

**FORM R6 Rule 22**  
WORKPLACE RELATIONS ACT 1996  
AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
APPLICATION TO SET ASIDE OR VARY AN AWARD

IN the matter of:

GRAPHIC ARTS – GENERAL – AWARD 2000

Application is made by [*name of the organisation or person*] for variation of the abovementioned award in the following terms.

- By inserting after clause 6.8 a new clause **6.9 Special Provision for Workers with Family Responsibilities – Right to Request Variation in Hours or Place of Work** in the terms set out in Annexure A hereto .
- By inserting in 7.1.4 the words “for every four weeks of annual leave” immediately following the words “five single days”.
- By inserting a new clause **7.1.12 Unpaid Leave Taken in Conjunction with Annual Leave** in the terms set out in Annexure B hereto.
- By deleting clause **7.2.6 (d) Unpaid Carers’ Leave** and replacing it with a new clause **7.2.7 Unpaid Leave for Family or Dependent Care Emergencies** in the terms set out in Annexure C hereto.
- By inserting a new clause **7.2.8 Purchased Leave for Family and Caring Responsibilities** in the terms set out in Annexure D hereto.
- By replacing the word “one” with the word “two” in clause 7.3.1 as follows:
  - 7.3.1(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 7.3.2 as follows:

**7.3.2 Basic entitlement**

**7.3.2(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 deleting clause 7.3.2(b)
- By inserting a new clause:

**7.3.2(b) Child Rearing Leave**

**7.3.2(b)(i)** 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 no other option will meet the needs of the workplace or enterprise.

**7.3.2(b)(ii)** An employer may only refuse the application if the employee’s attendance at the workplace is necessary and no other options will meet the needs of the workplace

- By inserting clause 7.3.2 (c) as follows:

**7.3.2(c)** Subject to 7.3.3(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 a new 7.3.2(d) as follows:

**7.3.2(d)** An employer may grant any additional period of simultaneous unpaid leave in excess of eight weeks as is agreed between the employer and employee.

- By inserting before clause 7.3.4 (c) the following words:

Except in relation to simultaneous leave under clause 7.3.2 (b) ....

- By inserting before clause 7.3.5 (b) (i) the following words:

Except in relation to simultaneous leave under clause 7.3.2 (b) ....

- By inserting a new clause **7.3.6A** as follows

**7.3.6A      Communication during parental leave**

7.3.6(A)(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 :

- (i) Make information available in relation to any significant effect the change will have to the status or responsibility level of the position the employee held before commencing parental leave.
- (ii) Provide an opportunity for the employee to discuss any significant effect the change will have to the status or responsibility level of the position the employee held before commencing parental leave.

7.3.6(A)(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 return to work on a part time basis or full time basis.

7.3.6(A)(c) The employee shall also notify the employer of changes of address or other contact details that would affect to the employer's capacity to make information available as set out in subclause X (above).

- By replacing the number "52" with the number "104" in clause 7.3.7
- Re-number 7.3.9(a) as 7.3.9(a)(i) and insert 7.3.9(a)(ii) as follows:

7.3.9(a)(ii) Where an employee has indicated an intention to return to work on a part time basis the employee will confirm their intention to return to work part time.

- By inserting a new clause **7.3.11 Special Part Time Provisions Relating to Return from Parental Leave** in the terms set out in Annexure E hereto.

**THE GROUNDS on which this application is made are as follows:**

1. To give effect to the objects of the *Workplace Relations Act 1996* [“the Act”] , Part 1, Sections 3(a), 3(d)(ii), 3(i), 3(j) and 3(k)by:
  - encouraging the pursuit of high employment, improved living standards, low inflation and international competitiveness through higher productivity and a flexible and fair labour market [s 3(a)];
  - ensuring the maintenance of an effective award safety net of fair and enforceable minimum wages and conditions of employment, [s 3(d)(ii)];
  - assisting employees to balance their work and family responsibilities effectively through the development of mutually beneficial work practices with employers, [s 3(i)];
  - respecting and valuing the diversity of the work force by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin [s 3(j)]; and
  - assisting in giving effect to Australia's international obligations in relation to labour standards, [s 3(k)] in particular ILO Convention Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers With Family Responsibilities.
2. To give effect to the Objects of Part VI of the Act, provided for in section 88A by ensuring that:
  - wages and conditions of employment are protected by a system of enforceable awards established and maintained by the Commission [s88A(a)];
  - awards act as a safety net of fair minimum wages and conditions of employment [s88A(b)].and
  - the Commission's functions and powers in relation to making and varying awards are performed and exercised in a way that encourages the making of agreements between employers and employees at the workplace or enterprise level [s88A(d)(i)].
3. To give effect to Section 88B(2) of the Act, by ensuring that a safety net of fair minimum wages and conditions of employment is established and maintained, having regard to:

