

FORM R6

Rule 22

Workplace Relations Act 1996

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

APPLICATION TO SET ASIDE OR VARY AN AWARD



IN the matter of:

**RUBBER, PLASTIC AND CABLE MAKING INDUSTRY - GENERAL -
AWARD 1998 [AW794720]**

Application is made by **the Victorian Employers' Chamber of Commerce and Industry** for variation of the abovementioned award in the following terms:

Part 2 – Award Flexibility

- [I]. Insert new clause 11A, “Flexibility To Balance Work And Family Responsibilities”, as follows:

11A. FLEXIBILITY TO BALANCE WORK AND FAMILY RESPONSIBILITIES

- 11A.1** An employee may request, and employer may agree to vary hours, days and times of work (including breaks and meal times), on the basis of employee family responsibilities.
- 11A.2** Agreed variations may be on an ongoing basis, or as single or periodic variations to accommodate particular employee requests.
- 11A.3** Where agreement is made under this clause, that agreement shall apply notwithstanding any contrary provisions of this award.
- 11A.4** This clause operates only by agreement. Nothing compels an employee to make a request under this clause, or an employer to agree to a request.

- [II]. Insert new clause 11B, "Payment for Agreed Hours of Work", as follows:

11B. PAYMENT FOR AGREED HOURS OF WORK

- 11B.1** All varied hours worked at the request of the employee and by agreement between employer and employee under clause 11A, *Flexibility To Balance Work And Family Responsibilities*, shall be payable at the employee's ordinary time rate of pay, regardless of when the varied time is worked.
- 11B.2** No additional penalties, loadings, allowances, or payments which may otherwise apply under this award, will apply to hours varied at the employee's request under clause 11A.

Part 4 – Employer and employees' duties, employment relationship and related arrangements

[III]. Delete clause 15.2.9, and insert the following:

15.2.9 A part-time employee must be engaged for a minimum of three consecutive hours a shift.

[IV]. Insert new clause 15.2.10, as follows:

15.2.10 The capacity of employers and employees to enter into part time employment, including for the purposes of assisting employees to balance work and family responsibilities, shall not be restricted by provisions of this award which have the following effects:

15.2.10(a) Any limits or restrictions on the hours, days or times at which part time employment may or may not be worked.

15.2.10(b) Any limits or restrictions on the capacity of part time employees to work during particular hours, or to work particular patterns of hours of work.

15.2.10(c) Any limits or restrictions on the duration of part time employment.

[V]. Insert new clause 15.3.17, as follows:

15.3.17 The capacity of employers and employees to enter into casual employment, including for the purposes of assisting employees to balance work and family responsibilities, shall not be restricted by provisions of this award which have the following effects:

15.3.17(a) Any limits or restrictions on the hours, days or times at which casual employment may or may not be worked.

15.3.17(b) Any limits or restrictions on the capacity of casual employees to work during particular hours, or to work particular patterns of hours of work.

15.3.17(c) Any limits or restrictions on the duration of casual employment.

[VI]. Insert new clause 18A, as follows:

18A. AGREED UNPAID ABSENCE

18A.1 By agreement between employer and employee, including for the purpose of assisting the employee to balance work and family responsibilities, the employee may be granted periods of unpaid absence from hours, days and times that otherwise would have been rostered hours of work.

- 18A.2 Accruals of all entitlements will cease for the duration of any approved unpaid absence in excess of one week.
- 18A.3 Approved unpaid absence will not break continuity of service.
- 18A.4 The employer may require the employee to access all unused paid leave accruals, and any unused rostered days off, prior to the employee being granted unpaid absence.

Part 6 – Hours of work, breaks, overtime, shift work, weekend work

[VII]. Delete clause 28.1.5, and insert the following:

28.1.5 Rate for Saturday ordinary hours

Subject to clause 28.1A, where agreement is reached in accordance with 28.1.2 hereof the minimum rate to be paid for a day worker for ordinary time worked between midnight on Friday and midnight on Saturday shall be time and a half.

[VIII]. Delete clause 28.1.6, and insert the following:

28.1.6 Rate for Sunday ordinary hours

Subject to clause 28.1A, where agreement is reached in accordance with 28.1.2 hereof the minimum rate to be paid for a day worker for ordinary time worked between midnight on Saturday and midnight on Sunday shall be time and three quarters.

[IX]. Insert new clause 28.1A, as follows:

28.1A Time off in lieu of payment for penalty rates

- 28.1A.1 By agreement between employer and employee, including for the purpose of assisting the employee to balance work and family responsibilities, time off at the penalty equivalent, or any part of it, may be taken in lieu of penalty rates otherwise payable for work performed during ordinary hours.
- 28.1A.2 This clause does not apply to penalties / additional payments for shift work or overtime.
- 28.1A.3 Such time off shall be taken within 28 days or is accumulated and added to the period of annual leave.

