

## **Subdivision CA—Unpaid family and domestic violence leave**

### **106A Entitlement to unpaid family and domestic violence leave**

- (1) An employee is entitled to 5 days of unpaid family and domestic violence leave in a 12 month period.
- (2) Unpaid family and domestic violence leave:
  - (a) is available in full at the start of each 12 month period of the employee's employment; and
  - (b) does not accumulate from year to year; and
  - (c) is available in full to part-time and casual employees.
- (3) For the purposes of subsection (2), if an employee is employed by a particular employer:
  - (a) as a casual employee; or
  - (b) for a specified period of time, for a specified task or for the duration of a specified season;the start of the employee's employment is taken to be the start of the employee's first employment with that employer.
- (4) The employee may take unpaid family and domestic violence leave as:
  - (a) a single continuous 5 day period; or
  - (b) separate periods of one or more days each; or
  - (c) any separate periods to which the employee and the employer agree, including periods of less than one day.
- (5) To avoid doubt, this section does not prevent the employee and the employer agreeing that the employee may take more than 5 days of unpaid leave to deal with the impact of family and domestic violence.

### **106B Taking unpaid family and domestic violence leave**

- (1) The employee may take unpaid family and domestic violence leave if:
  - (a) the employee is experiencing family and domestic violence; and
  - (b) the employee needs to do something to deal with the impact of the family and domestic violence; and
  - (c) it is impractical for the employee to do that thing outside the employee's ordinary hours of work.

Note 1: Examples of actions, by an employee who is experiencing family and domestic violence, that could be covered by paragraph (b) are arranging for the safety of the employee or a close relative (including relocation), attending urgent court hearings or accessing police services.

Note 2: The notice and evidence requirements of section 107 must be complied with.

- (2) ***Family and domestic violence*** is violent, threatening or other abusive behaviour by a close relative of an employee that:
  - (a) seeks to coerce or control the employee; and
  - (b) causes the employee harm or to be fearful.
- (3) A ***close relative*** of the employee is a person who:
  - (a) is a member of the employee's immediate family; or
  - (b) is related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

Note: ***Immediate family*** is defined in section 12.

### **106C Confidentiality**

- (1) Employers must take steps to ensure information concerning any notice or evidence an employee has given under section 107 of the employee taking leave under this Subdivision is treated confidentially, as far as it is reasonably practicable to do so.
- (2) Nothing in this Subdivision prevents an employer from disclosing information provided by an employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.

Note: Information covered by this section that is personal information may also be regulated under the *Privacy Act 1988*.

### **106D Operation of unpaid family and domestic violence leave and leave for victims of crime**

- (1) This Subdivision does not exclude or limit the operation of a law of a State or Territory to the extent that it provides for leave for victims of crime.
- (2) If an employee who is entitled, under a law of a State or Territory, to leave for victims of crime is also entitled to leave under this Subdivision, that law applies in addition to this Subdivision.
- (3) A person who is a national system employee only because of section 30C or 30M is entitled to leave under this Subdivision only to the extent that the leave would not constitute leave for victims of crime.

Note: Leave for victims of crime is a non-excluded matter under paragraph 27(2)(h).

### **106E Entitlement to days of leave**

What constitutes a day of leave for the purposes of this Subdivision is taken to be the same as what constitutes a day of leave for the purposes of sections 72A and 85 and Subdivisions B and C.