



The Australian Council of Trade Unions

Work and Family Test Case

Information Materials

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Introduction

Achieving a balance between work and family life has become an increasingly important issue for Australian workers and is the focus of widespread political, community and workplace debate.

Long term social changes in Australia mean that only one-third of dependant children in couple families, and half of those in lone parent families, have a “stay at home” parent. Changes in family formation, living arrangements, marital separation and labour force participation (especially for mothers) mean that in the majority of families with dependants, all the adults have responsibilities to paid employment.

At the same time the proportion of the population requiring care has increased, and is predicted to continue to do so with the aging of the population. This has been accompanied by a reduced reliance on institutional care, and increasing reliance on community care.

The major shifts in family lifestyles have been accompanied by changes in the way work is organised. In response to competitive pressure there has been an extension of long hours of work and the introduction of employer initiated flexibility over working time.

The ACTU has developed a range of policy responses to these changes. In 2001 the ACTU’s Parental Leave for Casuals Test Case extended the award right of 12 months unpaid parental leave to long-term casual workers. In 2002 the ACTU’s Reasonable Hours Test Case established a new award right for employees to refuse unreasonable overtime on grounds including their family responsibilities. The ACTU is actively lobbying for federal government-backed paid maternity leave of at least 14 weeks for all working women.

An examination of the different needs of workers over their life course has identified other key requirements to assist employees, particularly women, in balancing their caring and employment responsibilities. The ACTU’s Work and Family Test Case responds to the identified needs for greater flexibility in managing workplace transitions, both in and out of employment, and between full time and part time work.

Work arrangements including the availability of quality, secure part-time work, family friendly roster schedules, special leave and career breaks are poorly developed in Australia compared to other OECD countries.

Providing greater choices for employees to achieve a better balance between their work and family lives is overdue in Australia. The ACTU’s Test Case will ensure more flexible choices are available to all employees, including casual workers who are currently without leave entitlements.

Sharan Burrow
ACTU President

Why a Test Case?

The ACTU believes that its test case is both timely and responsible. The OECD has found that correct work and family policies can assist to increase employment, provide more secure incomes for families, strengthen gender equality and promote child development (OECD *Bosses and Babies*).

There are a range of tools available to assist employers and employees to develop “family friendly” workplaces. These include:

- educating employers on the business case for such measures, such as reduced absenteeism, improved staff retention and return on investment in training, higher employee morale and commitment;
- celebrating those employers who introduce family friendly work-practices through awards and other public recognition;
- encouraging bargaining for the introduction of flexible working arrangements, quality part-time employment and emergency leave;
- auditing the extent to which family friendly measures are available; and
- providing taxation and other government support to employers and families which encourages the take up of family friendly working arrangements.

However, evidence from Australia and overseas indicates that despite the advantages to the economy, and to individual enterprises, employers cannot be relied upon to voluntarily adopt the necessary measures.

The OECD has found that in countries where there are good national provisions, companies rely on those and do not add to them, while in countries with limited national provision, there is little sign that firms have filled the gap.¹ Another OECD study also concluded that the business case varies from firm to firm, and is likely to lead to differentiation within the workforce, with more valued employees being offered more, or more valuable family friendly arrangements². Where the business case is relied upon, workers with lower status, education and pay are less likely to benefit from the measures.

If successful a test case will ensure all award employees will have access to improved minimum standards. The awards used in the test case application cover employees employed in a range of industries, occupations and across the public and private sector, in both large and small workplaces.

¹ OECD Employment Outlook 2001 p 153.

² . OECD Labour Market and social policy Occasional Papers no 48, 2001, p 30)

Main Elements of the Claim

1. Extend the period of unpaid parental leave until the child is 2, and allow extended parental leave/childcare leave until the child is school age, subject to the operational requirements of the workplace or enterprise.

(Includes allowing 8 weeks simultaneous parental leave for both parents)

2. Require employers to consult with employees regarding significant changes to their job during a period of parental leave.

3. Remove the employer veto on part-time return to work after parental leave, and extend the availability of part time work until the child is school aged;

4. Provide a right for employees to request a variation in the hours worked, the arrangement of the hours worked, or the place of work to accommodate caring responsibilities, which the employer cannot unreasonably refuse;

5. Provide the capacity to take unpaid leave with the option to include averaging of wages over a period of time as requested by the employee; and

6. Provide a right to such unpaid emergency leave as is reasonable for family emergencies, available to all employees, including those currently ineligible for carers' leave. The purposes for the leave to include illness or injury, breakdown of care arrangements, and curriculum days.

