the process set out at paragraph [18] above.

**AM2015/2–Family Friendly Work Arrangements**

[20] Amended Directions were issued by former Vice President Watson on 22 December 2016.

[21] Ai Group sought an extension of time to file submissions and evidence in reply until 6 October 2017. Ai Group also proposed that paragraph 4 of the Amended Directions be amended so as to require submissions and evidence in reply by 27 October 2017 and that the hearing dates in October be vacated.

[22] The Ai Group's extension request is granted and the Directions of former Vice President Watson dated 22 December 2016 are vacated. Amended directions are at Attachment D to this Statement.

**PRESIDENT**

**Attachment A**

**AM2015/1–Family and Domestic Violence Leave materials filed to date**

**1. Decisions, Statements and Transcripts**

Item no.	Document title	Document date
1	<a href="#">Full Bench decision - [2017] FWCFB 3494</a>	03/07/2017

2	<a href="#">Full Bench decision - [2017] FWCFB 1133</a>	27/02/2017
3	<a href="#">Transcript - 2 December 2016</a>	02/12/2016
4	<a href="#">Transcript - 1 December 2016</a>	01/12/2016
5	<a href="#">Transcript - 18 November 2016</a>	18/11/2016
6	<a href="#">Transcript - 17 November 2016</a>	17/11/2016
7	<a href="#">Transcript - 16 November 2016</a>	16/11/2016
8	<a href="#">Transcript - 15 November 2016</a>	15/11/2016
9	<a href="#">Transcript - 14 November 2016</a>	14/11/2016
10	<a href="#">Transcript - 27 October 2016</a>	27/10/2016
11	<a href="#">Order - confidential hearing orders</a>	31/05/2016
12	<a href="#">Order - confidential evidence orders</a>	31/05/2016
13	<a href="#">Full Bench decision - [2015] FWCFB 5585</a>	23/10/2015
14	<a href="#">Transcript - 13 August 2015</a>	13/08/2015
15	<a href="#">Transcript - 20 February 2015</a>	20/02/2015
16	<a href="#">Statement - [2014] FWC 8583</a>	1/12/2014

## 2. Submissions and correspondence

Item no.	Document title	Organisation	Document date
1	<a href="#">Submission</a>	National Road Transport	05/04/2017

		Association	
2	<a href="#">Submission - further information</a>	Victorian Government Solicitor's Office	06/12/2016
3	<a href="#">Correspondence</a>	ARA and another	09/12/2016
4	<a href="#">Submission</a>	Brisbane Catholic Education	01/12/2016
5	<a href="#">Correspondence</a>	Women's Health Tasmania	01/12/2016
6	<a href="#">Correspondence</a>	Ai Group	30/11/2016
7	<a href="#">Submission</a>	ACTU	28/11/2016
8	<a href="#">Correspondence</a>	Victorian Government Solicitor's Office	28/11/2016
9	<a href="#">Correspondence</a>	NFF	28/11/2016
10	<a href="#">Submission - tender list</a>	ACTU	25/11/2016
11	<a href="#">Submission</a>	ACCI	28/11/2016
12	<a href="#">Submission</a>	Ai Group	28/11/2016
13	<a href="#">Correspondence</a>	AMIC	28/11/2016
14	<a href="#">Submission</a>	ACT Government	23/11/2016
15	<a href="#">List of exhibits - 14-18 November 2016</a>		
16	<a href="#">Witness schedule - 17 November 2016</a>	ACTU	17/11/2016
17	<a href="#">Submission</a>	Council of Greater Dandenong	15/11/2016