[X]. Delete clause 28.6 "Make-up time", and insert the following:

28.6 Make-up time

28.6.1 An employer and employee may agree, including for the purpose of assisting the employee to balance work and family responsibilities, to the employee working 'make up time', under which the employee takes time off during ordinary hours and works those at a later time, at the rate which would have been applicable to the hours taken off.

28.6.2 There is no requirement that "make up time" be worked within ordinary hours of work under this award, nor within an employee's ordinary or usual hours of work.

[XI]. Insert new clause 28.7.4(c), as follows:

28.7.4(c) By agreement between employer and employee, including for the purpose of assisting the employee to balance work and family responsibilities, rostered days off may be banked.

[XII]. Insert new clause 28.7.4(d), as follows:

28.7.4(d) By agreement between employer and employee, including for the purpose of assisting the employee to balance work and family responsibilities, rostered days off may be taken in part day amounts.

[XIII]. Insert new clause 31.10, as follows:

31.10 Time off in lieu of overtime

31.10.1 By agreement between employer and employee, including for the purpose of assisting the employee to balance work and family responsibilities, time may be taken in lieu of payment for overtime at an agreed time or times.

31.10.2 Overtime taken as time off shall be taken at the ordinary time rate, that is an hour for each hour worked.

[XIV]. Delete clause 33, '*Sunday work*', and insert the following:

33. Sunday work

Subject to clause 28.1A, any employee (other than a seven day shift worker) who is employed on a Sunday shall for all time worked on that day, be paid at the rate of double time. Where, by agreement between an employer and the majority of employees, shifts are rearranged to commence on Sunday instead of Monday, ordinary rates shall be paid for Sunday work.

Part 7 – Leave of absence and public holidays

[XV]. Insert new clause 34.3.4, as follows:

34.3.4 Where employer and employee agree, including for the purpose of assisting the employee to balance work and family responsibilities, the 17½% annual leave loading, or shift allowance payable on annual leave referred to in this clause may be taken as an equivalent amount of paid leave.

[XVI]. Delete clause 34.4.1, and insert the following:

34.4.1 The employee must be allowed to take annual leave, at a time fixed by the employer, within nine months after it is due. Provided that nothing in this clause, or any clause of this award, shall prevent an employer and employee agreeing to the accrual and carrying forward of any amount of annual leave, including where leave is being accrued by agreement to assist the employee to balance work and family responsibilities.

[XVII]. Delete clause 34.7, and insert the following:

34.7 Taking of annual leave

The annual leave shall be taken and given by mutual consent. If the employer and employee agree, including for the purpose of assisting the employee to balance work and family responsibilities, annual leave may be given and taken in separate periods, including single days.

[XVIII]. Insert new clause 34.10, as follows:

34.A Purchased Annual Leave

34.A.1 A full time or part time employee may with the agreement of the employer, including for the purpose of assisting the employee to balance work and family responsibilities, purchase between one (1) and six (6) additional weeks of annual leave.

34.A.2 Purchase of additional annual leave will be implemented through a proportionate adjustment to an employee's weekly wage in each week of the year. This will be calculated according to the following formula:

$$\text{Adjusted weekly wage} = \frac{\text{Employee's ordinary time pay rate.}}{52} \times \frac{52 - \chi}{52}$$

Where: χ = number of agreed weeks of additional purchased annual leave (between 1 and 6).

This formula yields the following:

<u>Additional Weeks Leave Purchased</u>	<u>Proportion of Employee Wage</u>	
1 week	51/52	98.0769%
2 weeks	50/52	96.1538%
3 weeks	49/52	94.2308%
4 weeks	48/52	92.3077%
5 weeks	47/52	90.3846%
6 weeks	46/52	88.4615%

34.A.3 The 17½% annual leave loading, or any additional shift loading payable on annual leave under clause 34.3, will not be payable on any additional annual leave purchased under this sub-clause.

34.A.4 Any agreement under this clause shall operate for a minimum period of twelve months.

[XIX]. Delete clause 35.5, and insert the following:

35.5 Carer's leave

35.5.1 Paid leave entitlement

35.5.1(a) An employee other than a casual is entitled to use up to 40 hours personal leave each year to care for members of his or her immediate family or household who are sick and require care and support. This entitlement is subject to the employee being responsible for the care and support of the person concerned. In normal circumstances an employee is not entitled to take carer's leave where another person has taken leave to care for the same person.

35.5.1(b) By agreement, an employee may take accrued personal leave of more than 40 hours each year as carers leave.

[XX]. Delete clause 36.2.2(d), and insert the following:

36.2.2(b) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child; or

[XXI]. Insert new clause 36.2.2(c), as follows:

36.2.2(c) any additional period of simultaneous unpaid leave agreed between employer and employee.

[XXII]. Delete clause 36.6, and insert the following:

36.6 Variation of period of parental leave

Unless agreed otherwise 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 to be notified at least ten weeks prior to the commencement of the changed arrangements.

[XXIII]. Delete clause 36.9.1, and insert the following:

36.9.1 An employee will notify of their intention to return to work after a period of parental leave at least ten weeks prior to the expiration of the leave.

