

FORM R6 Rule 22

Workplace Relations Act 1996

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

APPLICATION TO SET ASIDE OR VARY AN AWARD

(C2003/)

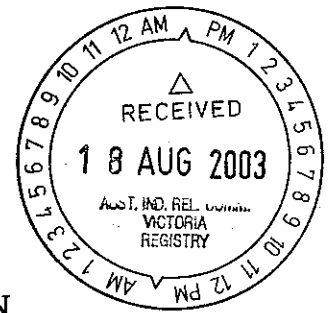
In the matter of the: 5142

Metal, Engineering and Associated Industries Award 1998

Application is made by the Australian Industry Group for the variation of the abovementioned Award in the terms set out in Schedule "A".

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

1. To give effect to the objects of the *Workplace Relations Act 1996* ("the Act") by assisting employees to balance their work and family responsibilities effectively through the development of mutually beneficial work practices with employers (s.3(i)).
2. To recognise that future changes in the size, profile and distribution of Australia's population are likely to have important implications for economic growth and living standards:
 - The Federal Government's *Intergenerational Report Budget Paper No. 5* for 2002-2003 shows that the rate of natural increase in Australia's population is in long-term decline. The total fertility rate of Australian women is below replacement level and is currently around 1.75%, projected to fall further to 1.6% by 2004. The rate of growth in Australia's labour force is expected to decline further in the next 40 years, falling to less than 1% in the decade between 2032 and 2042, creating serious consequences for the economic prosperity of the country.
 - Sole parent families now comprise around 21% of all family households. The vast majority of these are sole mother families and it is estimated that by 2000 approximately one out of every five children aged between 0 – 14 lived in a single parent family. The rise in the number of single parent families coupled with the greater participation of women in the workforce means that there is an increasing gap between the ability of families to manage their out of work responsibilities and their capacity to do so.



3. To recognise the important principle that, whilst assisting employees to balance their work and family responsibilities is important, it is essential that employers retain the right to manage their businesses in an efficient manner.
4. To recognize that education, leadership and facilitation is likely to be more successful than an unduly prescriptive approach.

Dated this Eighteenth Day of August 2003

For and on behalf of
the Australian Industry Group



Stephen Smith
Director – National Industrial Relations

Filed by:
Australian Industry Group
20 Queens Road
Melbourne VIC 8004

Contact:
Sophia Davis
Senior Adviser – Workplace Services

Tel: (03) 9867 0242
Fax: (03) 9867 0199

To the persons and organisations bound by the abovementioned award, you are hereby notified that the abovementioned application will be heard at

_____ on the _____ day of

_____ in _____.

and that you may appear and be heard at the time and place so fixed.

Dated: _____

MEMBER OF COMMISSION

Workplace Relations Act 1996



AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

STATEMENT OF FACTS – APPLICATION TO VARY AN AWARD

(C2003/ 5142)

In the matter of the:

Metal, Engineering and Associated Industries Award 1998.

And in the matter of an application to vary the abovementioned award by the Australian Industry Group.

I, Stephen Thomas Smith, of 51 Walker Street, North Sydney, in the State of New South Wales, state the following:

1. That I am the Director – National Industrial Relations of the Australian Industry Group, an organisation of employers registered under the above named Act.
2. That I am authorised to apply for a variation of the above mentioned Award.

And I make this statement conscientiously believing the information herein to be true in every particular.

Dated this Eighteenth Day of August 2003

For and on behalf of
the Australian Industry Group

A handwritten signature in black ink, appearing to read "S. Smith".

Stephen Smith
Director – National Industrial Relations

FORM R51 Rule 73

Workplace Relations Act 1996

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION



APPLICATION FOR AN ORDER FOR SUBSTITUTED SERVICE

(C2003/ 5142)

In the matter of the:

Metal, Engineering and Associated Industries Award 1998

Application is made by the Australian Industry Group 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 Express Post.

- Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, 133 Parramatta Road, Granville, NSW, 2142;
- Australian Workers' Union, Suite 15, 245 Chalmers Street, Redfern, NSW, 2016;
- Construction, Forestry, Mining and Energy Union, 13-15 Wentworth Avenue, Sydney, NSW, 2000;
- The Association of Professional Engineers, Scientists and Managers, Australia, Level 5, 163 Eastern Road, South Melbourne, VIC, 3205;
- Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, 52 Bay Street, Rockdale, NSW, 2216;
- Australian Liquor, Hospitality and Miscellaneous Workers Union, Level 9, 187 Thomas Street, Haymarket, NSW, 2000;
- National Union of Workers, 552 Victoria Street, North Melbourne, VIC, 3051;
- Metal Industries Association of Tasmania, 30 Burnett Street, North Hobart, TAS, 7000;
- Engineering Employers' Association of South Australia, Enterprise House, 136 Greenhill Road, Unley, SA, 5061;

- Air Conditioning and Mechanical Contractors Association of Australia Limited, 1st Floor, 30 Cromwell Street, Burwood, VIC, 3125.

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

1. That because of the large number of respondents to the abovementioned award it is difficult to promptly effect service as prescribed on each and every one of the parties bound by the award.
2. The parties listed for service in this application are those parties customarily served in applications to vary the abovementioned award.
3. The parties not listed for service in this application are those parties which are not customarily served in applications to vary the above mentioned award.

Dated this Eighteenth Day of August 2003

For and on behalf of
the Australian Industry Group



Stephen Smith
Director – National Industrial Relations



Workplace Relations Act 1996

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

STATEMENT OF FACTS – ORDER FOR SUBSTITUTED SERVICE

(C2003/)
5142

In the matter of the:

Metal, Engineering and Associated Industries Award 1998.

And in the matter of an application to vary the abovementioned award by the Australian Industry Group.

I, Stephen Thomas Smith, of Level 5, 51 Walker Street, North Sydney, in the State of New South Wales, state the following:

1. That I am the Director – National Industrial Relations of the Australian Industry Group, an organisation of employers registered under the above named Act.
2. That I am authorised to act in this matter.

And I make this statement conscientiously believing the information herein to be true in every particular.

Dated this Eighteenth Day of August 2003

For and on behalf of
the Australian Industry Group

Stephen Smith
Director – National Industrial Relations

Workplace Relations Act 1996

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION



ORDER FOR SUBSTITUTED SERVICE

(C2003/ 5142)

In the matter of the:

Metal, Engineering and Associated Industries Award 1998.

And in the matter of an application to vary the abovementioned award by the Australian Industry Group.

Upon reading the said application and statement of Stephen Thomas Smith, on the day of

_____ August 2003

And it appearing that service as prescribed of the said application upon all the respondents to the Metal, Engineering and Associated Industries Award 1998 cannot be promptly effected I do order that service as prescribed of the said application be dispensed with and that in lieu thereof the said service be effected by posting by Express Post a copy of the application and of this Order to the following respondents:

- Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, 133 Parramatta Road, Granville, NSW, 2142;
- Australian Workers' Union, Suite 15, 245 Chalmers Street, Redfern, NSW, 2016;
- Construction, Forestry, Mining and Energy Union, 13-15 Wentworth Avenue, Sydney, NSW, 2000;
- The Association of Professional Engineers, Scientists and Managers, Australia, Level 5, 163 Eastern Road, South Melbourne, VIC, 3205;
- Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, 52 Bay Street, Rockdale, NSW, 2216;
- Australian Liquor, Hospitality and Miscellaneous Workers Union, Level 9, 187 Thomas Street, Haymarket, NSW, 2000;
- National Union of Workers, 552 Victoria Street, North Melbourne, VIC, 3051;

- Metal Industries Association of Tasmania, 30 Burnett Street, North Hobart, TAS, 7000;
- Engineering Employers' Association of South Australia, Enterprise House, 136 Greenhill Road, Unley, SA, 5061;
- Air Conditioning and Mechanical Contractors Association of Australia Limited, 1st Floor, 30 Cromwell Street, Burwood, VIC, 3125.

