



Minister for Employment and Industrial Relations
Minister for Racing
Minister for Multicultural Affairs

In your reply please quote: 519306/23, 3513642

14 NOV 2016

Justice Iain Ross AO
President
Fair Work Commission
11 Exhibition Street
MELBOURNE VIC 3000

Dear President

RE: AM2015/1 Four Yearly review of modern awards – Family and Domestic Violence Leave

Please find enclosed the Queensland Government submission in relation to this matter.

The Queensland Government supports the Australian Council of Trade Unions (ACTU) application for the inclusion of domestic and family leave in all modern awards as a means of providing a universal entitlement for workers in the federal industrial relations system.

The Queensland Government recognises that family and domestic violence is a workplace issue.

The Queensland Government is of the view that employees should not be penalised for requiring leave to attend to domestic and family violence related matters, that they should not be required to exhaust other forms of leave when attending to such matters and that access to leave should not be left to the discretion of the employer.

The provision of leave and other entitlements which provide workplace support for victims of family and domestic violence are important in establishing a workplace culture that accepts a shared responsibility for supporting those affected by family and domestic violence.

As the largest employer in the State, the Queensland Government has taken the lead in raising awareness, supporting employees and creating effective workplace policies through a workforce support package developed for the State public service. This includes the provision of a minimum of 10 days of paid leave and other support options, such as flexible working arrangements, workplace and role adjustments, and counselling services via employee assistance programs.

In addition, the Industrial Relations Bill 2016, which is currently before the Queensland Parliament proposes a suite of measures to provide a comprehensive workplace response to domestic and family violence. If passed, these provisions will serve as a best practice model for governments and employers in other jurisdictions.

The centrepiece of the measures in the Bill is a new entitlement in the Modern Employment Conditions of 10 days paid leave for employees who need to take leave as a result of experiencing domestic violence, with 10 days unpaid leave for long term casual employees. The Bill also extends carer's leave to care for any person experiencing domestic and family violence, and enshrines protections from dismissal and other adverse action by employers for employees, or prospective employees, because they are a victim of domestic and family violence.

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The Queensland Government will continue to advocate for the inclusion of similar domestic and family violence provisions in the Fair Work Act 2009 including domestic and family leave as part of the National Employment Standards and unfair dismissal protections for victims of domestic and family violence leave.

The inclusion of domestic and family violence leave in all modern awards is particularly important in the absence of a universal legislated entitlement to such leave in the Fair Work Act 2009.

Thank you for your consideration of this submission.

Yours sincerely



HON. GRACE GRACE MP
Minister for Employment and Industrial Relations
Minister for Racing
Minister for Multicultural Affairs

Encl.

Queensland Government Submission

Fair Work Commission

AM2015/1

Four Yearly Review of Modern
Awards

Family and Domestic Violence Leave

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Introduction

1. The Queensland Government makes this submission to assist the Fair Work Commission (FWC) in the exercise of undertaking its first four yearly review of modern awards in accordance with section 156 of the *Fair Work Act 2009* (Cth) (FW Act).
2. The FWC is considering the Australian Council of Trade Unions (ACTU) application for all modern awards to include the provision of paid family and domestic violence leave. The ACTU application:
 - a) defines family and domestic violence;
 - b) seeks 10 days per year of paid family and domestic violence leave, with the ability to access a further two days per occasion if all forms of leave are exhausted; and
 - c) outlines evidentiary and privacy requirements.
3. A modern award may include terms about matters including 'the facilitation of flexible working arrangements, particularly for employees with family responsibilities' and 'leave and arrangements for taking leave'.¹
4. The Queensland Government is committed to leading reform of culture, systems and the law and to collaborating with the community to ensure sustainable changes are made to help put an end to domestic and family violence in Queensland.
5. The Queensland Government recognises that family and domestic violence is a workplace issue.
6. The Queensland Government is of the view that employees should not be penalised for requiring leave to attend to domestic and family violence related matters, that they should not be required to exhaust other forms of leave when attending to such matters and that access to leave should not be left to the discretion of the employer.
7. The provision of leave and other entitlements which provide workplace support for victims of family and domestic violence is important in establishing a workplace culture that accepts a shared responsibility for supporting those affected by family and domestic violence.
8. As the largest employer in the State, the Queensland Government has taken the lead in raising awareness, supporting employees and creating effective workplace policies through a workforce support package developed for the State public service.
9. In addition, the Industrial Relations Bill 2016, which is currently before the Queensland Parliament proposes a suite of measures to provide a comprehensive workplace response to domestic and family violence which will serve as a best practice model for governments and employers in other jurisdictions. The specific domestic and family violence measures are:

¹ *Fair Work Act 2009* (Cth), s 139.

