



STATEMENT

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, 10 MAY 2019

4 yearly review of modern awards – leave to deal with family and domestic violence model term – Fair Work Amendment (Family and Domestic Violence Leave) Act 2018.

[1] On 11 February 2019, the Full Bench issued a statement (the February Statement)¹ about the interaction between the ‘leave to deal with family and domestic violence’ model term included in all modern awards in July 2018² and the NES entitlement to ‘unpaid family and domestic violence leave’ included in the *Fair Work Act 2009* (the Act) after the *Fair Work Amendment (Family and Domestic Violence Leave) Act 2018* received Royal Assent on 12 December 2018.

[2] In the February Statement the Full Bench expressed the *provisional view* that the model term should be deleted from exposure drafts produced as part of the 4 yearly review and replaced with the following:

X. Unpaid family and domestic violence leave

Unpaid family and domestic violence leave is provided for in the NES

[3] The Full Bench also expressed the *provisional view* that the model term should remain in modern awards until they are replaced by the exposure drafts later this year.

[4] Interested parties were provided an opportunity to file any objection to the *provisional views*. One submission was received from the Australian Council of Trade Unions (ACTU)³. The ACTU object to the deletion of the model term on the following grounds:

- The NES entitlement has no equivalent to the Note under cl X.7 which deals with confidentiality;

¹ [\[2019\] FWCFB 767](#).

² [\[2018\] FWCFB 3936](#).

³ ACTU [submission](#) dated 18 March 2019.

- The NES entitlement has no equivalent to the Note under cl X.6 which deals with evidence;
- The coverage of de facto partners is narrower in the NES entitlement than the model term. The NES entitlement excludes non-resident, current de facto partners, while the model term does not;
- The model term has no equivalent of s.106E of the Act. Section 106E provides that ‘what constitutes a day of leave for the purposes of this Subdivision is taken to be the same as what constitutes a day of leave for the purposes of section 85 and Subdivisions B and C.’ The ACTU submit that, the meaning of a ‘day’ in the context of paid personal/carers leave in s 96(1) of the Act, including the effect (if any) of s 106E, remains the subject of ongoing Federal Court proceedings in *Mondelez Australia Pty Ltd v AMWU and Ors* VID731/2018.

[5] Interested parties are invited to file submissions in response to the ACTU by **4pm on Friday 17 May 2019**. Submissions should be sent to amod@fwc.gov.au.

[6] This matter will be determined on the papers unless any party requests a formal hearing by **4pm on Friday 17 May 2019**.

PRESIDENT

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