

12th April, 2021

Mr Iain Ross
President
Fair Work Commission

via email: Ross.J@fwc.gov.au

Dear President

Family & domestic violence clause (AM2015/1)

I write regarding the above proceeding.

As you know, in 2014 the ACTU made application under s 156 of the *Fair Work Act 2009 (FW Act)* to vary all modern awards to include an entitlement to 10 days per year of paid family and domestic violence leave.¹

On 26 March 2018, the Fair Work Commission (**the Commission**) decided that it was necessary to vary all modern awards to include a new entitlement to 5 days *unpaid* family and domestic violence leave,² and subsequently issued a draft model term which had been discussed and agreed at a series of conferences of union and employer representatives held in October 2017.³ A similar term providing access to 5 days unpaid family and domestic violence leave was later inserted into the national employment standards.

The Commission's Findings

In its decision issued on 3 July 2017, the majority of the Full-Bench found that:⁴

(a) Family and domestic violence is a significant problem which has a significant impact on affected individuals and the community, and which has a real and tangible impact on employees and employers in the workplace.

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(b) The evidence established that circumstances faced by employees who experience family and domestic violence, by contrast with other forms of interpersonal crime or hardship, requires a special response.

(c) Existing entitlements, such as the right to request a flexible working arrangement, personal leave, and annual leave, do not meet the needs of employees subjected to family and domestic violence.

¹ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am20151-replysub-actu-051016.pdf> at Annexure A, p 33

² [2018] FWCFB 1691

³ [2018] FWCFB 2440

⁴ [4 Yearly Review of Modern Awards – Family and Domestic Violence Leave Clause \[2017\] FWCFB 3494](#) at [42] – [46], [49], [51], [55]-[56] and [116].

The Commission also said:

We accept the evidence that the provision of paid leave would assist employees who experience family and domestic violence. It would obviously reduce the financial impact of the consequences of the violence. We accept the evidence that employees who experience family and domestic violence face financial difficulties as a result of the family and domestic violence such as relocation costs or becoming a sole parent. Having to lose pay at the same time because of the need to attend to the consequences of family and domestic violence would add to the financial burden faced by these employees. We therefore, would have no difficulty in concluding that the provision of paid leave would be a desirable outcome.⁵

The Commission ultimately opted for 'a cautious regulatory response', noting that that the extent to which the new entitlement to unpaid leave would be utilised was unknown, as was the impact of the new entitlement on business.

However, the Commission foreshadowed a review in June 2021 of the new unpaid leave entitlement and a revisiting of the need for *paid* leave.⁶

The increased incidence of family and domestic violence during COVID-19 has clearly demonstrated that this remains a pressing problem confronting employees and employers and the wider community.⁷

While a growing number of employers now provide access to paid family and domestic violence leave to their workforces, too many Australian workers are still forced to choose between their safety and their salary.⁸

We request that the foreshadowed review of the adequacy of the unpaid family and domestic leave entitlement and a revisiting of the need for 10 days paid leave commence urgently.

Yours sincerely



Sally McManus
Secretary

⁵ Ibid at [60]

⁶ [\[2018\] FWCFB 1691](#) at [308]-[309]

⁷ See for example <https://www.smh.com.au/national/nsw/covid-19-recession-is-trapping-women-in-violent-households-20200912-p55uyn.html>

⁸ See for example <https://www.wgea.gov.au/newsroom/employers-stand-up-against-family-and-domestic-violence>