- a) as part of the Modern Employment Conditions –
 - i) a new category of leave for an employee who has experienced domestic and family violence, with the entitlement being 10 days paid leave per year (10 days unpaid leave for long term casual employees); and
 - ii) the extension of carer's leave to care for any person experiencing domestic and family violence; and
 - b) protections from dismissal and other adverse action by employers for employees, or prospective employees, because they are a victim of domestic and family violence.
10. The Queensland Government will advocate for the inclusion of similar domestic and family violence provisions in the *Fair Work Act 2009* including domestic and family leave as part of the National Employment Standards and unfair dismissal protections for victims of domestic and family violence leave.
11. The Queensland Government supports the ACTU application for the inclusion of domestic and family leave in all modern awards as a means of providing a universal entitlement in the federal system.

Special Taskforce on Domestic and Family Violence in Queensland

12. In February 2015, the 'Not Now Not Ever' report of the Special Taskforce on Domestic and Family Violence in Queensland (the DFV Taskforce Report) was tabled in the Queensland Parliament. The Queensland Government has accepted all 140 report recommendations.
13. The DFV Taskforce report noted that domestic and family violence is a workplace issue. Domestic violence not only affects the work performance and workplace safety of the victim, but also their co-workers and the whole organisation.
14. Research indicates victims of family and domestic violence abuse can find it difficult to remain in paid employment. However it is widely accepted that economic independence is important in helping people leave an abusive relationship. Research also shows that most victims of domestic violence disclose their experience to co-workers, supervisors and others. The workplace is, therefore, an important source of support for victims of domestic violence.
15. The DFV Taskforce report highlighted the importance of providing employees with access to leave to attend court appearances, counselling and medical appointments.
16. The DFV Taskforce report made a number of recommendations relevant to the deliberations of the FWC in this matter, those being:
- a) *(31) As the largest employer in Queensland, the Queensland Government takes the lead in developing and modelling workplaces that foster equality, and educates employees on unacceptable behaviour in the home and the workplace, with direct emphasis on domestic and family violence.*

- b) (33) *The Queensland Government amends the Industrial Relations Act 1999 to create a new category of leave for the public sector for victims of domestic and family violence that may be taken for any purpose related to the violence (such as for injury recovery, finding accommodation, court preparation and court appearance).*
- c) (34) *The Queensland Government ensures the amendment provide for 10 days a year of leave, non-accumulative, to be taken in conjunction with other leave and incorporating sensitivity as to the proof requirements for approval of the leave.*
- d) (35) *The Queensland Government amends the Industrial Relations Act 1999 to specify outcomes of domestic and family violence (i.e. injury, application for leave, taking of leave) are not grounds for fair dismissal (similar to parental leave).*
- e) (36) *The Queensland Government requests the Commonwealth Government considers similar leave and dismissal amendments to the FW Act to protect Queensland workers engaged under the Federal Act from unfair dismissal and provide appropriate support to workers experiencing domestic and family violence.*
- f) (37) *The Queensland Public Service Commission Chief Executive develops Public Service Directives specifically for management of victims of domestic and family violence in the workplace.*
- g) (38) *The Queensland Public Service Commission Chief Executive develops training for managers and supervisors on implementing these directives and supporting victims of domestic and family violence.*

17. In its response to the DFV Taskforce Report, the Queensland Government accepted all 140 of the report's recommendations and committed to actions to help end domestic violence. The response also agreed that domestic and family violence is a workplace issue and that as the largest employer in the State, the Queensland Government would take the lead in raising awareness, supporting employees and creating effective workplace policies.

18. In accepting these DFV Taskforce Report recommendations, the Queensland Government noted that recommendations 33, 34, 35 and 36 would be considered as part of the Industrial Relations Legislative Reform Reference Group (Reference Group) review of industrial relations laws and tribunals in Queensland (IR Review).

Queensland Public Sector Directive (2015/1) – Support for Employees Affected by Domestic and Family Violence

19. In response to the DFV Taskforce Report recommendations, in November 2015, the Queensland Public Service Commission issued a new specific whole-of-government directive - Support for Employees Affected by Domestic and Family Violence (the Directive).