18	<a href="#">Submission</a>	Queensland Government	14/11/2016
19	<a href="#">Witness statements and expert evidence - updated</a>	ACTU	14/11/2016
20	<a href="#">Submission - objection to evidence - ACTU</a>	Ai Group	14/11/2016
21	<a href="#">Witness schedule- revised</a>	ACTU	14/11/2016
22	<a href="#">Witness statement - J. Stott - revised - redacted</a>	ACTU	11/11/2016
23	<a href="#">Submission</a>	NRA	02/11/2016
24	<a href="#">Correspondence - list of authorities</a>	Ai Group	20/10/2016
25	<a href="#">Submission in reply - witness statement and expert report</a>	ACTU	17/10/2016
26	<a href="#">Submission - source documents</a>	ACCI	12/10/2016
27	<a href="#">Submission - amended witness statement</a>	ACTU	12/10/2016
28	<a href="#">Submission in reply</a>	AHRC	14/10/2016
29	<a href="#">Correspondence</a>	NT Working Women's Centre	10/10/2016
30	<a href="#">Submission in reply</a>	ACTU	05/10/2016
31	<a href="#">Submission</a>	National Foundation for Australian Women	05/10/2016
32	<a href="#">Correspondence - directions hearing</a>	ACTU	
33	<a href="#">Reply submission and witness statements</a>	Ai Group	19/09/2016

34	<a href="#">Submission</a>	PGA	19/09/2016
35	<a href="#">Submission</a>	AFEI	19/09/2016
36	<a href="#">Submission</a>	AMIC	16/09/2016
37	<a href="#">Submission</a>	Surf Coast Shire Council	16/09/2016
38	<a href="#">Submission</a>	ACCI	16/09/2016
39	<a href="#">Submission</a>	NFF	15/09/2016
40	<a href="#">Submission</a>	Aged Care Services Australia Group	15/09/2016
41	<a href="#">Submission and witness statement</a>	Pricewaterhouse Coopers	20/06/2016
42	<a href="#">Submission and witness statements</a>	ACTU	01/06/2016
43	<a href="#">Correspondence</a> – outlining evidence to be filed	ACTU	31/05/2016
44	<a href="#">Submission - confidentiality matters</a>	ACTU	26/05/2016
45	<a href="#">Submission</a>	Victorian Government	16/05/2016
46	<a href="#">Submissions</a>	AHRC	12/05/2016
47	<a href="#">Outline of Expert Evidence</a>	ACTU	05/05/2016
48	<a href="#">Further submission</a>	Ai Group	21/08/2015
49	<a href="#">Further submission</a>	ACCI and others	21/08/2015
50	<a href="#">Further submission</a>	ACTU	18/08/2015

51	<a href="#">Correspondence</a> and list of authorities	ACTU	13/08/2015
52	<a href="#">Correspondence</a> and list of authorities	Ai Group	12/08/2015
53	<a href="#">Correspondence</a> and list of authorities	ABI & NSWBC	12/08/2015
54	<a href="#">Further submission</a> and list of authorities	Ai Group	11/08/2015
55	<a href="#">Correspondence and submissions</a>	ACTU	15/06/2015
56	<a href="#">Submission</a> on preliminary issues	NFF	20/04/2015
57	<a href="#">Submission</a> - Jurisdictional objection	Ai Group	20/04/2015
58	<a href="#">Submission</a>	HIA	20/04/2015
59	<a href="#">Outline of submissions</a>	ACCI	20/04/2015
60	<a href="#">Draft determinations</a>	ACTU	02/03/2015
61	<a href="#">Submission - draft clauses</a>	ACTU	13/02/2015

## ATTACHMENT B

### AM2015/1 Family and Domestic Violence Leave

#### List of Issues

##### A. Unpaid Domestic Violence Leave

1. Should there be an entitlement to access unpaid domestic violence leave in Modern Awards?
2. If there is to be an entitlement to unpaid domestic violence leave in Modern Awards, then:
  - 2.1 What is the extent of the entitlement to unpaid domestic violence leave (i.e. quantum)?
  - 2.2 The circumstances in which the leave entitlement arises, including:
    - (a) the definition of 'family and domestic violence' for the purposes of the clause;
    - (b) the circumstances in which leave may be accessed (eg attending an appointment related to the violence); and
    - (c) who may access the entitlement

- 2.3 Accrual issues, in particular whether the leave entitlement is available in full at the start of the year or accrues.
- 2.4 How would an employee access the entitlement (notice and evidentiary requirements)?
- 2.5 The availability of leave for part-time and casual employees.
- 2.6 The confidentiality of information provided by employees concerning their experience of family and domestic violence.
- 2.7 Whether taking unpaid family and domestic violence leave counts towards continuity of service.
- 2.8 Relationship/interaction with other forms of leave.

