



FAMILY FRIENDLY WORKPLACES: BARGAINING FOR WORK AND FAMILY PROVISIONS

An ACTU Resource Kit

INTRODUCTION

This booklet is designed to assist unions bargain for work and family provisions in collective agreements.

The starting point is the 2005 decision of the Industrial Relations Commission in the *Family Provisions Test Case*.¹

The decision awarded a number of new rights to employees with caring responsibilities.

1. The right for employees to request up to an additional 12 months unpaid parental leave after the 12 month entitlement which follows the birth of a child.
2. The right for employees to request part-time work on their return to work from parental leave and before their children are at school.
3. A duty on employers to not unreasonably refuse an

employee's request for extended parental leave or for a return to work on a part-time basis.

4. A requirement for employers to communicate with employees on parental leave about changes in their position or role in the business, together with an employee obligation to communicate matters relevant to their return to the employer.
5. Allowing for up to 10 days per year of an employee's paid Personal Leave entitlement to be used for the purpose of caring for family members or for family emergencies.
6. A right for all employees, including casuals, to take up to two days unpaid leave for family emergencies on each occasion such an emergency should arise.

The Work Choices amendments to the *Workplace Relations Act 1996* ("the Act") have affected the application of some of these provisions and have also commenced

¹ PR082005 Guidice P, Ross VP, Cartwright SDP, Ives DP, Cribb C 8 August 2005

the phasing out of award coverage altogether.

This means that it is more important than ever that unions seek to include these provisions in agreements.

The *Test Case* decision rejected some elements of the ACTU claim, in particular the ability for parents to vary their start and finish times to enable them to drop off and pick

up their school-age children, together with an ability to use salary sacrifice to “buy” up to six weeks additional leave each year to be used during school holidays.

Unions bargaining for a family friendly workplace should also seek to include these provisions in agreements.

The Effect of Work Choices on Work and Family Provisions

Allowable matters

Section 516 of the Act provides that a matter for which provision is made by the Australian Fair Pay and Conditions Standard (AFPCS) is not an allowable award matter unless it is about ordinary time hours of work.

Part 7 of the Act sets out the matters which are included in the AFPCS. Division 4 provides for personal leave and Division 6 for parental leave. It is arguable that the provisions in relation to personal and parental leave as determined by the *Family Provisions Test Case* are not allowable, although the ACTU believes that the right to request part-time employment after parental leave remains allowable.

Preserved award entitlements

Personal/carer’s leave and parental leave, including maternity and adoption leave, are preserved

award terms matters.² This means that award provisions dealing with these matters are deemed to be included in awards, in spite of being non-allowable. The preserved award term applies if it is more generous than the corresponding AFPCS. However, preserved personal/carer’s leave does not include unpaid carer’s leave.³ This means that the award right for all employees, including casuals, to take up to two days unpaid leave for family emergencies on each occasion such an emergency should arise, which was awarded in the *Family Provisions Test Case*, is no longer enforceable as an award entitlement although it is included in the AFPCS.

Preserved award entitlements continue to apply to employees employed by employers who were bound by the award prior to Work Choices, whether the employee was

² s527(2)(b)

³ s527(8)(b)(ii) and Reg Ch 2, 10.2

employed before or after its commencement. Preserved award entitlements do not apply to employees of employers who were not previously bound, such as new employers.

State awards

Part 3 of Schedule 8 of the Act creates Notional Agreements Preserving State Awards (NAPSAs) which cover employees of employers who were bound to apply a state award prior to Work Choices.

NAPSAs preserve a greater number of entitlements than do federal awards and, relevantly, include parental leave and personal/carer's leave without limitation.⁴ This means that where state awards include the provisions decided in the *Family Provisions Test Case* they are preserved for the three year period of operation of the NAPSA.

Effect of agreements

It is important to note that new post-reform agreements completely displace awards and, in particular, that the work and family provisions arising out of the *Family Provisions Test Case* already incorporated into awards would become inoperative to the extent that they exceed the relevant AFPCS.

