## Chapter 2 Modern employment conditions

### Division 4 Requests for flexible work arrangements

*Clause 27* has its basis in the *Fair Work Act 2009* (FW Act), however clause 27 does not restrict this right to specific purposes or categories of employees. Any employee in the Queensland jurisdiction may request a flexible working arrangement.

Clause 27(1) provides a non-exhaustive list of ways in which an employee’s working arrangement may be altered under a flexible working arrangement, such as a change to ordinary hours of work.

Clause 27(2) provides detail on the way in which the request must be made.

The right under this clause is a right to request and not an automatic right to the arrangement requested.

*Clause 28* provides detail on the way in which the employer must respond to the request including that the employer has 21 days from receipt of the request to respond to the request and that the employer may grant the request in full, in part, subject to certain conditions or refuse the request. Any refusal, partial refusal or imposition of conditions must be made on reasonable grounds.

*Clause 28* provides the criteria the employer must address when responding to a request including that the response must be in writing and provide reasons for the decision including identifying the grounds for refusal, partial refusal or imposition of conditions. The response must also state that QIRC has jurisdiction to hear and decide a dispute over the request. This clause also clarifies the legislative provision under which the QIRC has jurisdiction to hear such a dispute request.

*Clause 29* provides that failure of the employer to respond to the request within the 21 day time frame is considered a refusal and as such the QIRC has jurisdiction to hear and decide a dispute over the request in the same manner as provided for under clause 28.

## Division 6 Personal leave

### Subdivision 2 Carer’s leave

*Clause 42* permits an employee, other than a casual employee, to access up to 10 days per year on full pay of the employee’s sick leave entitlement referred to at clause 40 to care for or support a family or household member when that person is ill or because an emergency arises in relation to that person.

An employee may also access carer’s leave to care for a person experiencing domestic violence. Carer’s leave for this purpose is not restricted to caring for a person who is a household or family member.

*Clause 45* recognises the sensitive nature of information that may be disclosed in support of a leave application to care for a person who has experienced domestic violence. A heightened obligation exists with respect to evidence an employer receives in support of an application of this nature so that the employer must not disclose this information unless the employer has some further obligation to do so. While this clause provides that the employer must not disclose this information unless disclosure is required or permitted by another Act, this does not mean that an employer may disclose information without good cause simply because she or he was permitted to do under another piece of legislation.

## Division 7

### Domestic and family violence leave

*Clause 52* applies when an employee has experienced domestic violence and as a result requires leave.

This clause entitles an employee, other than a casual employee, to a maximum of 10 days domestic and family violence leave per year on full pay per year. For this purpose, payment for a day on full pay means payment for all ordinary hours that the employee would be paid if the employee had worked on that day. An employee, who is not a casual employee and who works on a less than full time basis, is entitled to payment for domestic and family violence leave on a proportionate basis.

This clause entitles a long term casual employee to a maximum of 10 days unpaid domestic and family violence leave per year. A short term casual employee is entitled to a maximum of 2 days unpaid domestic and family violence leave per year.

If required, an employee eligible for leave under this clause may access additional unpaid domestic and family violence leave, subject to her or his employer’s agreement.

This clause identifies the reasons the leave may be taken. The matters identified are not exhaustive.

Domestic and family violence leave does not accumulate from year to year. The leave may be used at any time throughout the year including as consecutive days, separate days, parts of days or a combination of these. There is no minimum amount of leave that must be taken. There is no qualifying period of employment that must be worked before an employee is eligible for this leave.

An employer must not fail to reengage a short or long term casual employee because the employee has accessed domestic and family violence leave.

*Clause 53* provides that an employee’s entitlement to take domestic and family violence leave is conditional upon the employee notifying the employer the leave is required. If possible, notice should be given before leave is taken, however this clause recognises there are situations where this may not be possible, in such cases prompt notification is sought.

*Clause 54* provides the employer with discretion to require the employee to provide evidence in support of an application for leave. If the employer requires evidence the employee must provide it. The clause provides a non-exhaustive list of evidence an employee could provide to comply with this request.

Clause 54 recognises information disclosed in support of a domestic and family violence leave application may be of a sensitive nature. This clause requires an employer to exercise caution with respect to treatment of such evidence by imposing an obligation upon the employer not to disclose information unless required or permitted to do so by some other legislation. While this clause permits further disclosure, an employer should not disclose information without good cause, simply because it is permitted under another piece of legislation.

## Chapter 8 Rights and responsibilities of employees, employers, organisations etc.

### Division 5 Other protections

*Clause 295* protects an employee or prospective employee from workplace discrimination. This protection prohibits an employer taking adverse action against an employee or prospective employee because of the person’s sex, relationship status, pregnancy, parental status, breastfeeding, age, race, impairment, religious belief or religious activity, political belief or activity, trade union activity, lawful sexual activity, gender identity, sexuality, family responsibilities or association with, or in relation to, a person identified on the basis of any of these attributes. This subclause is a civil penalty provision.

However, this clause does not apply to action that is not unlawful under an anti-discrimination law (mentioned in subclause 3); or is taken because of the inherent requirements of the particular position concerned; or if the action is taken against a staff member of an institution in accordance with the doctrines, beliefs or teachings of a particular religion or creed is taken in good faith and to avoid injury to the religious susceptibilities of adherents of that religion or creed.

This clause generally reflects the intent of section 351 (discrimination) of the FW Act, however the list of attributes have been adopted from section 7 of the *Anti-Discrimination Act 1991 (Qld).*

*Clause 296* provides specific protections for employees (or prospective employees) of employers who are experiencing domestic and family violence. This is a new workplace protection for Queensland, with no equivalent FW Act protection.

Subclause (1) prohibits an employer from taking adverse action against an employee, or prospective employee, because someone has committed or is committing domestic violence against the person. This subclause is a civil penalty provision.

It is not necessary for the person to have the benefit of, or be named as the aggrieved under a domestic violence order, a police protection order, or an application for a domestic violence order.

The definitions used in this clause have the meaning given by the *Domestic and Family Violence Protection Act 2012 (Qld)*.