**B. Extension of the NES entitlement to personal/carers leave to domestic violence leave**

1. Does the Full Bench have jurisdiction to extend the NES entitlement to personal/carers leave to incorporate domestic violence leave?
2. If so, should the NES entitlement to personal/carers leave be extended to incorporate domestic violence leave?
3. If the NES entitlement to personal/carers leave is to be extended to incorporate domestic violence leave, then:
  - 3.1 The circumstances in which the NES entitlement to personal/carers leave can be accessed for the purposes of domestic violence leave? This issue requires a consideration of definitional issues regarding domestic violence for the purposes of the clause, the purposes for which the leave could be accessed and who can access the entitlement.
  - 3.2 Should there be a cap on the amount of personal/carer's leave that can be taken for family and domestic violence leave purposes?
  - 3.3 The issues set out at 2.3 to 2.8 above.

**ATTACHMENT C**



**DIRECTIONS**

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

**4 yearly review of modern awards – Family and domestic violence leave**  
(AM2015/1)

JUSTICE ROSS, PRESIDENT

MELBOURNE, 3 AUGUST 2017

DEPUTY PRESIDENT GOOLEY  
COMMISSIONER SPENCER

### **Preamble**

These directions concern the further proceedings in respect of the preliminary views expressed by the majority (Deputy President Gooley and Commissioner Spencer) ([\[2017\] FWCFB 3494](#) at [6]) that:

- (i) All employees should have access to unpaid family and domestic violence leave.
- (ii) Employees should be able to access their NES entitlement to personal/carer's leave for the purpose of taking family and domestic violence leave.

### **Directions**

1. All interested parties shall file comprehensive written submissions and any further witness statements or documentary evidence on which the party seeks to rely by 4.00 pm on Friday 1 September 2017.
2. On or before 4.00 pm on Friday 29 September 2017, interested parties are to file comprehensive written submissions in reply and any witness statements or documentary evidence in reply.
3. All submissions filed should address the issues set out in Attachment B to the 2 August 2017 Statement. Submissions are not limited to the issues identified in Attachment B.
4. The matter will be listed for Conference before me on 11 and 13 October 2017 in Melbourne.
5. The matter will be listed for oral Hearing on 19 and 20 October 2017 in Sydney.
6. All material should be sent in a Word document to [amod@fwc.gov.au](mailto:amod@fwc.gov.au).
7. Copies of any submissions filed in response to these directions will be published on the [AM2015/1—Family and domestic violence clause](#) page of the Commission's website.
8. Liberty to apply

### **PRESIDENT**

### **ATTACHMENT D**

#### **AMENDED DIRECTIONS**

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

#### **4 yearly review of modern awards –Family friendly work arrangements (AM2015/2)**

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT GOOLEY  
COMMISSIONER SPENCER

MELBOURNE, 3 AUGUST 2017

The directions issued on 22 December 2016 are vacated and the following directions are made:

1. Any party opposing the ACTU's claim shall file comprehensive written submissions and any witness statements or documentary material on which the party seeks to rely, by **4.00 pm on Friday 6 October 2017**.

2. The ACTU and any other interested party supporting the ACTU's claim shall file any reply evidence written submissions and evidence in reply by **4.00 pm on Friday 3 November 2017**.
3. The matter will be listed for a directions hearing on **Wednesday 8 November 2017** for the purpose of scheduling the evidence. At that hearing, all parties intending to participate in the hearing must be in a position to inform the Commission of the witnesses required for cross-examination, and an estimate of the length of time required for cross-examination.
4. The matter will be listed for hearing on **12-14 December 2017** and **18-22 December 2017**, inclusive.
5. Liberty to apply.

PRESIDENT

- 1 21 July 2017 [Transcript](#) PN 279-293
- 2 ACTU [submission](#) at [17]
- 3 APSC [submission](#) at [5]-[7]

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