



REPORT

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

Family and Domestic Violence Leave Clause

(AM2015/1)

JUSTICE ROSS, PRESIDENT

SYDNEY, 22 JUNE 2018

4 yearly review of modern awards – family and domestic violence leave clause – provisional model term.

[1] On 26 March 2018 (the March 2018 Decision)¹ a Full Bench decided that five days unpaid family and domestic violence leave should be included in all modern awards. The Full Bench was satisfied that such a term was ‘permitted’ within the meaning of s.136(1)(a) of the Fair Work Act 2009 (Cth) (the Act) and ‘necessary’ to achieve the modern awards objective, as required by s.138.

[2] The Commission issued a Statement² on 3 May 2018 attaching a draft model term and inviting submissions on whether the draft model term accurately reflected the outcome of the March 2018 Decision.

[3] Submissions were received from:

- Australian Chamber of Commerce and Industry (ACCI);
- Australian Council of Trade Unions (ACTU);
- Australian Industry Group (Ai Group);
- National Road Transport Association (NatRoad); and
- The Pharmacy Guild of Australia (the Pharmacy Guild).

[4] A Mention was held in relation to this matter on 21 June 2018. A [transcript](#) is available on the 4 yearly review section of the Commission website. The following parties attended the mention:

- Ai Group;
- Australian Chamber of Commerce and Industry;
- Australian Council of Trade Unions; and
- NatRoad.

¹ [\[2018\] FWCFB 1691](#)

² [\[2018\] FWCFB 2440](#)

[5] At the mention, there was no opposition to the ACTU's proposed changes to the draft model term. These matters are referred to in the ACTU's submissions at paragraphs [10]-[12];

'Clause X.1

10. Using the terms 'full-time, part-time and casual' could lead to uncertainty about the applicability of the clause to fixed-term employees, apprentices and others. This clause should be redrafted so that it reads:

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

11. This phrase is clearer, broader and more consistent with the Full Bench's comments on this matter.

Clause X.3

12. For the avoidance of doubt, a new Clause X.3(b)(iii) should be inserted to confirm that the leave is available *in full* to part-time and casual employees, i.e. not pro-rated. In the absence of such clarification, there may be some uncertainty about the way in which this provision interacts with other award provisions which pro-rata entitlements for part-time employees.'

[6] ACCI sought a short opportunity to reflect on a possible implication arising from the ACTU's proposed changes.

[7] The changes proposed by the Pharmacy Guild were discussed but were not the subject of comment by any other employer organisation and were opposed by the ACTU.

[8] The following directions were generally agreed:

1. ACCI is to file any additional comment it wishes to make by no later than **4pm Monday, 25 June 2018.**
2. All parties are invited to file any final comments on the proposed model term, having regard to the discussion at the conference and any material filed by ACCI pursuant to direction 1, by no later than **4pm Thursday, 28 June 2018.**
3. All submissions are to be sent to amod@fwc.gov.au.
4. Liberty to apply.

[9] The Full Bench will determine all outstanding matters on the papers.

PRESIDENT

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