For this reason alone, it is important to ensure that these award provisions are included in all collective agreements.

⁴ Schedule 8, s34(3)

Further Work and Family Claims

The *Family Provisions Test Case* did not award the full ACTU claim. The need to include the *Test Case* provisions in agreements provides a good opportunity to bargain for increased entitlements in line with the claim.

It should be noted that in granting the right to request additional unpaid parental leave and part-time work on return from parental leave until the child reaches school age, the Commission accepted the principle that flexibility should operate more broadly, while concluding that it would be premature to provide for this until the parties had further discussion, concluding:

“Issues relating to the reconciliation of work and family responsibilities generally should be further considered in conciliation”

Significant elements of the claim which should be pursued are:

1. The right for all employees with caring responsibilities to request flexible working hours.
2. The right to “purchase” up to six weeks additional annual leave with the ability to elect to spread the cost over the year through salary averaging;

3. Changes to parental leave entitlements, including:
 - a. The right to a maximum of two years unpaid leave;
 - b. Increasing the period of simultaneous parental leave after the birth to 8 weeks;
 - c. The ability to apply for an additional 52 weeks of unpaid leave (“Child rearing leave”) to be taken at any time until the child reaches school age;
4. A right to reasonable unpaid time off in cases of family emergency;
5. A right to return to work from parental leave on a part-time basis to last until the child reaches school age;
6. Inclusion of a domestic partner, whether of the same or different gender, in the definition of “immediate family”.

In addition to these claims, other family friendly provisions which could be sought include access to a telephone at work for family purposes, and provision of lactation leave and facilities for nursing mothers.

Work and Family Provisions are Good for Employers

The last 30 years have seen structural changes in the labour market which have required significant changes in thinking about work/life balance. The two most important developments have been the shift of women with children into paid employment together with the changes in household structure, with a growth in single person and single parent households. The traditional family, with a father working full-time and a mother not in paid employment, has declined to only 28% of two parent families with dependent children. One in five families with dependent children is headed by a sole parent and half of these are employed.

The consequence of these changes is that fewer families than ever have a full-time carer at home, although aging of the population, later marriage and child bearing and reduction in institutional care for people with disabilities means that caring responsibilities for family members other than children are increasing.

The *Family Provisions Test Case* limited the application of the right to request part-time work to employees with responsibility for young children. Parents of school-age children experience great difficulties co-ordinating work with school hours which can be more rigid than child care arrangements for young children, as do those employees with responsibility for

disabled or elderly parents and close relatives. There is no logical reason for limiting the application of flexibility to only one part of the life cycle.

There is growing recognition amongst employers that assisting employees balance work and family is good business, particularly at a time of serious skill shortages. The business case for family friendly workplaces is based on a number of considerations.

Attracting the best employees and becoming employer of choice.

International research has shown that work-life balance is a major issue for graduates choosing future employers.⁵

Reducing employee turnover, with associated costs of recruitment and training.

Replacing an experienced employee costs one and a half times their salary, once paying out of entitlements, advertising, interviewing and training costs are taken into account. Consideration also needs to be given to intangibles such as loss of corporate knowledge and experience, lack of consistent service and customer relationships

⁵ www.workplace.gov.au - Why family friendly policies are good for business

and the effect of continuous turnover on staff morale.⁶

Reducing absenteeism and improving employee commitment and productivity.

Greenslopes Private Hospital's family initiatives led to a 5.5% reduction in employee turnover and a 23% reduction in workers' compensation costs.⁷

Improving the employer's reputation with its customers and in the community.

Companies are experiencing increasing pressure to demonstrate that they are socially responsible, including in their relationships with employees. The growing use of "reputation" or "socially responsible" indexes, which take into account family friendly policies, as well as award competitions focusing on the issue, such as the Equal Opportunity for Women in the Workplace Agency's Business Achievement Awards and the ACCI/BCA National Work and Family Awards, highlight the importance of approach to work and family for corporate reputation.