20. The Directive:

- a) *includes the provision of a minimum of ten days of paid leave and other support options, such as flexible working arrangements, workplace and role adjustments, and counselling services via employee assistance programs.*

- b) *defines domestic and family violence and notes that employees may access leave for reasons such as attending medical, legal, police or counselling appointments; attending court and other legal proceedings; and organising alternative accommodation, care or education arrangements for themselves or in support of the person affected.*
- c) *states that an employee does not have to use other leave entitlements before accessing this paid leave, and further leave (including special leave, sick leave and carers leave) is also accessible.*
- d) *notes that an employee's access to leave and other support should not be denied in the absence of supporting documentation. This acknowledges that employees are often not in a position to provide evidence to substantiate requests for support. Employees also have the right to choose whether, when and to whom they disclose information about being affected, and confidentiality is considered paramount (except to the extent that disclosure is required or permitted by law).*
- e) *mandates that Queensland Government agencies put a specific domestic and family violence support policy in place, and provide employee access to the Recognise, Respond, Refer e-learning awareness-raising program, jointly developed by the Queensland Government and Australia's CEO Challenge.*

- 21. The Directive forms part of a new Workforce Support Package that also includes a model policy template and related resources to support employees, managers and human resources practitioners.
- 22. The state government is encouraging local governments, business and non-government organisations to adopt and/or tailor the package to suit the needs of their workplaces.
- 23. More broadly, the Queensland Government, as an employer, is promoting a focus on creating a 'constructive workplace culture' across the public sector. All workplaces are encouraged to foster a supportive and collaborative working environment that promotes prevention of domestic and family violence.

The Review of industrial relations laws and tribunals in Queensland

- 24. In August 2015, the Queensland Government appointed the Reference Group to undertake the IR Review. The Reference Group was chaired by Mr Jim McGowan AM and comprised key industrial relations stakeholders.
- 25. The terms of reference of the IR Review included:
 - a) *How best to deal with contemporary and emerging industrial relations matters in the State jurisdiction (for example, workplace bullying, domestic and family violence, gender equality, work-life balance, changes in standard working arrangements such as telecommuting/working from home).*

26. The IR Review released a number of Issues papers and sought submissions in response from interested stakeholders. Issues Paper 7 'Contemporary and Emerging Issues' examines workplace issues in relation to domestic and family violence.²

27. The report of the IR Review recommended that:

(30) That, in accordance with recommendations 33 and 34 of the Domestic Family Violence Taskforce Report a new clause in the Queensland Employment Standards be inserted to provide up to 10 days paid domestic family violence (DFV) related leave annually for employees other than casual employees. Such leave is to be non-cumulative. An employee may access up to 10 days paid leave in each year for DFV related purposes for reasons including but not limited to:

- i) injury recovery;*
- ii) attending medical, legal, police, counselling and other DFV related appointments;*
- iii) court preparation;*
- iv) attending court;*
- v) obtaining safe housing;*
- vi) organising child care or education matters; and*
- vii) undertaking other DFV related activities.*

If required by the employer, the employee may have to provide supporting information to demonstrate that leave for the purpose of attending to a DFV related matter is necessary. Acceptable forms of proof include but are not limited to:

- a. police, legal, medical, or counsellor documents or reports*
- b. statutory declaration*
- c. written advice.*

Information disclosed by an employee in relation to DFV will be kept confidential except to the extent that disclosure is required or permitted by law.

(31) That long term casual employees be entitled to 10 days unpaid domestic family violence (DFV) leave each year for DFV related reasons.

(43) That carer's leave be available for a person to care for any person affected by domestic and family violence (i.e. need not be immediate family or household member).

(45) That a separate clause be inserted prohibiting the dismissal of an employee because the employee is a victim of domestic violence and a reference to outcomes of domestic family violence victims as a prohibited reason for dismissal. Further, the general protections and adverse action provisions are to apply to victims of domestic and family violence.

² Industrial Relations Legislative Reform Reference Group (2015) *Review of Industrial Relations Laws and Tribunals – Queensland: Contemporary and Emerging Issues*, October 2015, Queensland Treasury, Industrial Relations Policy and Regulation.