MEMBER OF COMMISSION

5142
Schedule 'A'



**METAL, ENGINEERING AND ASSOCIATED INDUSTRIES
AWARD 1998**

That the above award be varied in the following respects:

1. By inserting a new sub-clause 4.2.5 in Clause 4.2 – **Employment Categories** in Part I of the Award, as follows, and renumbering the existing sub-clauses 4.2.5, 4.2.6, 4.2.7, 4.2.8 and 4.2.9:

4.2.5 Job-share Employment

4.2.5(a) An employee may be engaged to work on a job-share basis in which the employee shares a full-time job with another employee (“the job share partner”). An employee so engaged shall be paid per hour 1/38th of the weekly rate prescribed by this award for the work performed.

4.2.5(b) Before job-share employment commences:

- (i) The employee and the employer must agree on the hours to be worked by the employee, the days upon which they will be worked and the commencing and finishing times for work. The terms of this agreement may be varied with the consent of the employer and the employee.
- (ii) The job share partner and the employer must agree on the hours to be worked by the job share partner, the days upon which they will be worked and the commencing and finishing times for work. The terms of this agreement may be varied with the consent of the employer and the job share partner.

4.2.5(c) The terms of this award shall apply pro rata to job-share employees on the basis that ordinary weekly hours for full-time employees are 38 hours.

4.2.5(d) Except as provided for in 4.2.5(f), overtime shall be payable to job-share employees for time worked in excess of the hours fixed in accordance with the pattern of hours applicable to the employee.

4.2.5(e) Where the job-share employee's normal paid hours fall on a public holiday prescribed in clause 7.5 - Public holidays, of this award and work is not performed by the employee, such employee shall not lose pay for the day. Where the employee works on the holiday, such employee shall be paid in accordance with clause 7.5 of this award.

4.2.4(f) Unless agreement is reached to the contrary between the employee and the employer, the employee will not be required to cover annual leave,

long service leave or personal leave absences of the job share partner. However, if the employee covers any such absence, the employee will be paid at ordinary rates for the time spent covering.

4.2.5(g) The employer may terminate the job-share arrangement by giving four week's notice to the relevant employee/s if any of the following events occurs:

- The employment of one of the employees involved in the job-share arrangement is terminated by the employer or the employee;
- The arrangement is no longer consistent with the operational requirements of the business.

In such circumstances, the job-share employee/s may apply for a full-time position with the employer.

2. By adding a new subclause 6.1.7 to Clause 6.1 – **Ordinary Hours of Work** in Part I of the Award, as follows:

6.1.7 Work and Family Balance

In order to assist in better balancing work and family responsibilities, an employee may elect, with the consent of the employer, to work additional hours and take such time off at a later stage, subject to the following conditions:

- 6.1.7(a)** The time off shall be taken within 12 months of the time being worked;
- 6.1.7(b)** The time off shall be taken at a time or times nominated by the employee but agreed upon by the employer;
- 6.1.7(c)** The time off shall be taken at the ordinary time rate, that is an hour for each hour worked;
- 6.1.7(d)** Time accumulated under this sub-clause must be taken as leave except in the event of termination of employment.
- 6.1.7(e)** Upon termination of employment, any time accumulated under this provision is to be paid at the ordinary time rate, that is an hour for each hour worked.

Where an agreement is reached in accordance with 6.1.7, the agreement must be recorded in the time and wages records.

3. By adding a new subclause 7.1.13 to Clause 7.1 – **Annual Leave** of Part I of the Award as follows:

7.1.13 Work and Family Balance

The following measures are designed to assist employees to better balance work and family responsibilities.

7.1.13(a) Unpaid leave taken in conjunction with annual leave

- (i) 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).
- (ii) Except as provided for in (iii), the employee is to be paid for the period of annual leave prior to commencing leave.
- (iii) An employee may elect, with the consent of the employer, 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.

- (iv) Where an agreement is reached in accordance with 7.1.13(a), the agreement must be recorded in the time and wages records.

7.1.13(b) Use of leave loading to purchase additional annual leave

An employee may elect, with the consent of the employer, to forgo annual leave loading in return for an equivalent amount of additional annual leave. In such circumstances, most full-time employees under the award would accrue an additional 26.6 hours of leave per year.

