

In the Fair Work Commission

4 yearly review of modern awards - Family & Domestic Violence Leave (AM2015/1)

Preliminary View Submissions of the National Road Transport Association (NatRoad)

28 July 2017

About NatRoad

The National Road Transport Association (NatRoad) is a not-for-profit industry association with a history dating to January 1948. NatRoad receives no government or union funding. It has more than 1000 members including members in every Australian State and Territory. NatRoad represents the interests of more than 1000 transport businesses. Its members include employing contractors, contract carriers, and owner-drivers working in all sectors of the road transport and logistics and related industries throughout Australia. While many of NatRoad's members are small to medium business owners and operators, it also represents large national and state-based fleet businesses.

Issues to be Addressed

In relation to AM2015/1, NatRoad relies on its earlier submissions of 5 April 2017.

It also supports the issues to be addressed which were proposed by the Fair Work Commission (the **Commission**) on 24 July 2017.

That is, in respect of unpaid domestic violence leave NatRoad agrees that the issues that to be addressed by the parties and the Commission should include *inter alia*:

- **Issue 1:** Should there be an entitlement to access unpaid domestic violence leave?
- **Issue 2:** If there is to be an entitlement to unpaid domestic violence leave then:
 - 1) What is the extent of the entitlement to unpaid domestic violence leave (i.e. how many days unpaid leave)?
 - 2) In what circumstances does an entitlement to unpaid domestic violence arise (i.e. the definitional issues)?
 - 3) Continuity of service issues.
 - 4) Application to part-time employees.

Small Business Considerations

In addition, in relation to the matters already listed under Issue 2, NatRoad submits that special consideration should also be given to small business operations in respect of any entitlement to unpaid family and domestic violence leave.

Just as the *Fair Dismissal Code* applies to small business employers with fewer than 15 employees (calculated on a simple headcount of all employees including casual employees who are employed on a regular and systematic basis), if any entitlement to unpaid family and domestic violence leave is ultimately agreed, consideration should be given to providing special dispensation, different entitlements and/or different qualifying criteria in respect of small business.

Small business employees cannot make a claim for unfair dismissal in the first 12 months following their engagement.

Similar or more rigorous requirements might be considered in respect of any eligibility for unpaid family and domestic violence leave for employees generally (with a longer period for small business) should such an entitlement ultimately be determined. Perhaps this could be considered as one of the definitional issues referred to in at 2) of Issue 2?

In the case of some small businesses, e.g. (but not limited to) where there are only one or two employees, providing an extra entitlement to any form of unpaid leave could be financially disastrous for the business. For example, in the case of a transport business which employs one truck driver only, where that driver takes unpaid leave, the business is unlikely to be able to continue to provide any services to its customers. In such cases the customer is likely to take its business elsewhere either in the short-term or permanently leading to harm to the small business in question. Clearly if no income is generated for a fortnight, a small business in this situation is likely to experience difficulty. The economic impact of any such unpaid leave on small businesses like this should be considered. Perhaps it might be appropriate for any entitlement to unpaid family and domestic violence leave to not apply to certain small businesses at all?

In the event that some entitlement to unpaid family and domestic violence leave is ultimately agreed, NatRoad suggests that a minimum service period prior to any general entitlement to unpaid family and domestic leave accruing should be considered. A longer service period should apply before any entitlement accrues for employees working in small business. Perhaps an appropriate service period for large business would be something consistent with the current period required for eligibility for maternity leave, with a longer period applicable to small business (if at all)?

Nature of Industry/Business Considerations

In addition, in relation to the matters already listed in Issue 2, NatRoad also submits that consideration might also be given to the type and nature of an industry/business in relation to providing any entitlement to unpaid family and domestic violence leave.

Domestic violence is largely a (female) gendered phenomenon, just as responsibility for providing family and other types of care typically falls to women. The question needs to be asked: should industries that are male-dominated be required to provide an entitlement to this form of leave when it is probable that there will be no demand, or not a high demand for it? Has any research been done into providing access to such leave in male-dominated industries/business in other jurisdictions or at all? Rather than a one-size fits all approach, should consideration be given to allowing industry-specific tailored approaches?

Summary

As outlined above, NatRoad supports the general thrust of the issues proposed for consideration by the Commission on 24 July 2017. It further supports the particular consideration of the small business and industry-specific issues in that context.