28. The report of the IR Review notes that the recommended legislative measures combined with measures taken by the Queensland Government, as an employer, will provide a comprehensive workplace response to domestic and family violence that may serve as a best practice model for governments and employers in other jurisdictions.
29. The Queensland Government has accepted all recommendations of the IR review. Accordingly, the Industrial Relations Bill 2016 (IR Bill), which is currently before the Queensland Parliament, provides for 10 days of domestic family violence leave, as part of the Modern Employment Conditions, consistent with recommendations 30 and 31 of the report of the IR Review.
30. In addition, the IR Bill 2016:
- a) extends carer's leave to care for any person experiencing domestic and family violence
 - b) provides for a broad right to request flexible working arrangements and a right to appeal a request for flexible working arrangements. This right is open to all employees; and
 - c) introduces general protections and adverse action provisions to the State jurisdiction and provides specific workplace protections against adverse action for employees, or prospective employees, who are victims of domestic and family violence.
31. It is anticipated that the IR Bill 2016 will be debated before the end of 2016 and if passed, all workers in the Queensland industrial relations jurisdiction (Queensland public servants and local government employees) will have a legislative entitlement to domestic and family violence leave as well as other workplace family and domestic violence protections.

Family and Domestic Violence leave in modern awards

32. The FW Act provides a right to request a change in working arrangements where an employee is experiencing violence from a member of the employee's family.³
33. Other DFV related provisions are to be negotiated between the relevant parties, either through enterprise agreements or workplace policy.
34. According to the 2015 Productivity Commission report of its inquiry into the national Workplace Relations Framework (the PC Review report), an estimated 21.8 per cent of employees covered by agreements approved between 1 January 2012 and 30 June 2015 contained a clause regarding domestic violence that provided a related provision.⁴ The most common type of domestic violence clause was one that offered leave.

³ *Fair Work Act 2009* (Cth), s 65(1A).

⁴ Productivity Commission 2015, *Workplace Relations Framework Report No. 76* <<http://www.pc.gov.au/inquiries/completed/workplace-relations/report>>.

35. While a significant portion of these workers are likely to be public sector employees, a number of large corporations such as Telstra, Virgin Australia and the National Australia Bank have also introduced family and domestic violence arrangements. Generally these have been introduced through workplace policies rather than through more enforceable instruments such as awards or enterprise agreements.
36. A 2011 inquiry by the Australian Law Reform Commission made three recommendations regarding family violence and the FW Act, indicating that the Australian Government should consider:
- a) family violence-related amendments to the FW Act in the course of the 2012 post-implementation review of the Act;
 - b) amending the FW Act to allow victims of DFV domestic violence and those caring for them to request flexible working arrangements;
 - c) amending the National Employment Standards (NES) to include provisions for additional paid family and domestic violence leave.
37. The PC Review report acknowledged family and domestic violence as a 'significant social issue' that affects employment and the workplace.⁵ The PC Review report also noted that workplaces can support employees experiencing family and domestic violence in several ways including through the provision of leave.⁶
38. The Queensland Government is of the view that employees should not be penalised for requiring leave to attend to domestic and family violence related matters, that they should not be required to exhaust other forms of leave when attending to such matters and that access to leave should not be left to the discretion of the employer.
39. The introduction of a legislated paid leave entitlement not only provides financial assistance to victims during a time of duress but also recognises that employees have a legitimate right to access leave to attend to domestic and family violence related matters and that employees requiring leave for this purpose continue to have a place in the workforce.
40. From the point of view of the employer, it is more cost effective to support an employee who is experiencing domestic and family violence than it is to replace the employee if they leave the workplace. Workplace support for domestic and family violence can also increase productivity, decrease costs in relation to leave, and identify the employer as one who shows social responsibility and provides community leadership.
41. The provision of leave and other entitlements to provide workplace support for victims of family and domestic violence are also important in establishing a workplace culture that accepts a shared responsibility for supporting those affected by family and domestic violence.

⁵ Ibid, 21-22.

⁶ Ibid, 550.

42. We know that family and domestic violence does not discriminate. Therefore, although workplace policies play an important role in building a supportive culture for victims of domestic and family violence, the provision of enforceable minimum entitlements to leave and other workplace supports are critical in ensuring that all employees have access to the same protections in the workplace.
43. On 28 November 2016 at the Council of Australian Governments' National Summit to Reduce Violence Against Women and Their Children, the Honourable Annastacia Palaszczuk MP, Premier of Queensland and Minister for the Arts, proposed that all Australian Governments should legislate to provide paid leave for those affected by domestic and family violence. The Premier called for domestic and family violence leave to be included in the NES.
44. In accordance with the DFV Taskforce recommendations, the Queensland Government will pursue the inclusion of domestic and family violence leave in the National Employment Standards, in discussions with federal counterparts and at national forums.
45. The Queensland Government supports the ACTU application for the inclusion of domestic and family leave in all modern awards as a means of providing a universal entitlement in the federal system.