

Workplace Relations Act 1996

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

APPLICATION TO SET ASIDE OR VARY AN AWARD

IN the matter of: **Retail and Wholesale Industry – Shop Employees – Australian Capital Territory - Award 2000**

Application is made by Shop, Distributive and Allied Employees' Association for variation of the abovementioned award in the following terms.

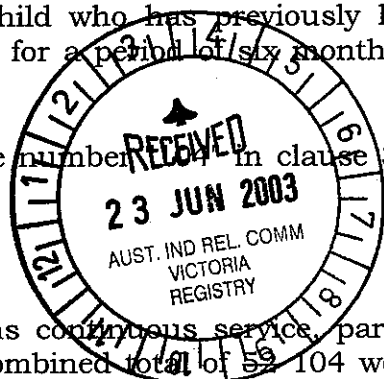
- i. By inserting in clause 29 a new clause **29A Special Provision for Workers with Family Responsibilities - Right to Request Variation in Hours** in the terms set out in Annexure A hereto.
- ii. By deleting clause **31.6 Unpaid Carer's Leave**.
- iii. By inserting a new clause **31.6 Unpaid Leave for Family or dependent Care Emergencies** in the terms set out in Annexure B hereto.
- iv. By inserting a new **Clause 31.7 Purchased Carer's Leave** in the terms set out in Annexure C hereto.
- v. By replacing the word "one" with the word "two" in clause 32.1.1 as follows:

32.1.1(a) For the purpose of this clause child means a child of the employee under the age of ~~one~~ two years except for adoption where a 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 the spouse of the employee or a child who has previously lived continuously with the employee for a period of ~~six~~ months or more.

- vi. By replacing the number "52" with the number ~~52~~ in clause 32.2 as follows:

32.2 Basic Entitlement

32.2.1. 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.



vii. By deleting clause 32.2.2 and replacing it with the following:

32.2.2 Subject to 32.3.6, 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.

viii. By inserting a new clause:

32.2.3 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 no other option will meet the needs of the workplace or enterprise.

ix. By inserting before clause 32.4.1(c) the following words:

Except in relation to simultaneous leave under clause 32.2.3...

x. By inserting before clause 32.5.2(a) the following words:

Except in relation to simultaneous leave under clause 32.2.3 that...

xi. By varying clause 32.6 by replacing the words "four weeks" with the words "14 days".

xii. By inserting a new clause as follows:

32.6A Consultation during parental leave

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

xiii. By replacing the number "52" with the number "104" in clause 32.7

xiv. By inserting a new clause 32.11 Special Part Time Provisions Relating to Return from Parental Leave in the terms set out in Annexure D hereto.

THE GROUNDS upon which the 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.

We would seek that this matter be heard in Melbourne.

Dated this 23rd day of June 2003



JOE DE BRUYN
National Secretary/Treasurer
Shop, Distributive & Allied
Employees' Association
5th Floor, 53 Queen Street
MELBOURNE VIC 3000

Ph: (03) 9629 2299
Fax: (03) 9629 2646

Annexure A

29A SPECIAL PROVISION FOR WORKERS WITH FAMILY RESPONSIBILITIES - RIGHT TO REQUEST VARIATION IN HOURS

29A.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 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.

29A.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.

Relationship to Rest of Award

29A.3 An agreement reached under this provision must comply with clause 9 FACILITATIVE PROVISIONS. An employer shall not grant an application which would result in an employee working in contravention of clauses 23, 24, 25, 26, 27, 28 and 29.

Responsibilities of employers

29A.4 An employer to whom an application under clause 29A.1 is made must consider the application and must not unreasonably refuse such an application.

29A.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.

29A.6 Where an employer and employee cannot reach agreement regarding an application under clause 29A.1 the application shall be dealt with in accordance with clause 11 (Dispute Resolution Procedure).

29A.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 29A.1 or

exercised a right conferred on him or her under Clause 11.

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

29A.8 Nothing in this clause shall detract from the entitlement of an employee under clause 32.11 of this award (Special Part Time Provisions Relating to Return from Parental Leave).