Union participants & Awards in the Case

The Awards for which the applications have been lodged and the unions lodging the applications to vary, are:

| Award | Union |
|---|--------------|
| Graphic Arts – General – Award 2000 | AMWU |
| Metal, Engineering and Associated Industries Award 1998 | AMWU |
| Clerical and Administrative Employees (Victoria) Award 1999 | ASU |
| Retail and Wholesale Industry – Shop Employees – Australian Capital Territory Award 2000 | SDA |
| Pharmaceutical General Award: CSL 1998 | CPSU |

Key Statistics

The Work and Family Test Case responds to long term social changes and labour market trends indicated by the following data:

- The proportion of couples with children in Australia where both parents work increased from 44% in 1981 to 62% in 2000 (Australian Bureau of Statistics).
- The proportion of single mothers in paid work increased from one-third in 1985 to one-half in 2000 (ABS).
- Most mothers (54%) return to work after parental leave before their child's second birthday (2001 ABS)
- The proportion of mothers who work with children aged less than 12 months more than doubled from 17% in 1976 to 36% in 2001 (ABS).
- 68% of Australian women aged 25-54 work (2001 OECD).
- 57% of employed mothers are part time (2001 ABS).
- 66% of part time jobs are casual (2002 ABS)
- 40% of employed mothers have no leave entitlements (Australian Institute of Family Studies)
- 60% of full time mothers would prefer part time work (AIFS).
- 80% of workers of prime childbearing age support extending unpaid parental leave from 12 months to 24 months (ACTU Workplace Survey 2002).
- 2.3 million Australians care for someone because of their disability or age (1998 ABS).

Work and Family Transitions

The Test Case seeks flexible choices for employees negotiating transitions in and out of the workforce or between full and part time work to balance their employment and caring responsibilities at different phases of family life:

| FAMILY PHASE | CURRENT MINIMUM STANDARD | ACTU TEST CASE NEW STANDARD |
|-----------------------------------|--|--|
| Pregnancy & birth | <ul style="list-style-type: none"> • 12 months unpaid parental leave • 1 week simultaneous unpaid leave for both parents | <ul style="list-style-type: none"> • 24 months unpaid parental leave • 8 weeks simultaneous unpaid leave for both parents (eg for fathers to assist post birth) |
| Caring in early childhood | <ul style="list-style-type: none"> • 12 months unpaid parental leave • Employee request for part time work subject to absolute veto by employer | <ul style="list-style-type: none"> • 24 months unpaid parental leave • Right to part time hours after returning from parental leave • Extra unpaid leave by agreement of employer |
| Caring for young children | <ul style="list-style-type: none"> • Employee may request part time work until child is 2 but subject to veto by employer • 5 days sick leave may be used to care for sick relative – no rights for casuals • Award hours set by employer | <ul style="list-style-type: none"> • Right to part time hours until child is school age • Right to reasonable unpaid emergency leave including for casuals (eg sick child or usual care not available) • Right to vary daily hours (eg to fit childcare times) |
| Caring for school children | <ul style="list-style-type: none"> • 4 weeks paid annual leave • 5 days sick leave may be used to care for sick relative – no rights for casuals • Award hours set by employer | <ul style="list-style-type: none"> • 6 weeks extra unpaid annual leave (eg school holidays) • Right to reasonable unpaid emergency leave including for casuals (eg curriculum days, sick child, childcare) • Right to vary daily hours (eg to fit school/aftercare times) |
| Caring for aged/disabled | <ul style="list-style-type: none"> • 4 weeks paid annual leave • Award hours set by employer | <ul style="list-style-type: none"> • 6 weeks extra unpaid annual (eg respite care) • Right to vary daily hours (eg to fit regular appointments) |

The Proposed Clauses

Metal, Engineering and Associated Industries Award 1998

Application is made for variation of the abovementioned award in the following terms.

- **By inserting after clause 6.4 a new clause 6.5 Special Provision for Workers with Family Responsibilities – Right to Request Variation in Hours in the terms set out below.**
- **By deleting clause 7.2.6 (c) Unpaid Carers' Leave**
- **By inserting a new clause 7.2.7 Unpaid Leave for Family or Dependent Care Emergencies in the terms set out below**
- **By inserting a new clause 7.2.8 Purchased Carers' Leave in the terms set out below.**
- **By replacing the word "one" with the word "two" in clause 7.4.1 as follows:**
 - 7.4.1(a) For the purpose of this clause child means a child of the employee under the age of two *years* except for adoption of a child where 'child' means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.
- By replacing the number "52" with the number "104" in clause 7.4.2 as follows:
 - 7.4.2 Basic entitlement
 - 7.4.2(a) After twelve months continuous service, parents are entitled to a combined total of ~~52~~104 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For females, maternity leave may be taken and for males, paternity leave may be taken. Adoption leave may be taken in the case of adoption.