Reducing potential liability under discrimination, occupational health and safety and employment law.

There has been a number of cases establishing that a failure to permit flexible or part-time work can be a breach of an employer's obligation not to discriminate on the basis of family responsibilities.

UK experience

In 1993 the UK Government introduced a statutory right for employees to request flexible hours of work, similar to the right established by the *Test Case*. A survey conducted a few months later found that more than two thirds of employers thought that the opportunity to work flexibly had a positive impact on staff attitudes and morale. Although only a third of employers thought that the new rights had led to business benefits, a mere 7% said that their organisation had experienced significant problems complying with the legislation, with 90% disagreeing with that proposition.⁸

The UK Government will be extending the right to request flexible hours of work to carers for adults from April 2007, and is considering extension to parents of older children. A recent report by the UK's Equal opportunity Commission recommended giving all employees the right to request flexible hours, irrespective of the

⁶ www.workplace.gov.au - Why flexible work arrangements are good for business

⁷ *Ibid*

⁸ *A Parent's Right to Ask - A Review of Flexible Working Arrangement Survey Report* October 2003, Lovells CIPD

reason for which they want it. The report found that employees value control over their working hours over limits to the number of hours, and argues a strong economic and social case for increased flexibility.⁹

The EOC sums it up:

“The way we work no longer fits the world we live in. If it is changed, we could all win. If it isn’t, we will all face a bleaker future: wasted potential, less time for caring, more stress-related problems and illnesses, continuing low pay for women and their families, reduced competitiveness for individual businesses and for the economy and, even, greater traffic congestion and environmental damage.”

⁹ EOC *Working outside the box: Changing work to meet the future* January 2007

Work and Family Provisions are Good for Employees

There is strong evidence that stress related to difficulties in combining the demands of paid work with caring responsibilities puts pressure on employees' physical and mental health and can contribute to family breakdown.

The proportion of women who return to work prior to their child's first birthday has doubled to 33% in the past 15 years, with more than half doing so by the time their child is two. Research put to the Industrial Relations Commission by the ACTU shows that men and women deal with work and family conflicts differently: women tend to adjust their work around their family, but give up the benefits of

secure, high quality employment, while men tend to maintain their previous work arrangements but pay through deteriorating work satisfaction and increased pressure.

A family friendly workplace is of particular benefit to women, as they have traditionally been disadvantaged at work as a result of their role as primary carers for children and other family dependents. Women have less job security, lower pay and reduced ability to access training and promotion. A better work and family balance can prevent caring responsibilities from limiting women's ability to achieve equal opportunity in the workplace.

International Standards

The need to take account of the relationship between work and family is reflected in a number of international instruments to which Australia is party. The most relevant is ILO Convention (No.156) Concerning Equal Opportunities and Equal Treatment for Men and Women Workers; Workers with Family Responsibilities:

Article 3: With a view to creating effective equality of opportunity and treatment for men and women workers, each member shall make it an aim of national policy to enable persons with family responsibilities

who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.

Other relevant instruments are ILO Convention (No.111) Concerning Discrimination in respect of Employment and Occupation; UN Convention on the Elimination of All Forms of Discrimination Against Women and UN Convention on the Rights of the Child.

International Examples

Many comparable economies to Australia provide work and family arrangements significantly better than those available in this country.

