

IN THE FAIR WORK COMMISSION

Fair Work Act 2009

s.156 – Four Yearly Review of Modern Awards

AM2015/1 - Family and Domestic Violence Leave

**SUBMISSIONS OF
THE AUSTRALIAN COUNCIL OF TRADE UNIONS**

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Introduction

1. These submissions are filed pursuant to a Statement of the Fair Work Commission (**the Commission**) dated 3 May 2018.
2. On 3 July 2017, a Full Bench of the Commission [dismissed](#) the ACTU's claim for 10 days paid family and domestic violence leave, but expressed a preliminary view that it is necessary to provide a period of *unpaid* family and domestic violence leave in modern awards.
3. On 13, 18, 19 and 20 October 2017, the content of a provisional model unpaid family and domestic violence leave model term was discussed at conferences of interested parties. The parties took a cooperative and productive approach to discussions, with the result that the vast majority of the content of a provisional model term (the quantum of the leave the significant exception) was agreed by negotiation. On 19 October 2017, Commission issued a [Statement](#) summarising the outcome of the discussions.
4. On 26 March 2018, the Full Bench [decided](#) that five days unpaid family and domestic violence leave should be included in modern awards. The Full Bench was satisfied that such a term was 'permitted' within the meaning of s. 136(1)(a) of the *Fair Work Act 2009* (**FW Act**) and 'necessary' to achieve the modern awards objective, as required by s.138. The Full Bench explained that:

[306] As we have observed, family and domestic violence is ubiquitous. One in four women in Australia have experienced such violence (almost 2.2 million women). Such violence not only affects those who suffer it, but the children who are exposed to it, extended families, friends and work colleagues. It is an issue that impacts on workplaces and which requires specific action.

[307] This decision takes a cautious regulatory response to this issue. We have decided to provide five days' unpaid leave to employees experiencing family and domestic violence, if the employee needs to do something to deal with the impact of that violence and it is impractical for them to do it outside their ordinary hours of work. We have decided to defer our consideration of whether employees should be able to access paid personal/carer's leave for the purpose of taking family and domestic violence leave.

[308] The extent to which the new entitlement to unpaid leave will be utilised is unknown, as is the impact of the new entitlement on business.

[309] We propose to revisit this issue in June 2021, after the model term has been in operation for three years. At that time we will consider whether any changes are needed to the unpaid

leave model term, and whether to allow access to personal/carer's leave. At that time we will also revisit the question of whether provisions should be made for paid family and domestic violence leave.

5. The Full Bench decided that five days leave should be available to all employees (including casuals), in full (i.e. not pro-rated for employees working less than full-time hours), at the commencement of each 12 month period of employment. The Full Bench decided that the leave would not accrue, and that access would not be dependent on employees accessing any available paid leave entitlement first.
6. The *Australian Government Industry Award 2016*, the *Road Transport and Distribution Award 2010* and the *Road Transport (Long Distance Operations) Award 2010* were to be considered separately. However, on 1 May 2018, the Australian Public Service Commission and the National Road Transport Association confirmed they no longer pressed their objections to the inclusion of the model term.
7. On 3 May 2018, the Commission issued a Statement attaching a provisional model term and inviting submissions on whether the draft model term accurately reflected the outcome of earlier decisions.

Family and Domestic Violence Leave Model Term

8. The ACTU has reviewed the provisional model term at Attachment A of the 3 May 2018 [Statement](#). Subject to the below comments, the ACTU is satisfied that the provisional model term accurately reflects earlier decisions of the Full Bench and discussions between the parties during the October 2017 conferences.
9. It has been assumed that typographical matters such as incomplete cross-references and inaccurate numbering will be addressed by the Commission, and therefore these matters are not addressed in these submissions.

Clause X.1

10. Using the terms 'full-time, part-time and casual' could lead to uncertainty about the applicability of the clause to fixed-term employees, apprentices and others. This clause should be redrafted so that it reads:
 - a. *X.1 This clause applies to all employees, including casuals.*

11. This phrase is clearer, broader and more consistent with the Full Bench's comments on this matter.¹

Clause X.3

12. For the avoidance of doubt, a new Clause X.3(b)(iii) should be inserted to confirm that the leave is available *in full* to part-time and casual employees, i.e. not pro-rated. In the absence of such clarification, there may be some uncertainty about the way in which this provision interacts with other award provisions which pro-rata entitlements for part-time employees.

Conclusion

13. During the hearing of this matter, the ACTU argued that there was sufficient evidence to demonstrate the necessity for paid family and domestic violence leave at this point in time. Although the Full Bench accepted much of this evidence, the majority ultimately declined the ACTU's proposal, instead taking a 'cautious approach' which provided for a lesser quantum of *unpaid* leave. The ACTU remains committed to the provision of a minimum of 10 days paid family and domestic violence leave for all Australian workers.
14. The Full-Bench has indicated that it will review the operation of the new entitlement to unpaid family and domestic violence leave in June 2021, considering both the utilisation of the entitlement and its impact on business. The Full Bench will at that time also revisit the question of whether provision should be made for *paid* family and domestic violence leave.
15. The ACTU requests that the Commission consider allocating appropriate resources at an early stage to ensure that independent, thorough and credible data and research is available to underpin any review of the operation of the new entitlement in June 2021.

13 June 2018

Australian Council of Trade Unions

¹ *4 Yearly Review of Modern Awards – Family and Domestic Violence Leave* [2018] FWCFB 1691 at [11], [159], [189], [237], [245] and [246].