

## 4 Yearly Review of Modern Awards – Family and Domestic Violence Leave Clause

### Submissions of the National Road Transport Association (NatRoad)

#### Introduction

1. These submissions are filed on behalf of the National Road Transport Association (NatRoad) in response to the Statement of the Full Bench dated 3 May 2018<sup>1</sup> (**the Statement**).
2. The Statement invites interested parties to file submissions on whether the draft model term accurately reflects the outcome of the Decision<sup>2</sup>.
3. NatRoad's interests arise principally from members' coverage of the *Road Transport and Distribution Award 2010* and the *Road Transport (Long Distance Operations) Award 2010*, together referred to as the Transport Awards. We also have an interest in several other awards that regulate our members' employment arrangements, namely:
  - the *Clerks—Private Sector Award 2010*;
  - the *Manufacturing and Associated Industries and Occupations Award 2010*;
  - the *Passenger Vehicle Transportation Award 2010*;
  - the *Transport (Cash in Transit) Award 2010*; and
  - the *Vehicle Manufacturing, Repair, Services and Retail Award 2010*.
4. NatRoad is a not for profit industry association. It represents the interests of more than 1100 contract carriers, employing contractors, owner drivers and other businesses that operate in the road transport industry throughout Australia. Most of NatRoad's members are small businesses.
5. NatRoad welcomes the opportunity to make submissions to the Full Bench in relation to matter AM2015/1 – Family and Domestic Violence Leave Clause.

#### Draft model term

6. NatRoad has considered the 'Leave to deal with Family and Domestic Violence: Model Term' set out in Attachment A of the Statement.
7. Our primary concern prior to the release of the model term was that there must be a direct and immediate relationship between the violence and the purpose of accessing of the leave; for example, if the employee needs to move house urgently, needs to attend unscheduled court hearings, or to have an emergency medical assessment (for example in the case of sexual assault or other trauma).

<sup>1</sup> [2018] FWC 2440 <https://www.fwc.gov.au/documents/decisionssigned/html/2018fwcfb2440.htm>

<sup>2</sup> [2018] FWCFB 1691 <https://www.fwc.gov.au/documents/decisionssigned/html/2018fwcfb1691.htm>

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8. We note that the Model Term at clause X.6(c) – Evidence, provides that ‘*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*’ [emphasis added]. Further, that there is an explanatory Note providing the following guidance, ‘*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.*’
9. It is also noted the pursuant to clause X.8 – Compliance, that ‘*An employee is not entitled to take leave under clause X unless the employee complies with clause X*’ [emphasis added].
10. Based upon the inclusion and the substance of the abovementioned provisions, we are satisfied that the draft model term follows the notice and evidentiary requirements of other leave entitlements dependent upon a trigger event before the entitlement is enlivened, and reflects the Decision in that regard.

### **Conclusion**

11. NatRoad is of the view that the draft model term accurately reflects the outcome of the decision.

**National Road Transport Association**

1 June 2018