Canada

- 15 weeks paid maternity leave¹⁰ plus 35 weeks paid parental leave
- 5-10 days emergency leave in some provinces

Germany

- 14 weeks paid maternity leave, 3 years unpaid parental leave (with some pay for low-paid workers for up to 2 years)
- 10 days per child emergency leave (capped at 25 days)
- Right to take parental leave in the form of part-time work

Ireland

- 14 weeks paid and 4 weeks unpaid maternity leave plus 14 weeks paid parental leave
- Up to 3 days emergency leave, capped at 5 days in 36 months
- Up to 65 weeks unpaid leave to care for a disabled person

Netherlands

- 16 weeks paid maternity leave, 2 days paid paternity leave and up to 6 months unpaid parental leave for each parent
- 2 days emergency leave for personal reasons and 10 days to care for family members
- Right to adjust hours of work and arrangement of hours
- Career break leave for 2-6 months
- Breastfeeding leave for up to a quarter of normal hours

New Zealand

- 14 weeks paid maternity leave included in 52 weeks maximum unpaid parental leave
- 10 days special leave available during pregnancy
- Requests to change employment arrangements for family reasons must be dealt with in good faith

Sweden

- 450 paid days per child, 30 of which are reserved for non-birth parent
- Emergency leave of 120 paid days per year for each child under 12
- Right to part-time work and to take parental leave while working 25% of normal hours

¹⁰ In some counties, including Canada, payment during maternity leave may be based on a proportion of previous earnings, a statutory rate or be in the form of an insurance benefit

United Kingdom

- 52 weeks maternity leave with 39 weeks paid, 2 weeks paid paternity leave
- 13 weeks unpaid parental leave for each child up to age 5
- Reasonable unpaid emergency leave to care for a dependant. This may include, for example, an elderly neighbour living alone who falls and breaks a leg, where the employee is closest on hand at the time of the fall
- Right to request part-time work which must not be unreasonably refused
- From 6 April 2007, the UK's flexible work entitlement will be available to care for adults as well as children. The definition of a carer will

include “any employee who is or expects to be caring for their spouse, partner or civil partner, near relative or someone who lives at the same address”. The “near relative” definition includes: parents; parents-in-law; sons and daughters aged 18 or over; adopted sons and daughters aged 18 or over; siblings, including in-laws; uncles and aunts; grandparents; and step-relatives.

United States

- 12 weeks unpaid family/medical leave per year
- 6 weeks paid leave to care for children or other family member (California)

Union Bargaining in Practice

A number of unions have bargained successfully for work and family provisions setting higher standards than found in awards. Following are some examples from the retail industry.

- A right to up to 2 years unpaid parental leave (Coles supermarkets, David Jones, Myer, Kmart, Officeworks, Target)
- 12 weeks unpaid parental leave for permanent

employees with less than 6 months service (Coles Myer)

- A right to return to work from parental leave on fewer hours than those previously contracted for a period up to the child's second birthday (Coles supermarkets, Coles Myer Liquor Group, Kmart, Myer, Officeworks, Target)
- Up to 12 months maternity leave can be taken concurrently with paternity leave, with maternity leave reduced by an period of

- paternity leave taken in relation to the same child (David Jones)
- Both parents can take up to 8 weeks simultaneous leave at the time of the birth or adoption (Officeworks, Coles supermarkets, Just Jeans/Portmans, Kmart, Red Rooster, Target, Coles Myer Liquor Group)
 - Access to personal/carer's leave for attending own or partner's pregnancy-related medical appointments and pre-natal education sessions
- (David Jones, Coles supermarkets, Kmart, Myer, Target, Coles Myer Liquor Group)
 - Time off for breastfeeding or expressing during working hours (Coles Myer, Woolworths)
 - One-off additional personal leave on return from parental leave of 5 days for full-timers and 3 days for part-timers (Just Jeans/Portmans)

Definition of “Family Member”

Employees should be entitled to leave to care for people who are usually dependent on them for care and support. In specific circumstances, this could include extended family or non-relatives.

History

The 1994 *Family Leave Test Case*¹¹ allowed employees to access sick leave for the purpose of caring for a member of the employee's immediate family or a member of the employee's household.

