



# DETERMINATION

*Fair Work Act 2009*

s.156—4 yearly review of modern awards

## **4 yearly review of modern awards—Family Friendly Working Arrangements**

(AM2015/2)

### **PASSENGER VEHICLE TRANSPORTATION AWARD 2010**

[MA000063]

Passenger vehicle transport (non rail) industry

JUSTICE ROSS, PRESIDENT  
VICE PRESIDENT HATCHER  
COMMISSIONER SPENCER

MELBOURNE, 21 NOVEMBER 2018

*4 yearly review of modern awards – family friendly working arrangements common issue – requests for flexible working arrangements model term – Passenger Vehicle Transportation Award 2010*

A. Further to the decision issued by the Full Bench on 20 November 2018 [[\[2018\] FWCFB 6863](#)], the above award is varied as follows:

1. By inserting clause 23A—Requests for flexible working arrangements as follows:

#### **23A. Requests for flexible working arrangements**

##### **23A.1 Employee may request change in working arrangements**

Clause 23A applies where an employee has made a request for a change in working arrangements under s.65 of the [Act](#).

Note 1: Section 65 of the [Act](#) provides for certain employees to request a change in their working arrangements because of their circumstances, as set out in s.65(1A).

Note 2: An employer may only refuse a s.65 request for a change in working arrangements on ‘reasonable business grounds’ (see s.65(5) and (5A)).

Note 3: Clause 23A is an addition to s.65.

### **23A.2 Responding to the request**

Before responding to a request made under s.65, the employer must discuss the request with the employee and genuinely try to reach agreement on a change in working arrangements that will reasonably accommodate the employee's circumstances having regard to:

- (a) the needs of the employee arising from their circumstances;
- (b) the consequences for the employee if changes in working arrangements are not made; and
- (c) any reasonable business grounds for refusing the request.

Note 1: The employer must give the employee a written response to an employee's s.65 request within 21 days, stating whether the employer grants or refuses the request (s.65(4)).

Note 2: If the employer refuses the request, the written response must include details of the reasons for the refusal (s.65(6)).

### **23A.3 What the written response must include if the employer refuses the request**

Clause 23A.3 applies if the employer refuses the request and has not reached an agreement with the employee under clause 23A.2.

- (a) The written response under s.65(4) must include details of the reasons for the refusal, including the business ground or grounds for the refusal and how the ground or grounds apply.
- (b) If the employer and employee could not agree on a change in working arrangements under clause 23A.2, the written response under s.65(4) must:
  - (i) state whether or not there are any changes in working arrangements that the employer can offer the employee so as to better accommodate the employee's circumstances; and
  - (ii) if the employer can offer the employee such changes in working arrangements, set out those changes in working arrangements.

### **23A.4 What the written response must include if a different change in working arrangements is agreed**

If the employer and the employee reached an agreement under clause 23A.2 on a change in working arrangements that differs from that initially requested by the employee, the employer must provide the employee with a written response to their request setting out the agreed change(s) in working arrangements.

**23A.5 Dispute resolution**

Disputes about whether the employer has discussed the request with the employee and responded to the request in the way required by clause 23A, can be dealt with under clause 9—Dispute Resolution.

2. By updating the table of contents and cross-references accordingly.

B. This determination comes into operation from 1 December 2018. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after 1 December 2018.

PRESIDENT

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