

IN THE FAIR WORK COMMISSION

Matter No. AM2015/1

RE *Family and Domestic Violence Leave Clause*

SUBMISSION IN REPLY THE TRANSPORT WORKERS' UNION OF AUSTRALIA

1. The TWU refer to the Statement and Directions of the Full Bench issued 3 August 2017.¹ In accordance with the Directions set out at Appendix C, the Transport Workers' Union of Australia (**TWU**) file the following written submissions in reply.

Introduction

2. The TWU represents 90,000 men and women in Australia's aviation, oil, waste management, gas, road transport, passenger vehicles and freight logistics industries.
3. With over 100 years' experience in conducting Australia's freight task, the TWU has been proactive in establishing efficient industry standards that improve the lives and safety of transport workers, their families and the road using public.
4. The TWU's rules entitles the Union to represent as members both independent contractor drivers and employee drivers engaged in the road freight task. As a result, the TWU likely represents more small businesses than perhaps any other Organisation in Australia.
5. The TWU represents transport workers engaged under a number of modern awards including:
 - a. *Road Transport and Distribution Award 2010*; and
 - b. *Road Transport (Long Distance Operations) Award 2010*.

Australian Council of Trade Unions Submissions

6. The TWU refers to the written submission of the Australian Council of Trade Unions (**ACTU**) dated 1 September 2017.
7. The TWU supports the submissions of the ACTU in relation to both the entitlement of unpaid domestic violence leave and their inclusion in modern awards and those

¹ [2017] FWCFB 4047.

submissions made in relation to the extension of personal/carer's leave to incorporate domestic violence leave.

National Road Transport Association Submissions

8. The TWU refers to the various submissions of the National Road Transport Association (**NatRoad**) in this matter dated as follows:
 - a. 5 April 2017;
 - b. 28 July 2017; and
 - c. 1 September 2017.
9. In relation to NatRoad's submissions, the TWU broadly submits that a vast number of the assertions contained within the above-named submissions do not accurately reflect or provide credible information on the extent to which matters pertaining to domestic violence and the necessity for such provision in road transport awards ought to be considered.

Submission 5 April 2017

10. NatRoad has asserted in their submissions at page 4 that due to the "blokey" culture of the road transport industry that the likelihood of any male or female transport worker admitting that they are a victim of family or domestic violence is minimal. This assertion is made on the basis that transport workers are unwilling to admit to or address their being victims of family or domestic violence purely because of some stereotypical view of the inherent characteristics of all transport workers as a whole.
11. The TWU rejects this position and submits that any individual could or might be the subject of family domestic violence and that in fact, including additional provisions in relation to family domestic violence might assist to address any stigma around admitting and/or addressing matters as is necessary for victims of family domestic violence in the road transport industry.
12. Further, NatRoad's submission that workers in road transport are less vulnerable to family domestic violence in the workplace because they have an isolated working environment is also not based on any clear evidence as to how or why such a working environment would mean that transport workers are less vulnerable to family and domestic violence behaviours. NatRoad has also suggested that due to the isolated working environment of transport workers that the type of violent or threatening behaviours is more likely to be stalking type behaviours such as constant phone calls that cannot be addressed by way of provisions for family and domestic violence leave.
13. This is also addressed at paragraphs 63 to 65 of NatRoad's 1 September 2017 submissions where NatRoad has suggested that stalking types behaviours are at the

other end of the spectrum from physical assault, which NatRoad has stated is commonly perceived as violence.

14. Again, the TWU assert that such a submission fails to consider how the provision of family and domestic violence leave might assist transport workers who are the subject of both these and a myriad of other family and domestic violence type situations. In fact, the example provided by NatRoad at page 5 of their submissions about the threat that workers who are the subject of constant stalking behaviours would be directly alleviated by allowing transport workers to take the necessary time to address the family domestic violence threat they are experiencing as opposed to causing drivers to go into the workforce when they are experiencing such pressures.

28 July 2017

15. Consistent with NatRoad's general position and spelt out at page 2 of NatRoad's 28 July 2017, is the statement that as family and domestic violence is a female gendered phenomenon and the road transport industry is a male dominated workplace, that family and domestic violence leave provisions are unlikely to be utilised and as such, they are unnecessary.
16. This statement assumes that men are not the victims of family domestic violence, which they are, irrespective of whether or not women are tragically over represented in this statistic. Further, such provisions are necessary to ensure that ANY victim of family and domestic violence irrespective of their representation in any statistic has access to the necessary leave required to address such circumstances.

1 September 2017

17. At paragraph 20 of their submission NatRoad has made comments about the provision of unpaid leave as a financial disincentive that would only exacerbate financial pressure in an industry already crying out for safe rates.
18. Family and domestic violence leave is a provision for persons in the workplace who are suffering traumatic circumstances and for whom, the provision of paid or unpaid access to domestic violence leave would provide certainty in ensuring that they might have some security in their employment as they endure such circumstances as opposed to a situation where they might otherwise be under pressure to resign rather than have access to paid time off.²
19. Any political association between the necessity for safe rates in the road transport industry and the inclusion of provisions for family and domestic violence leave are opposed by the TWU. So too is any association whereby financial circumstance is called upon as a valid argument as to why a transport worker affected by family and domestic violence ought not be entitled to access family and domestic violence leave in the road transport industry.

² Majority Decision, paragraph 61.

20. Also of concern is the position set out at paragraphs 66 – 73 of NatRoad’s submissions whereby it is stated men who are victims of domestic violence are unlikely to admit that this is the case. Reasons set out in these paragraphs include feelings of supposed emasculation or weakness with further statements about acceptance or allowing of the abuse.
21. Whilst the TWU understand that NatRoad has expressed concern as to these generalisations, the submissions contained at paragraphs 67 – 69 in particular only aim to exemplify why it is so important to change the perception that men cannot be the victims of family and domestic violence and why actively facilitating provisions that provide for family and domestic leave are so important.

Conclusion

22. The TWU submits that there is no evidence to support any assertion that transport workers are any more or less likely to be the subject of family and domestic violence. Transport workers, like all workers in the community, can experience a myriad of forms of behaviours that are consistent with the ACTU definition of family and domestic violence including violent, threatening and/or abusive behaviour.
23. Family and domestic violence is an important societal concern and the inclusion of provisions in modern awards that directly address and seek to remedy such matters by facilitating access to specialised leave ought to be encouraged. There should not be any artificial restrictions placed on transport workers (male or female) because family and domestic violence is perceived as a gendered issue nor should there be limited access to those workers whom might require such leave because of stereotypical paradigms about the industry.

Transport Workers’ Union of Australia

Dated: 29 September 2017