[XXIV]. Delete clause 38.2.1, and insert the following:

38.2.1 Subject to clause 28.1A, and except as provided in 29.3.2 of this award, an employee who works on any holiday provided for in this clause shall for all time worked on that day, be paid at the rate of double time and a half.

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

1. To give effect to the Principal Object of the *Workplace Relations Act 1996* (s.3), by:
 - a. 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) of the *Workplace Relations Act 1996*).
 - b. Ensuring primary responsibility for the interaction of work and family affecting the relationship between employers and employees, rests with employers and employees at the workplace or enterprise level (s.3(b) of the *Workplace Relations Act 1996*).
 - c. Enabling employers and employees to choose the most appropriate form of agreement for their particular circumstances (s.3(c) of the *Workplace Relations Act 1996*).
 - d. Providing means for conditions of employment to be determined as far as possible by the agreement of employers and employees at the workplace or enterprise level, upon a foundation of minimum standards (s.3(d)(i) of the *Workplace Relations Act 1996*).
 - e. Assisting employees in balancing their work and family responsibilities effectively through the development of mutually beneficial work practices with their employers (s.3(i) of the *Workplace Relations Act 1996*).
 - f. 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) of the *Workplace Relations Act 1996*).
 - g. Assisting in giving effect to Australia's international obligations in relation to labour standards (s.3(k) of the *Workplace Relations Act 1996*).
2. To give effect to the Objects of Part VI of the *Workplace Relations Act 1996* (s.88A) by ensuring that:
 - a. Awards act as a safety net of fair minimum wages and conditions of employment (s.88A(b)).
 - b. Awards remain simplified and suited to the efficient performance of work according to the needs of particular workplaces or enterprises (s.88A(c)).
 - c. Awards encourage the making of agreements between employers and employees at the workplace or enterprise level (s.88A(d)(i)).
3. To maintain the award safety net of minimum conditions of employment, as provided for in s.88B(2) of the *Workplace Relations Act 1996*.

4. To prevent industrial disputation in Australian workplaces as provided for in s.89 of the *Workplace Relations Act 1996*.
5. To give effect to s.93A of the *Workplace Relations Act 1996*, and the principles embodied in the Family Responsibilities Convention referred to in that section, by:
 - a. Assisting in minimising discrimination against employees with family responsibilities.
 - b. Helping employees to reconcile employment and family responsibilities.
6. To give effect to s.143(1b) of the *Workplace Relations Act 1996* ensure awards do not:
 - a. Prescribe work practices that restrict or hinder the efficient performance of work, thereby giving effect to s.143(1B)(b) of the *Workplace Relations Act 1996*.
 - b. Contain provisions that have the effect of restricting or hindering productivity, having regard to fairness to employees, thereby giving effect to s.143(1B)(c) of the *Workplace Relations Act 1996*.
7. To give effect to s.143(1C) of the *Workplace Relations Act 1996* by ensuring awards:
 - a. Contain facilitative provisions that allow agreement at the workplace or enterprise level, between employers and employees (including individual employees), on how the award provisions are to apply (s.143(1C)(a)).
 - b. Contain provisions enabling the employment of regular part-time employees (s.143(1C)(b)).
 - c. Are expressed in plain English and are easy to understand in structure and content (s.143(1C)(c)).
 - d. Do not contain provisions that are obsolete or that need updating (s.143(1C)(d)).
 - e. Do not contain provisions that discriminate against an employee 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 (s.143(1C)(f)).
8. To give effect to s.144 of the *Workplace Relations Act 1996* by ensuring award provisions are framed to avoid unnecessary technicalities:
9. To encourage improved consultation and discussion between employers and employees on the interaction of work and family considerations affecting the relationship between employers and employees in Australian workplaces.

10. To enhance and support the capacities of employees to address employee familial, caring and parental considerations through improved access to paid leave and paid time away from the workplace during usual or ordinary hours of work.
11. To enhance and support the capacities of employees to address employee familial, caring and parental considerations through improved access to unpaid leave and unpaid time away from the workplace during usual or ordinary hours of work.
12. To maximise the capacity of employers and employees to agree to leave arrangements which can support and improve the interaction between work and family affecting the relationship between employers and employees in Australian workplaces.
13. To ensure that employees and employers have access to an appropriate range of employment / engagement options which maximise scope for employment arrangements that can complement, facilitate and support individual employee familial, parental and caring considerations.
14. To improve scope for employees and employers to agree at the workplace level to vary hours work to complement, facilitate and support individual employee familial, parental and caring considerations.
15. To improve the operation of parental leave provisions in awards by ensuring employers have more appropriate notice of employee availability for work following parental leave.

Dated: 19th August 2003

David Gregory
[Signature of applicant]

DAVID GREGORY [Name]
[Position]

MANAGER,
WORK PLACE POLICY

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 {insert date}

{Signature}

Member of Commission
[or Registrar]
