



DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

Family and domestic violence clause

(AM2015/1)

JUSTICE ROSS, PRESIDENT

VICE PRESIDENT HATCHER

COMMISSIONER SPENCER

MELBOURNE, XX MONTH 2018

Leave to deal with family and domestic violence.

A. Further to the decision [[2018] FWCFB 3936] issued on 6 July 2018 it is ordered that the modern awards listed in Appendix A to this determination be varied as follows:

1. By inserting at the relevant clause number listed in Appendix A the following clause:

X. Leave to deal with Family and Domestic Violence

X.1 This clause applies to all employees, including casuals.

X.2 Definitions

(a) In this clause:

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 that causes them harm or to be fearful.

family member means:

- (i) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
- (ii) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or
- (iii) a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

(b) A reference to a spouse or de facto partner in the definition of *family member* in clause X.2(a) includes a former spouse or de facto partner.

X.3 Entitlement to unpaid leave

An employee is entitled to 5 days' unpaid leave to deal with family and domestic violence, as follows:

- (a) the leave is available in full at the start of each 12 month period of the employee's employment; and
- (b) the leave does not accumulate from year to year; and
- (c) is available in full to part-time and casual employees.

Note: 1. A period of leave to deal with family and domestic violence may be less than a day by agreement between the employee and the employer.
2. The employer and employee may agree that the employee may take more than 5 days' unpaid leave to deal with family and domestic violence.

X.4 Taking unpaid leave

An employee may take unpaid leave to deal with family and domestic violence if the employee:

- (a) is experiencing family and domestic violence; and
- (b) needs to do something to deal with the impact of the family and domestic violence and it is impractical for the employee to do that thing outside their ordinary hours of work.

Note: 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.

X.5 Service and continuity

The time an employee is on unpaid leave to deal with family and domestic violence does not count as service but does not break the employee's continuity of service.

X.6 Notice and evidence requirements

(a) Notice

An employee must give their employer notice of the taking of leave by the employee under clause X. The notice:

- (i) must be given to the employer as soon as practicable (which may be a time after the leave has started); and
- (ii) must advise the employer of the period, or expected period, of the leave.

(b) Evidence

An employee who has given their employer notice of the taking of leave under clause X must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for the purpose specified in clause X.4.

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

X.7 Confidentiality

- (a)** Employers must take steps to ensure information concerning any notice an employee has given, or evidence an employee has provided under clause X.6 is treated confidentially, as far as it is reasonably practicable to do so.
- (b)** Nothing in clause X 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.

X.8 Compliance

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

2. By updating the table of contents accordingly.

B. This determination comes into operation from 1 August 2018. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after 1 August 2018.

PRESIDENT

Appendix A—Awards to be varied for leave to deal with family and domestic violence clause

Award title	Award ID	Insert clause as
<i>Aboriginal Community Controlled Health Services Award 2010</i>	MA000115	31
<i>Aged Care Award 2010</i>	MA000018	33
<i>Air Pilots Award 2010</i>	MA000046	32
<i>Aircraft Cabin Crew Award 2010</i>	MA000047	29
<i>Airline Operations-Ground Staff Award 2010</i>	MA000048	38
<i>Airport Employees Award 2010</i>	MA000049	37
<i>Alpine Resorts Award 2010</i>	MA000092	30
<i>Aluminium Industry Award 2010</i>	MA000060	27
<i>Ambulance and Patient Transport Industry Award 2010</i>	MA000098	34
<i>Amusement, Events and Recreation Award 2010</i>	MA000080	28
<i>Animal Care and Veterinary Services Award 2010</i>	MA000118	30
<i>Aquaculture Industry Award 2010</i>	MA000114	27
<i>Architects Award 2010</i>	MA000079	24
<i>Asphalt Industry Award 2010</i>	MA000054	29
<i>Australian Government Industry Award 2016</i>	MA000153	26
<i>Banking, Finance and Insurance Award 2010</i>	MA000019	28
<i>Black Coal Mining Industry Award 2010</i>	MA000001	28
<i>Book Industry Award 2010</i>	MA000078	25
<i>Broadcasting, Recorded Entertainment and Cinemas Award 2010</i>	MA000091	26A
<i>Building and Construction General On-site Award 2010</i>	MA000020	41A
<i>Business Equipment Award 2010</i>	MA000021	35
<i>Car Parking Award 2010</i>	MA000095	30
<i>Cement and Lime Award 2010</i>	MA000055	28
<i>Cemetery Industry Award 2010</i>	MA000070	28
<i>Children's Services Award 2010</i>	MA000120	28
<i>Cleaning Services Award 2010</i>	MA000022	33
<i>Clerks—Private Sector Award 2010</i>	MA000002	33
<i>Coal Export Terminals Award 2010</i>	MA000045	23
<i>Commercial Sales Award 2010</i>	MA000083	28
<i>Concrete Products Award 2010</i>	MA000056	30
<i>Contract Call Centres Award 2010</i>	MA000023	31
<i>Corrections and Detention (Private Sector) Award 2010</i>	MA000110	28
<i>Cotton Ginning Award 2010</i>	MA000024	29
<i>Dredging Industry Award 2010</i>	MA000085	27
<i>Dry Cleaning and Laundry Industry Award 2010</i>	MA000096	29