Annexure B

31.6 UNPAID LEAVE FOR FAMILY OR DEPENDANT CARE EMERGENCIES

- 31.6 (a) The provisions of this clause apply to all employees, and are in addition to those specified in clause 31.4.4.
- 31.6 (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.
- 31.6 (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 C

31.7 PURCHASED CARERS LEAVE

- 31.7 (a) In addition to an employee's entitlement to unpaid emergency leave in clause 31.6 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.
- 31.7 (b) An employer may grant additional unpaid leave.
- 31.7 (c) The employee shall apply to the employer for unpaid leave at least 4 weeks before the employee wishes to take the leave.
- 31.7 (d) Where the employer and employee are unable to agree on the quantum or timing of unpaid leave, the matter shall be dealt with in accordance with the dispute resolution procedure.
- 31.7 (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 $\frac{1}{2}$.

- 31.7 (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 31.8(e).

Annexure D

32.11 SPECIAL PART TIME PROVISIONS RELATING TO RETURN FROM PARENTAL LEAVE

- 32.11(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 provided for in accordance with this clause. Where as a result of the employers request work is performed in excess or outside of these agreed hours the provisions of clause 26 shall apply..

Workplace Relations Act 1996

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

APPLICATION FOR AN ORDER FOR SUBSTITUTED SERVICE

IN the matter of:

**RETAIL AND WHOLESALE INDUSTRY - SHOP EMPLOYEES - AUSTRALIAN
CAPITAL TERRITORY - AWARD 2000****C. No. 5830 of 2001****RE: WORK AND FAMILY TEST CASE**

Application is made by the Shop, Distributive and Allied Employees' Association for an order for substituted service for the service otherwise required by the Australian Industrial Relations Commission Rules in the above matter and that service upon the undermentioned parties be good and sufficient service and be effected by facsimile:

Executive Director
Coles Myer Limited
FAX: 03) 9829 6606

Executive Director
Australian Retailers Association NSW Division
FAX: 02) 9262 1464

Executive Director
ACT & Region Chamber of Commerce & Industry Limited
FAX: 02) 62736611

Executive Director
Confederation of Australian Business
FAX: 02) 6282 5045

Executive Director
David Jones Limited (NSW)
FAX: 02) 9267 9736

Executive Director
Woolworths Limited (NSW)
FAX: 02) 8822 8480



The grounds on which this application is made are as follows:

Workplace Relations Act 1996

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

ORDER FOR SUBSTITUTED SERVICE

In the matter of:

**RETAIL AND WHOLESALE INDUSTRY - SHOP EMPLOYEES - AUSTRALIAN
CAPITAL TERRITORY - AWARD 2000**

(C No. 5830 OF 2001)

Upon reading the application of Joe De Bruyn, I order that service otherwise required by the Rules of the Australian Industrial Relations Commission be dispensed with and service be effected by facsimile upon the undermentioned parties:

Executive Director
Coles Myer Limited
FAX: 03) 9829 6606

Executive Director
Australian Retailers Association NSW Division
FAX: 02) 9262 1464

Executive Director
ACT & Region Chamber of Commerce & Industry Limited
FAX: 02) 62736611

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Executive Director
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FAX: 02) 9267 9736

Executive Director
Woolworths Limited (NSW)
FAX: 02) 8822 8480

DATED: 2003

SIGNED: _____

BY THE COMMISSION

1. The abovementioned organisations are the only organisations to appear in matters relating to this award or alternatively are the only employers affected by this application.
2. The organisations clearly represent the interests of employers and employees covered by the award or alternatively are the only employers affected this application.
3. On any other grounds deemed just and reasonable by the Commission.

Dated 23rd June, 2003

A handwritten signature in cursive script, reading "J. de Bruyn". The signature is written in black ink and is positioned above a horizontal line.

JOE DE BRUYN

NATIONAL SECRETARY/ TREASURER

I, Joe De Bruyn, am National Secretary/Treasurer of the Shop, Distributive and Allied Employees' Association and I am authorised to act in this matter.

J. de Bruyn
JOE DE BRUYN
NATIONAL SECRETARY/TREASURER

To the persons and organisations bound by the abovementioned award:

You are hereby notified that the abovementioned application will be heard

by [*insert 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 thisday of.....2002

.....
[*Signature*] Member of Commission [*or Registrar*]