The term “immediate family” was defined to include:

- (a) a spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the

employee. A de facto spouse in relation to a person means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and

- (b) a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

In Stage 2 of the case heard the following year the ACTU argued that the award provision should explicitly provide an entitlement to carer's leave for same sex partners and persons in a traditional kinship

¹¹ Print L6900 O'Connor P, Ross VP, Marsh SDP, McDonald & Holmes CC 29 November 1994

relationship “without discrimination in interpretation as to race or sexual preference”. The Commission rejected this claim.¹²

The ACTU pursued the issue of non-discrimination in the 2004 case, with an agreement being reached in conciliation proceedings for the parties to jointly review the definition to ascertain whether there are any discriminatory aspects.

Why the definition should be changed

An employee is entitled to take leave to care for a same sex partner living under the same roof, meaning that in most cases leave would be available in relation to same sex partners.

However, there are at least two types of cases in which the current provision has a discriminatory effect.

First, leave would not be available where same sex partners did not live together, for example because of work commitments in different cities.

Second, leave would not be available to care for the family members of a same sex partner who did not live with the employee, although there is an entitlement to leave to care for children, grandchildren, siblings, parents and

grandparents of a partner of the opposite sex.

The definition of “immediate family” in agreements should be varied to include same sex partners for reasons including the following:

1. It is generally accepted that discrimination on the basis of sexual preference is unacceptable.
2. A number of federal and state legislative instruments already target discrimination on the ground of sexual preference, including the *Workplace Relations Act*.
3. The cost of extending access to leave to care for same sex partners or their immediate family members not living with the employee would be negligible.

Developments in other jurisdictions

HREOC is currently conducting an inquiry into discrimination on the basis of same sex relationships.

HREOC notes that:

“...every state and territory except South Australia has undertaken legislative reform affording wide-ranging recognition to gay and lesbian partnerships within their jurisdiction.

“These reforms place same-sex couples on an equal footing with heterosexual de facto relationships

¹² *Personal/Carer's Leave Test Case - Stage 2*
Print M6700 O'Connor P, Ross VP, Marsh SDP,
McDonald & Holmes CC 28 November 1995

in literally hundreds of pieces of state and territory law. (South Australia had a Bill before Parliament in 2004 and 2005 to the same effect; this is likely to be reintroduced in 2006.¹³)

“The various states and territories used different terminology in their reforms. NSW, Queensland, Western Australia and the Northern Territory use the terms ‘de facto relationship’ and ‘de facto partner’. Victoria and the ACT use ‘domestic relationship’ and ‘domestic partner’, while Tasmania uses the term ‘significant relationship’.

“These differences in terminology are not significant in effect, as each jurisdiction adopted a common set of criteria for the determination of the existence of such relationships. As a result of the reforms there is now a far higher degree of consistency, both within states and between states, in the rights granted to unmarried couples and the definitions used to characterise them.

“The most important difference between states and territories in the definitions used is in the requirement of cohabitation. Tasmania does not require that the couple live together. Victoria has two definitions of ‘domestic’ relationship, only one of which

requires the couple to live together. The definition requiring cohabitation is used in Victorian laws that relate to financial rights or economic dependence, while the definition that does not require cohabitation is used in mostly health-related areas and laws that concern emotional interdependence.”

¹³ In 2004 and 2005 the South Australian Labor Government struggled to pass the *Statutes Amendment (Relationships) Bill 2004* as it did not control the Legislative Council. Following the South Australia election in March 2006, the Labor Government has control of both houses and is expected to reintroduce the Bill.

Framework for a Model Agreement Work and Family Clause

As every agreement is different, including existing provisions covering parental leave, part-time work and leave arrangements, it is not possible to provide a standard model clause. The following clauses and amendments, once negotiated, can be inserted into existing agreement provisions.

The steps to ensuring that agreements contain fully up-to-date work and family provisions are:

- First:** Include all award provisions in agreements.
- Second:** Make sure that these provisions reflect the standard award provisions determined by the Full Bench in the *Family Provisions Test Case*. The ACTU Guide to Varying Awards to Give Effect to the Work and Family Case is attached to assist with this.
- Third:** Negotiate for the following improvements and, once agreed, include in agreements.