Award title	Award ID	Insert clause as
<i>Educational Services (Post-Secondary Education) Award 2010</i>	MA000075	30
<i>Educational Services (Schools) General Staff Award 2010</i>	MA000076	32
<i>Educational Services (Teachers) Award 2010</i>	MA000077	27
<i>Electrical Power Industry Award 2010</i>	MA000088	32
<i>Electrical, Electronic and Communications Contracting Award 2010</i>	MA000025	32
<i>Fast Food Industry Award 2010</i>	MA000003	32
<i>Fire Fighting Industry Award 2010</i>	MA000111	33
<i>Fitness Industry Award 2010</i>	MA000094	31
<i>Food, Beverage and Tobacco Manufacturing Award 2010</i>	MA000073	38
<i>Funeral Industry Award 2010</i>	MA000105	29
<i>Gardening and Landscaping Services Award 2010</i>	MA000101	28
<i>Gas Industry Award 2010</i>	MA000061	29
<i>General Retail Industry Award 2010</i>	MA000004	36
<i>Graphic Arts, Printing and Publishing Award 2010</i>	MA000026	42
<i>Hair and Beauty Industry Award 2010</i>	MA000005	37
<i>Health Professionals and Support Services Award 2010</i>	MA000027	36
<i>Higher Education Industry-Academic Staff-Award 2010</i>	MA000006	28
<i>Higher Education Industry-General Staff-Award 2010</i>	MA000007	35
<i>Horse and Greyhound Training Award 2010</i>	MA000008	27
<i>Horticulture Award 2010</i>	MA000028	29
<i>Hospitality Industry (General) Award 2010</i>	MA000009	37A
<i>Hydrocarbons Field Geologists Award 2010</i>	MA000064	25
<i>Hydrocarbons Industry (Upstream) Award 2010</i>	MA000062	31
<i>Joinery and Building Trades Award 2010</i>	MA000029	36
<i>Journalists Published Media Award 2010</i>	MA000067	28
<i>Labour Market Assistance Industry Award 2010</i>	MA000099	30
<i>Legal Services Award 2010</i>	MA000116	40
<i>Live Performance Award 2010</i>	MA000081	22A
<i>Local Government Industry Award 2010</i>	MA000112	30
<i>Mannequins and Models Award 2010</i>	MA000117	28
<i>Manufacturing and Associated Industries and Occupations Award 2010</i>	MA000010	45
<i>Marine Tourism and Charter Vessels Award 2010</i>	MA000093	27
<i>Marine Towage Award 2010</i>	MA000050	27
<i>Maritime Offshore Oil and Gas Award 2010</i>	MA000086	24
<i>Market and Social Research Award 2010</i>	MA000030	27
<i>Meat Industry Award 2010</i>	MA000059	42
<i>Medical Practitioners Award 2010</i>	MA000031	32