- **By inserting a new clause:**

7.4.2 (ab) CHILD REARING LEAVE

In addition to any other form of parental leave, an employee may apply for a further period of 52 weeks child rearing leave. An employee may, on an annual basis, request an extension of child-rearing leave for no more than 52 weeks at any one time provided that the total period of parental leave does not extend beyond the child reaching school age. The employer shall only refuse such application(s) where the employer can demonstrate that that no other option will meet the needs of the workplace or enterprise.

- By deleting clause 7.4.2 (b) and replacing it with the following:

7.4.2(b) Subject to 7.4.3(f), parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take an unbroken period of up to eight weeks at the birth or time of placement of the child.

- By inserting before clause 7.4.4 (c) the following words:

Except in relation to simultaneous leave under clause 7.4.2 (b)

- By inserting before clause 7.4.5 (b) (i) the following words:

Except in relation to simultaneous leave under clause 7.4.2 (b)

- By varying clause 7.4.6 by replacing the words "four weeks" with the words "14 days".

- **By inserting a new clause as follows**

7.4.6A Consultation during parental leave

An employee on parental leave will be consulted concerning changes in the status, nature or responsibility levels of, or potential redundancy related to the position she or he held before commencing parental leave.

- By replacing the number "52" with the number "104" in clause 7.4.7
- By inserting a new clause 7.4.11 Special Part Time Provisions Relating to Return from Parental Leave in the terms set out below.

6.5 SPECIAL PROVISION FOR WORKERS WITH FAMILY RESPONSIBILITIES – RIGHT TO REQUEST VARIATION IN HOURS

- 61.5 A employee may apply to his/her employer for a change in his/her terms and conditions of employment if :
- (a) the change relates to the hours the employee is required to work, and/or the times when the employee is required to work and/or the physical location at which , the employee is required to work, and
 - (b) the purpose in applying for the change is to enable the employee to care for an immediate family member or member of the employee’s household.
- 62.5 In making the application, the employee must specify the change applied for and the date on which it is proposed the change should become effective.

Relationship to Rest of Award

- 63.5 An agreement reached under this provision must comply with clause 2.2 FACILITATIVE PROVISIONS. An employer shall not grant an application which would result in an employee working in contravention of clauses 6.1, 6.2, 6.3 or 6.4

Responsibilities of employers

- 6.5.4 An employer to whom an application under clause 6.5.1 is made must consider the application and must not unreasonably refuse such an application.
- 6.5.5 Where an employer forms a view that the application will not be supported, the employer shall explore all other reasonable alternatives to allow the employee to meet his or her caring responsibilities. An employer may only refuse the application if the employer can demonstrate that employee’s attendance at the workplace is necessary, and no other options will meet the needs of the workplace or enterprise.
- 6.5.6 Where an employer and employee cannot reach agreement regarding an application under clause 6.5.1 the application shall be dealt with in accordance with clause 3.2 (Dispute Resolution Procedure).
- 6.5.7 The employer shall not impose any detriment by any act, or any deliberate failure to act, on the ground that the employee made an

application under clause 6.5.1 or exercised a right conferred on him or her under Clause 3.2.

Relationship to part time work following a period of parental leave.

6.5.8 Nothing in this clause shall detract from the entitlement of an employee under clause 7.4.11 of this award (Special Part Time Provisions Relating to Return from Parental Leave).

7.2.7 UNPAID LEAVE FOR FAMILY OR DEPENDANT CARE EMERGENCIES

7.2.7(a) The provisions of this clause apply to all employees, and are in addition to those specified in clause 7.2.5 (c)..

7.2.7 (b) An employee who has not otherwise applied for and been granted paid leave, is entitled to reasonable time off during the employee's working hours in order to take action which is necessary:

(i) to provide assistance on an occasion when a dependant is sick, gives birth or is injured or assaulted;

(ii) to make arrangements for the provision of care for a dependant who is sick or injured;

(iii) in consequence of the death of an immediate family member or member of the employee's household;

(iv) because of the unexpected disruption or termination of arrangements for the care of a dependant;

(v) to deal with an incident which involves a child of the employee and which occurs unexpectedly in a period during which an educational establishment which the child attends is responsible for the child; or

(vi) to care for a child of the employee where such care is related to the closure of the educational establishment which the child attends for the purpose of curriculum or teacher in-service days.

7.2.7 (c) An employee must inform his or her employer of the reason for his absence as soon as reasonably practicable, and, where practical, for how long he/she expects to be absent.

