



# STATEMENT

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **Family and Domestic Violence Leave Clause**

(AM2015/1)

JUSTICE ROSS, PRESIDENT

SYDNEY, 20 OCTOBER 2017

*4 yearly review of modern awards – family and domestic violence leave clause.*

[1] This Statement should be read in conjunction with the Statements of [6 October 2017](#) and [19 October 2017](#).<sup>1</sup>

[2] Further conferences of interested parties<sup>2</sup> were held on 19 and 20 October 2017.

[3] At the conferences there was progress towards a measure of agreement in relation to some aspects of a draft model unpaid family and domestic violence leave term; while other aspects remain contested.

[4] In the event that the Full Bench adhered to the preliminary view expressed in the majority decision and determined that there should be a model unpaid family and domestic violence leave term then the conference parties propose the model term attached. All parties acknowledged that the proposed model term represents a significant compromise from their respective preferred positions.

PRESIDENT

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<sup>1</sup> [2017] FWC 5192 and [2017] FWC 5417

<sup>2</sup> The conferences were attended by representatives from the Australian Council of Trade Unions, Ai Group, Australian Chamber of Commerce and Industry, Australian Meat Industry Council, National Road Transport Association, Pharmacy Guild of Australia, Master Electricians Australia and the Community and Public Sector Union

20 October 2017

## Family and Domestic Violence Leave Model Term

### 1. Definitions (Agreed)

**Family and domestic violence** means violent, threatening or other abusive behaviour by a family member of an employee that seeks to coerce or control the employee and which causes them harm or to be fearful.

**Family member** means:

- (a) A spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee;
  - (b) A child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee;
  - (c) A person related to the employee according to Aboriginal or Torres Strait Islander kinship rules;
- In this clause a spouse or de facto partner includes a former spouse or de facto partner.

### 2. Entitlement to unpaid family and domestic violence leave (Not Agreed)

A number of matters concerning the extent of the entitlement remain in dispute:

- Is an employee entitled to unpaid leave for *each occasion* that satisfies clause 3 and, if so, is there a limit on the number of days of unpaid leave that can be taken on each occasion?
- Is the entitlement to be limited to a specified quantum of unpaid leave *per annum* and, if so, what is that quantum?
- In relation to any specified quantum of unpaid leave entitlement:
  - Does the entitlement accrue progressively during a year of service or is it simply an entitlement in each 12 month period?
  - Does the entitlement accumulate from year to year?
  - How does the entitlement 'work' in relation to part time employees?
  - Does the entitlement to take unpaid leave apply to casuals?
- Should an employee be required to exhaust other forms of leave (such as personal/carers leave) before becoming entitled to unpaid family and domestic violence leave?
- In the event that the entitlement to unpaid family and domestic violence leave is limited to a specified quantum of unpaid leave, then the following term is agreed:

'A period of family and domestic violence leave may be less than a day by agreement between the employee and the employer.'

### 3. Taking Unpaid Leave (Agreed)

An employee experiencing family or domestic violence may access unpaid leave if it is necessary to deal with the impact of the family and domestic violence and it is impractical for the employee to do so outside their ordinary hours of work.

Note 1: The entitlement to take unpaid leave only applies to an employee subjected to family and domestic violence.

Note 2: The reasons for which an employee may take leave include making arrangements for their safety or the safety of a family member (including relocation), attending urgent court hearings, or accessing police services.

### 4. Notice and evidence requirements (Agreed)

#### *Notice*

- 4.1 An employee must give their employer notice of the taking of leave under this clause by the employee.
- 4.2 The notice:
  - (a) must be given to the employer as soon as practicable (which may be a time after the leave has started); and
  - (b) must advise the employer of the period, or expected period, of the leave.

#### *Evidence*

- 4.3 An employee who has given their employer notice of the taking of leave under this clause must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for a purpose specified in clause 3.

Note: Depending on the circumstances such evidence may include a document issued by the police service, a court or family violence support service, or a statutory declaration.

### 5 Confidentiality (Agreed)

- 5.1 Employers must take steps to ensure information concerning any notice given or evidence provided under clause 4 is treated confidentially, as far as it is reasonably practicable to do so.
- 5.2 Nothing in this clause prevents an employer from disclosing information provided by an employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.

Note: Information concerning an employee's experience of family and domestic violence is sensitive and if mishandled can have adverse

consequences for the employee. Employers should consult with such employees regarding the handling of this information.

**6 Compliance (Agreed)**

An employee is not entitled to take leave under this clause unless the employee complies with this clause.