Award title	Award ID	Insert clause as
<i>Mining Industry Award 2010</i>	MA000011	27
<i>Miscellaneous Award 2010</i>	MA000104	27
<i>Mobile Crane Hiring Award 2010</i>	MA000032	29
<i>Nursery Award 2010</i>	MA000033	31
<i>Nurses Award 2010</i>	MA000034	36
<i>Oil Refining and Manufacturing Award 2010</i>	MA000072	30
<i>Passenger Vehicle Transportation Award 2010</i>	MA000063	28
<i>Pastoral Award 2010</i>	MA000035	26A
<i>Pest Control Industry Award 2010</i>	MA000097	28
<i>Pharmaceutical Industry Award 2010</i>	MA000069	30
<i>Pharmacy Industry Award 2010</i>	MA000012	33
<i>Plumbing and Fire Sprinklers Award 2010</i>	MA000036	38
<i>Port Authorities Award 2010</i>	MA000051	26
<i>Ports, Harbours and Enclosed Water Vessels Award 2010</i>	MA000052	26
<i>Poultry Processing Award 2010</i>	MA000074	31
<i>Premixed Concrete Award 2010</i>	MA000057	28
<i>Professional Diving Industry (Industrial) Award 2010</i>	MA000108	29
<i>Professional Diving Industry (Recreational) Award 2010</i>	MA000109	27
<i>Professional Employees Award 2010</i>	MA000065	23
<i>Quarrying Award 2010</i>	MA000037	33
<i>Racing Clubs Events Award 2010</i>	MA000013	34
<i>Racing Industry Ground Maintenance Award 2010</i>	MA000014	28
<i>Rail Industry Award 2010</i>	MA000015	27
<i>Real Estate Industry Award 2010</i>	MA000106	29
<i>Registered and Licensed Clubs Award 2010</i>	MA000058	34A
<i>Restaurant Industry Award 2010</i>	MA000119	38A
<i>Road Transport (Long Distance Operations) Award 2010</i>	MA000039	27
<i>Road Transport and Distribution Award 2010</i>	MA000038	33
<i>Salt Industry Award 2010</i>	MA000107	29
<i>Seafood Processing Award 2010</i>	MA000068	31
<i>Seagoing Industry Award 2010</i>	MA000122	25
<i>Security Services Industry Award 2010</i>	MA000016	28
<i>Silviculture Award 2010</i>	MA000040	33
<i>Social, Community, Home Care and Disability Services Industry Award 2010</i>	MA000100	36
<i>Sporting Organisations Award 2010</i>	MA000082	29
<i>State Government Agencies Award 2010</i>	MA000121	29
<i>Stevedoring Industry Award 2010</i>	MA000053	27
<i>Storage Services and Wholesale Award 2010</i>	MA000084	30

Award title	Award ID	Insert clause as
<i>Sugar Industry Award 2010</i>	<i>MA000087</i>	36A
<i>Supported Employment Services Award 2010</i>	<i>MA000103</i>	26
<i>Surveying Award 2010</i>	<i>MA000066</i>	28
<i>Telecommunications Services Award 2010</i>	<i>MA000041</i>	27
<i>Textile, Clothing, Footwear and Associated Industries Award 2010</i>	<i>MA000017</i>	43A
<i>Timber Industry Award 2010</i>	<i>MA000071</i>	36A
<i>Transport (Cash in Transit) Award 2010</i>	<i>MA000042</i>	33
<i>Travelling Shows Award 2010</i>	<i>MA000102</i>	28
<i>Vehicle Manufacturing, Repair, Services and Retail Award 2010</i>	<i>MA000089</i>	32A
<i>Waste Management Award 2010</i>	<i>MA000043</i>	37
<i>Water Industry Award 2010</i>	<i>MA000113</i>	32
<i>Wine Industry Award 2010</i>	<i>MA000090</i>	35
<i>Wool Storage, Sampling and Testing Award 2010</i>	<i>MA000044</i>	30