- the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community;
  - economic factors, including levels of productivity and inflation, and the desirability of attaining a high level of employment;
  - when adjusting the safety net, the needs of the low paid.
4. To give effect to Section 88B(3) of the Act by ensuring that in the performance of its functions the Commission has regard to the need to prevent and eliminate discrimination because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
  5. To give effect to Section 93A of the Act to ensure that , in the performance of its functions the Commission takes into account the principles embodied in the Family Responsibilities Convention, in particular those relating to in particular those relating to:
    - preventing discrimination against workers who have family responsibilities; and
    - helping workers to reconcile their employment and family responsibilities.
  6. To ensure effective equality of opportunity and treatment for men and women workers, and to take account of the needs of workers with family responsibilities by updating the existing parental leave test case by:
    - Extending the period of 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;
    - Allowing 8 weeks simultaneous parental leave;
    - Aligning the notice period required of employees returning to work to conform with the periods of notice in Schedule 14 of the Act;
    - Inserting a requirement on employers to consult with employees regarding significant changes to their job during a period of parental leave;
    - Removing the employer veto on part-time return to work, and extend the availability of part time work until the child is school aged;

- Reasserting the right of parents who are on part-time work post parental leave to refuse overtime;
7. To ensure effective equality of opportunity and treatment for men and women workers, and to take account of the needs of workers with family responsibilities by inserting into awards:
- 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 is obliged to consider in light of the operational needs of the workplace or enterprise and not unreasonably refuse;
  - 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
  - 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.
8. Such other grounds as the Commission sees fit.

Dated 2003

*[Signature of applicant]*

\* Omit whichever is inapplicable.

To the persons and organisations bound by the abovementioned award.

You are hereby notified that the abovementioned application will be heard by *[name of Commission member]* at *[time]* on *[date]* at *[place]* and that you may appear and be heard at the time and place so fixed.

Dated 2003 .

*[Signature]*

Member of Commission

*[or Registrar]*

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## **Annexure A**

### **6.9 SPECIAL PROVISION FOR WORKERS WITH FAMILY RESPONSIBILITIES – RIGHT TO REQUEST VARIATION IN HOURS OR PLACE OF WORK**

- 6.9.1 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.
- 6.9.2 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. Where an employee is making application for a temporary change, he or she shall indicate the period of time for which they are applying for a change.

#### **Relationship to Rest of Award**

- 6.9.3 An agreement reached under this provision must comply with clause 2.3 FACILITATIVE PROVISIONS. An employer shall not grant an application which would result in an employee working in contravention of clauses 6.1 –6.7.
- 6.9.4 Where an agreement has be reached under this provision, an employer may only exercise his or her rights under clause 6.1.6 and 6.1.7 in a manner which is consistent with the terms of the agreement.

#### **Responsibilities of employers**

- 6.9.5 An employer to whom an application under clause 6.9.1 is made must consider the application and must not unreasonably refuse such an application.
- 6.9.6 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 and no other option will meet the needs of the workplace or enterprise.

6.9.7 Where an employer and employee cannot reach agreement regarding an application under clause 6.9.1 the application shall be dealt with in accordance with clause 3.2 (Dispute Resolution Procedure).

6.9.8 An employer must not:

- (a) Dismiss an employee, injure an employee in his or her employment or alter the position of an employee to the employee's prejudice; or
- (b) Threaten to dismiss an employee, injure an employee in his or her employment or alter the position of an employee to the employee's prejudice;

wholly or partly because the employee is proposing to make, is making or has made an application under this clause.

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

6.9.9 Nothing in this clause shall detract from the entitlement of an employee under clause 7.3.11 of this award (Special Part Time Provisions Relating to Return from Parental Leave).

## **Annexure B**

### **7.1.12 UNPAID LEAVE TAKEN IN CONJUNCTION WITH ANNUAL LEAVE**

- 7.1.12(a) In order to assist employees to better balance work and family responsibilities an employee may elect, with the consent of the employer, to take a period of unpaid leave immediately following a period of annual leave. For example, agreement could be reached for an employee to take six weeks of leave (ie. Four weeks of annual leave immediately followed by two weeks of unpaid leave.)
- 7.1.12(b) An employer to whom an application under this clause is made must consider the application and must not unreasonably refuse such an application.
- 7.1.12(c) 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 the employee's attendance at the workplace is necessary and no other options will meet the needs of the workplace or enterprise.
- 7.1.12(d) Except as provided for in (5), the employee is to be paid for the period of annual leave prior to commencing leave.
- 7.1.12(e) An employee may elect to be paid during the leave period at the same time that payment would have been made if the employee was at work. In such circumstances, agreement is able to be reached for the employee's annual leave pay to be averaged over the total period of leave.