7.2.8 PURCHASED CARERS LEAVE

7.2.8 (a) In addition to an employee's entitlement to unpaid emergency leave in clause 7.2.7 above, a full time, part time or regular casual employee shall be entitled to take up to 6 weeks unpaid carer's leave per annum. Such leave shall be available in one or more periods.

7.2.8 (b) An employer may grant additional unpaid leave.

7.2.8 (c) The employee shall apply to the employer for unpaid leave at least 4 weeks before the employee wishes to take the leave.

7.2.8 (d) Where the employer and employee are unable to agree on the timing or quantum of unpaid leave, the matter shall be dealt with in accordance with the dispute resolution procedure.

7.2.8 (e) An employee may elect to reduce his or her weekly rate of pay over a period of averaging in order to continue to receive payment of wages during the period of unpaid leave. In the event that the employee requests such a reduction the following shall apply:

The employee shall advise the employer the number of weeks purchased leave that he or she intends to take, and the period over which he or she wishes to average the payment of wages.

The employer shall calculate the employee's revised weekly rate of pay as follows:

Revised weekly wage = Usual weekly wage by (period of averaging less x) divided by the period of averaging, where:

- (i) x is the number of weeks unpaid leave; and
- (ii) period of averaging is the number of weeks over which the employee and employer agree to reduced weekly wages.

Example 1:

Employee A will purchase 6 weeks leave, and will average payment over 52 weeks

Revised weekly wage = Usual weekly wage multiplied by (52 minus 6) divided by 52.

Revised weekly wage = Usual weekly wage multiplied by 46/52.

Example 2:

Employee b will purchase 4 weeks leave, and will average payment over 8 weeks

Revised weekly wage = Usual weekly wage multiplied by (8 minus 4) divided by 8.

Revised weekly wage = Usual weekly wage multiplied by ½.

7.2.8 (f) However, if the employee leaves or is dismissed before the period of unpaid leave is completed, the employer must pay the employee any wages which have been withheld under clause 7.2.8(e).

7.4.11 SPECIAL PART TIME PROVISIONS RELATING TO RETURN FROM PARENTAL LEAVE

- (a) (a) An employee may work part-time in one or more periods at any time from the date of birth or placement of the child (or for pregnant employees where part time employment is, because of the pregnancy, necessary or desirable) until the child reaches school age.
- (b) Before commencing a period of part-time employment under this subclause the employee and the employer shall agree:
 - (i) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;
 - (ii) upon the classification applying to the work to be performed; and
 - (iii) upon the period of part-time employment.
- (c) The terms of this agreement may be varied by consent.
- (d) The terms of this agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.
- (e) The terms of this agreement shall apply to the part-time employment.
- (f) The employment of a part-time employee under this clause, may be terminated in accordance with the provisions of this award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this clause or has enjoyed or proposes to enjoy any benefits arising under this clause.
- (g) An employer may request but not require, an employee working part-time in accordance with this clause to work outside or in excess of the employee's ordinary hours of duty as agreed under this clause. Where as a result of the employers request work is performed in excess or outside of these hours the employee shall be paid overtime in accordance with clause 6.4 of this award.



WORK & FAMILY TEST CASE FACT SHEET

In June 2003, the ACTU applied to the Australian Industrial Relations Commission for a Work and Family Test Case

❖ **The Case seeks flexible choices for employees at different stages of family life by establishing new standards in industrial awards to:**

- Give a right for full-time employees returning from parental leave to part-time work.
- Allow employees to “buy” up to six weeks a year extra annual leave through averaged salary adjustments (eg for school holidays).
- Give a right to reasonable unpaid emergency leave for family responsibilities (eg caring for sick or frail aged family members).
- Allow employees to request changes to start and finish times (eg to accommodate school and childcare appointments).
- Extend the current provision for unpaid maternity leave (parental leave) from 12 months to 24 months.

❖ **The Case responds to major social changes that have intensified pressure on employees struggling to balance work and family life:**

- The proportion of couples with children in Australia where both parents work increased from 44% in 1981 to 62% in 2000.
- The proportion of single mothers in paid work increased from one-third in 1985 to one-half in 2000.
- Most mothers (54%) return to work before their child’s second birthday.
- The proportion of mothers who worked with children aged less than 12 months more than doubled from 17% in 1976 to 36% in 2001.
- 68% of Australian women aged 25-54 work (2001 OECD).
- 57% of employed mothers are part time - 66% of part time jobs are casual.
- 40% of employed mothers have no leave entitlements (AIFS)
- 60% of full time mothers would prefer part time work (AIFS).
- 80% of prime age workers want 24 months unpaid parental leave (ACTU).
- 2.3 million Australians care for someone because of their disability or age.

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