Where an agreement is reached in accordance with 7.1.13(b), the agreement must be recorded in the time and wages records.

7.1.13(c) Purchased Additional Annual Leave

In order to assist in better balancing work and family responsibilities, an employee may elect, with the consent of the employer, to accrue additional annual leave in return for a reduction in the employee's weekly wage, subject to the following conditions:

- (i) The additional annual leave must be taken at a time or times nominated by the employee but agreed upon by the employer.
- (ii) The additional annual leave must be taken within 12 months of accruing such leave. The employer and the employee can agree to extend this period.
- (iii) The employee has the right to cease accruing additional annual leave and revert to his or her usual weekly wage by giving no less than four weeks' notice in writing to the employer. The employer and employee can agree to a shorter period of notice.
- (iv) The maximum amount of additional annual leave which an employee can accrue in a 12 month period is six (6) weeks.
- (v) Annual leave loading, shift loadings and weekend penalty loadings are not payable on additional annual leave accrued in accordance with paragraph 7.1.13(c).
- (vi) The employer must calculate the lower weekly wage ('the revised weekly wage') which the employee is entitled to receive in return for the accrual of additional annual leave in the following manner:

Revised weekly wage = usual weekly wage multiplied by (52 weeks minus the number of weeks of additional annual leave to be accrued per year) divided by 52

Example One

A full-time employee earns a wage of \$500 per week (ie. \$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 additional annual leave per year. In such circumstances, annual leave would accrue at the rate of 5.846 hours per week (ie. 38 hours multiplied by 8 weeks and divided by 52 weeks). The employee would receive the amount of \$461.50 throughout the year, including for each of the four weeks of additional annual leave.

Example Two

A full-time employee earns a wage of \$700 per week (ie. \$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 additional annual leave per year. In such circumstances, annual leave would accrue at the rate of 7.308 hours per week (ie. 38 hours multiplied by 10 weeks and divided by 52 weeks). The employee would receive the amount of \$619.20 throughout the year, including for each of the six weeks of additional annual leave.

- (vii) Where an agreement is reached in accordance with paragraph 7.1.13(c), the agreement must be recorded in the time and wages records.

- 4. By deleting sub-clause 8.3 of Part IV – Long Service Leave, of the Award and inserting the following:

8.3 Broken leave

Long service leave shall be taken in a manner that is agreed to between the employer and the employee. Leave can be broken up into any number of periods.

- 5. By adding a new clause 10 to Part IV – Long Service Leave, of the Award, as follows, and renumbering the existing clauses 10, 11, 12, 13 and 14.

10 Work and Family Balance

The following measures are designed to assist employees to better balance work and family responsibilities.

10.1 Unpaid leave taken in conjunction with long service leave

10.1.1 An employee may elect, with the consent of the employer, to take a period of unpaid leave immediately following a period of long service leave. For example, agreement could be reached for an employee to take 12 weeks of leave (ie. Eight weeks of long service leave immediately followed by four weeks of unpaid leave).

10.1.2 Except as provided for in 10.1.3, the employee is to be paid for the period of long service leave in the manner set out in Clause 7.

10.1.3 An employee may elect, with the consent of the employer, 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 long service leave pay to be averaged over the total period of leave.

Example

A full-time employee takes 12 weeks of leave, consisting of eight weeks of long service leave immediately followed by four weeks of unpaid leave. Agreement could be reached for the employee to be paid one twelfth of the total amount payable for the period of leave during each week of the leave period.

- 10.1.4** Where an agreement is reached in accordance with 10.1, the agreement must be recorded in the time and wages records.

10.2 Long service leave payments to shift workers

An afternoon or night shift worker may elect, with the consent of the employer, to:

- 10.2.1** Take long service leave without shift loadings, or,
- 10.2.2** Receive the relevant shift loadings during a period of long service leave but have the period of leave discounted by an equivalent amount to the relevant loading.

Example

In lieu of 13 weeks' of long service leave, agreement is reached between an employee and the employer for the employee to take 10 weeks' leave with a 30% shift loading on the amount paid.