

IN THE FAIR WORK COMMISSION

Matter No.: AM2015/1

Fair Work Act 2009

Section 156 – 4 yearly review of modern awards

Family and Domestic Violence Leave

**SUBMISSIONS ON BEHALF OF AGED CARE SERVICES AUSTRALIA GROUP
PTY LTD**

DATE: 15 September 2016

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Background:

1. Aged Care Services Australia Group Pty Ltd (ACSAG) is one of the largest providers of residential aged care services in Australia.
2. ACSAG operates residential aged care facilities in Victoria, New South Wales, South Australia and Tasmania.

The Claim:

3. The claim made by the ACTU seeks 10 days paid leave per annum on account of family and domestic violence. This leave is to be available to all employees, including casuals. The leave sought for the purpose of attending legal proceedings, counselling, appointments with a medical or legal practitioner, relocation or making other safety arrangements or any other activities associated with the experience of family and domestic violence. The claim defines family and domestic violence as any

violent, threatening or other abusive behaviour by a person against a member of the person's family or household (current or former).

4. The claim further seeks that if the period of paid leave is exhausted the employee will be entitled to up to 2 days unpaid leave on each occasion. The claim is silent on whether the paid leave is cumulative year on year although the ACTU submissions at paragraph 2.20 appear to clarify that the paid leave is not intended to be cumulative. The claim also contains machinery provisions related to notice and evidentiary requirements.

Submission:

5. ACSAG is opposed to the claim. The claim would, if successful, effectively create a new and separate form of paid leave of up to two weeks per year. ACSAG believes and submits that if the claim is successful it should be treated in the same way as carer's leave is treated. That is to say that the claimed quantum of family and domestic violence leave should be available to employees, excluding casual employees, from within their accrued entitlement to personal leave. Whilst personal leave was originally only available to an employee for illness or injury suffered by the employee himself or herself the introduction of carer's leave has extended that availability circumstances where persons other than the individual employee suffers illness or injury. It is submitted that family and domestic violence leave, as claimed, is of a similar character as carer's leave in that it relates, as defined, to circumstances surrounding illness or injury to a member of the employee's family or household brought about by a violent act of another person.
6. ACSAG notes that on or about 1 July 2013 the Act was amended to specify that requests for Flexible Working Arrangements under the National Employment Standards now include employees who are experiencing violence from a member of their family or one who provides care and support for a member of their immediate family due to domestic violence. ACSAG considers that this is an appropriate industrial response to the issue of family and domestic violence.

DATED: 15 September 2016



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Michael P. Rahilly LL.B

Solicitor for Aged Care Services Australia Group Pty Ltd