



Australian Government
Australian Public Service Commission

The Honourable Justice Iain Ross AO
President
Fair Work Commission

Your Honour

Proposed Family and Domestic Violence provisions in Awards

1. I am writing in regards to the recent Full Bench Decision ([2017]FWCFB3494) on the inclusion of family and domestic violence leave clauses in modern awards.
2. During the Mentions hearing of 21 July 2017, you requested that we provide a view on whether the *Australian Government Industry Award 2016* should be included in this decision.
3. The Australian Public Service Commission is not a party to the Australian Government Industry Award but acted on behalf of Australian Government employers covered by it during its consideration by the Fair Work Commission.
4. We provide views here in a similar capacity. We have consulted with Australian Government employers covered by this Award and will continue to seek their views as this matter progresses. However, as the time available to consult was limited, individual employers covered by the Award may have other views.
5. In the context of the Australian Government Industry Award, we do not consider that the inclusion of specific clauses for family and domestic violence leave are necessary.
6. The introduction of an unpaid leave entitlement would have no effect on the high level of support currently provided to employees suffering domestic violence.
7. Notwithstanding this, we accept that the Australian Government Industry Award should be included these proceedings if they are intended to apply to all industry awards.

Family and Domestic Violence support for employees in Australian Government Employment

8. Australian Government employers are committed to supporting employees who are affected by family and domestic violence through a range of measures, including access to leave. Requests for leave and other support are handled sensitively.

9. APSC advice to agencies reflects the Government's firmly declared position that Australian Government employers are to treat employees who are the victims of family violence in an emphatic and supportive manner. Every effort is to be made to help them deal with their circumstances in a way that respects their individual dignity. Flexible access to a range of leave options is guaranteed and no adverse career impacts will be entertained.
10. The APSC is working with employers on this issue, and recently circulated a comprehensive family and domestic violence policy framework. The framework provides better practice advice to agencies about supporting employees experiencing family and domestic violence, and a template policy that agencies can adapt to suit their own workplace arrangements.
11. Most Australian Government employers set employee terms and conditions through enterprise agreements, with a smaller number using other instruments such as common law contracts.
12. The preferred approach is to provide leave for employees experiencing domestic violence through miscellaneous leave clauses in enterprise agreements. This is uncapped and may be paid or unpaid depending on the individual circumstances.
13. Australian Government employers also commonly have policies in place allowing employees affected by family and domestic violence to use personal/carer's leave.
14. A range of other, practical support measures are typically provided to employees. These can include access to counselling and support, assistance with personal safety, advance payments of salary or emergency financial assistance, access to suitable office facilities should employees need to attend work with children, loaned mobile phones, and relocation to alternative offices.
15. Given current practice, a new entitlement in the Award would generally not provide employees with a greater benefit than they currently receive.

Employee Privacy

16. The introduction of an identifiable leave type could put employee safety at risk.
17. By establishing a specific domestic or family violence leave type, other employees could potentially identify affected individuals on human resources systems. This could create significant safety risks if this information was accidentally or maliciously provided to a perpetrator.
18. Affected employees may also prefer not to self-identify as victims of family or domestic violence, or have such an incident recorded in their employee records.

Application of the Better Off Overall Test

19. If a family and domestic violence leave provision is included in the Award, we are concerned that the Fair Work Commission may require it to be included in future enterprise agreements to pass the Better Off Overall Test.
20. Few Australian Government enterprise agreements contain specific references to family and domestic violence. The inclusion of family and domestic violence leave clauses in Australian Government enterprise agreements has been resisted to date for the reasons outlined above.

21. Employees could be worse off if there is an expectation that accrued personal leave or a defined amount of unpaid leave should be used for these purposes.
22. We would argue that current practice in providing miscellaneous and/or personal leave to victims of domestic violence ought to satisfy any future Better Off Overall Test assessment.

Issues to be addressed in submissions

23. The Full Bench statement asked for views on the issues on which submissions should be made in relation to the Full Bench's preliminary decision.
24. For the reasons above, we consider that the issues should include whether clauses providing for unpaid domestic violence leave, and the use of personal/carer's leave entitlements, are necessary in all modern awards.
25. The issues raised above with respect to the Better Off Overall Test may also be worthy of consideration by other parties making submissions.

We are available to provide further assistance to the Fair Work Commission in progressing this matter, as necessary.

Yours sincerely



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