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

Note: It is important to ensure that this provision cannot be used to undermine other agreement provisions covering hours or work and penalty rates.

1. An 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 where, as between his or her home and a place of business of the employer, 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.
2. In making the application, the employee must:
 - a. specify the change applied for and the date on which it is proposed the change should become effective, and

- b. explain what effect, if any, the employee thinks making the change applied for would have on his or her employer and how any such effect might be dealt with.

Responsibilities of employers

3. An employer to whom an application under subclause 1 is made must consider the application and must not unreasonably refuse such an application.
4. 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 employee's attendance at the workplace is necessary to meet the needs of the workplace or enterprise.
5. Where an employer and employee cannot reach agreement regarding an application under subclause 1 the application shall be dealt with in accordance with the dispute resolution procedure in this agreement.
6. 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 subclause 1 or exercised a right conferred on him/her under the dispute resolution procedure.

Relationship to part time work following a period of parental leave

7. Nothing in this clause shall detract from the entitlement of an employee under the Special Part Time Provisions Relating to Return from Parental Leave clause of this agreement.

PLANNED (PURCHASED) UNPAID CARER'S LEAVE

1. In addition to an employee's entitlement to unpaid emergency leave, 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.
2. An employer may grant additional unpaid leave.
3. The employee shall apply to the employer for unpaid leave at least 4 weeks before the employee wishes to take the leave.

4. Where the employer and employee are unable to agree on the timing of unpaid leave, the matter shall be dealt with in accordance with the dispute resolution procedure.
5. An employee may elect to reduce his/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 formula shall apply:

Revised weekly wage = Usual weekly wage*(period of averaging-x)/period of averaging, where:

- (i) x is the number of weeks unpaid leave
 - (ii) period of averaging is the number of weeks over which the employee and employer agree to reduced weekly wages
6. 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 subclause 5.

PARENTAL LEAVE

1. Amend the right to request an extension of unpaid parental leave from 52 to 104 weeks to a right to take the extended leave.
2. Amend the right to request an extension of simultaneous parental leave after birth or adoption to from 4 weeks to 8 weeks to a right to this extension.

CHILD REARING LEAVE

In addition to and following concurrently on from 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 employee's return to work is necessary to meet the needs of the workplace or enterprise.

DEFINITION OF SPOUSE

In the definition of "spouse" add "a person of the same sex as the first mentioned person who lives with the first mentioned person on a bona fide domestic basis".

GUIDE TO VARYING AWARDS TO GIVE EFFECT TO THE WORK AND FAMILY CASE

A: Parental leave

1. Amend definition of child- now “under school age”
2. Insert AIRC right to request clause after clause re variation to the basic parental leave entitlement

“P. Right to request

P.1 An employee entitled to parental leave pursuant to the provisions of clause [] may request the employer to allow the employee:

P.1.1 to extend the period of simultaneous unpaid parental leave provided for in clause[] up to a maximum of eight weeks;

P.1.2 to extend the period of unpaid parental leave provided for in clause [] by a further continuous period of leave not exceeding 12 months;

P.1.3 to return from a period of parental leave on a part-time basis until the child reaches school age,

to assist the employee in reconciling work and parental responsibilities.

P.2 The employer shall consider the request having regard to the employee’s circumstances and, provided the request is genuinely based on the employee’s parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer’s business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.”

3. Add two new clauses following the right to request clause:

Employees request and employer’s decision to be in writing

The employee’s request and the employer’s decision made under (right to request to return to work part-time-see decision p.104-P.1.3) must be recorded in writing.

Request to return to work part-time

Where an employee wishes to make a request under (P.1.3), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return work from parental leave.