#### *Example*

*An employee takes six weeks of leave, consisting of four weeks of annual leave immediately followed by two weeks of unpaid leave. Agreement could be reached for the employee to be paid one sixth of the total amount payable for the period of leave during each week of the leave period.*

## **Annexure C**

### **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 an immediate family member or member of the employee's household is sick, gives birth or is injured or assaulted;

(ii) to make arrangements for the provision of care for an immediate family member or member of the employee's household who is sick or injured;

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

(iv) where there has been a breakdown in the usual care arrangements for an employee's immediate family member or member of the employee's household;

(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.

## **Annexure D**

### **7.2.8 PURCHASED FOR FAMILY AND CARING RESPONSIBILITIES**

- 7.2.8(a) In order to assist in better balancing work and family or caring responsibilities, an employee may apply to take up to 6 weeks unpaid leave per annum.
- 7.2.8(b) An employee may also apply to purchase the additional leave in return for a reduction in the employee's weekly wage.
- 7.2.8(c) An employer to whom an application under this clause is made must consider the application and must not unreasonably refuse such an application.
- 7.2.8(d) 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 and no other options will meet the needs of the workplace or enterprise.
- 7.2.8(e) The purchased leave must be taken at a time or times nominated by the employee but agreed upon by the employer.
- 7.2.8(f) The purchased leave must be taken within 12 months of accruing such leave. The employer and the employee can agree to extend this period.
- 7.2.8(g) The employee may cease accruing purchased leave and revert to his or her usual weekly wage by giving no less than two weeks' notice in writing to the employer or notice equivalent to the length of the pay cycle whichever is greater. The employer and employee can agree to a shorter period of notice.
- 7.2.8(h) The maximum amount of purchased leave which an employee can accrue in a 12 month period is six (6) weeks.
- 7.2.8(i) Annual leave loading, shift loadings and weekend penalty loadings are not payable on purchased leave accrued in accordance with this clause.
- 7.2.8(j) If an employee leaves or is dismissed before the period of purchased leave is taken, the employer must pay the employee for any leave purchased but not taken.

7.2.8(k) The employer must calculate the lower weekly wage (‘the reduced weekly wage’) which the employee is entitled to receive in return for the accrual of purchased leave in the following manner:

Reduced Weekly Wage = weekly ordinary time rate of pay multiplied by (52 weeks minus the number of weeks of purchased leave to be accrued per year) divided by 52.

7.2.8(l) The employee’s wage comprises the reduced weekly wage, plus any overtime, penalty rates, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and any other ancillary payments of a like nature.

7.2.8(m) All overtime, penalty rates, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and any other ancillary payments of a like nature shall be calculated on the employee’s ordinary time rate of pay, (or as otherwise set out in this award), and not on the employee’s reduced weekly wage.

#### *Example One*

*A full-time employee working ordinary time earns a wage of \$500 per week (i.e. \$26,000 per year). Agreement is reached between the employer and the employee for the employee’s wage to be reduced to \$461.50 per week in return for four weeks of purchased leave per year. The employee would receive the amount of \$461.50 throughout the year, including for each of the four weeks of purchased leave.*

*During a one week period of annual leave the employee would receive \$461.50 plus annual leave loading on one weeks leave of \$87.50, (17.5% of \$500).*

*An employee working night shift for one week would be paid the night penalty calculated on \$500 dollars, and would receive \$461.50 plus shift loading of \$150 (\$500 by 30%).*

#### *Example Two*

*A full-time employee earns a wage of \$700 per week (i.e. \$36,400 per year). Agreement is reached between the employer and the employee for the employee’s wage to be reduced to \$619.20 per week in return for six weeks of purchased leave per*

*year. The employee would receive the amount of \$619.20 throughout the year, including for each of the six weeks of purchased leave.*

**7.2.8(n) Effect of purchased leave on other award entitlements**

- 7.2.8(n)(i) Periods of purchased leave taken shall not be treated as service for the purposes of annual leave accrual, long service leave accrual or sick leave accrual.
- 7.2.8(n)(ii) Periods of purchased leave are to be treated as service for the purposes of notice on termination, severance pay, eligibility for parental leave, and all other purposes of the award.
- 7.2.8(n)(iii) A period of personal leave shall be exclusive of any public holidays which fall during the period.

*Note: This clause is a template which will require the parties to each award, on application, to identify other entitlements that are linked to the employee's period of employment. Without limiting the items that need to be considered, the following outcome will usually apply:*

- Periods of purchased leave shall count as service towards periodic salary adjustments (increments)*
- To the extent that the award provides for unpaid leave to count as service towards leave accrual, periods of purchased leave shall also count as service*

- 7.2.8(n)(iv) Where agreement is reached in accordance with this clause, the agreement must be recorded in the time and wages record.

## **Annexure E**

### **7.3.11 SPECIAL PART TIME PROVISIONS RELATING TO RETURN FROM PARENTAL LEAVE**

- (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 and finishing 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 in 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.