4. Amend the variation to basic entitlement clause to read:

“Where an employee takes leave under P2 (basic entitlement) or P6 (right to request), unless otherwise agreed between the employer and employee, an employee may apply to their employer to change the period of parental leave on one occasion. Any such change is to be notified as soon as possible, but no less than four weeks prior to the commencement of the changed arrangements. Nothing in this clause shall detract from any entitlements set out in P2”

5. Remove statutory declaration requirement for paternity leave by inserting the words “*except in relation to leave taken simultaneously with the child’s mother under (basic entitlement for paternity leave) (right to request extension of paternity leave)*” in front of the words “*a statutory declaration...*”
6. Insert AIRC clause re Communication During Parental leave:

x. *Communication during parental leave*

(a) *Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:*

(a)(i) *make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and*

(a)(ii) *provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.*

(b) *The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee’s decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.*

- (c) *The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with x(a).*

7. Check casuals clause up to date re test case standard.

B: Annual leave

1. The decision permits the carry over of annual leave for up to two years. Awards need only be varied where they expressly prohibit accumulation to less than two years. The wording will depend on the clause in the award.
2. The decision allows for 10 days single days of annual leave. Again awards need only be varied where they currently limit the number of single days to fewer than 10.

C: New “personal leave” clause

1. Bereavement leave has to be transferred to a separate award clause.
2. Bereavement leave will become a stand-alone entitlement which will be available on each occasion that there is a death, subject to the qualifying conditions set out in the relevant award clause. In addition, an employee may take unpaid bereavement leave by agreement with the employer.
3. The award provisions relating to sick leave should be *renamed “Personal leave for personal injury and sickness”*. The quantum of leave is the quantum currently available for sick leave, not the total personal leave amount.
4. The award provisions relating to carer's leave should be renamed *“Personal leave to care for an immediate family or household member”*.
5. The purpose for which carers leave is available should be amended to include *“caring for members of the employee's immediate family or household due to an unexpected emergency”*.
6. The annual cap on using personal leave for caring purposes should be increased to 10 days. Where the existing five day limit on carer's leave in an award is expressed in terms of hours, an hourly equivalent to 10 days which is double the existing hourly carer's leave limit in the relevant award would apply, eg. a 38 hour limit would become a 76 hour limit and a 40 hour limit would become an 80 hour limit.

7. The ability to agree an additional amount of leave should be added. The agreed words are:

“By agreement between an employer and an individual employee, the employee may access an additional amount of their accrued personal leave for the purposes of caring for members of the employee’s immediate family or household who are sick and require care and support or who require care due to an unexpected emergency. In such circumstances, the employer and the employee shall agree upon the additional amount that may be accessed.

8. The following evidentiary requirements apply:

The existing evidentiary requirements in the relevant award would apply for leave taken for personal illness or injury.

The existing evidentiary requirements in the relevant award would apply for leave taken to care for members of the employee’s immediate family or household who are sick and require care and support.

The new evidentiary requirement in relation to leave due to unexpected emergency is:

When taking leave to care for members of their immediate family or household who require care due to an unexpected emergency, the employee must, if required by the employer, establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

9. The right to unpaid leave needs to be included. The agreed words are:

Where an employee has exhausted all paid personal leave entitlements, they are entitled to take unpaid personal leave to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency. The employer and the employee shall agree on the period. In the absence of agreement, the employee is entitled to take up to two days (up to a maximum of 16 hours) of unpaid leave per occasion, provided that notice and evidentiary requirements are met.

10. The right of casual employees to take leave needs to be included. The agreed words are:

Casual employees are not entitled to personal leave but subject to notice and evidentiary requirements, casual employees are entitled to not be available to attend work, or to leave work:

- *If they need to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency or the birth of a child; or*
- *Upon the death in Australia of an immediate family or household member.*

The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (ie. 2 days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

The settlement with the ACCI and AiG assumes this will be included in the award under types of employment, not under personal leave, however parties are free to agree to insert the provisions where it suits them.