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Confederation of ACT Industry
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19 August 2003

RECEIVED
19 AUG 2003
AUSTRALIAN INDUSTRIAL REGISTRY
A.C.T.

Justice Giudice
President
Australian Industrial Relations Commission
Nauru House
80 Collins Street
MELBOURNE VIC 3000

Dear Justice Giudice

**Re: AIRC Work and Family Case**
**(C2002/4198, 4199, 4203, 4301, 4302 and ors)**
**ACCI Member Application – *Retail and Wholesale Industry – Shop Employees – Australian Capital Territory – Award 2000***

The attached application has been lodged today to vary a number of provisions of the Retail and Wholesale Industry – Shop Employees – Australian Capital Territory – Award 2000, which affect the capacities of employers and employees to address the balance of work and family considerations.

This application forms part of the package of ACCI member applications foreshadowed to you by ACCI during the mention of the above matters on 23 July 2003, and in further correspondence during recent days.

The Confederation of ACT Industry (trading as the ACT and Region Chamber of Commerce and Industry) is being represented by ACCI in relation to this application, and in relation to the above matters already lodged by ACTU affiliate unions. The ACCI contact for this matter is Mr Scott Barklamb, Manager-Workplace Relations, Tel: (03) 9668 9950, e-mail: scott.barklamb@melb.acci.asn.au .

ACCI has asked me to request that this application be forwarded to you for consideration, and be addressed as outlined in ACCI's separate correspondence.

Yours sincerely,

**Alexandra Allars**
**Workplace Relations Adviser**

cc: Australian Council of Trade Unions - Ms Cath Bowtell
Australian Chamber of Commerce and Industry - Mr Scott Barklamb

C 2003/5268

**FORM R6** **Rule 22**

*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 [AW794740CRA]**

Application is made by the Confederation of ACT Industry (trading as the ACT and Region Chamber of Commerce and Industry) for variation of the abovementioned award in the following terms:

## *Part 2 – Award Flexibility*

[I]. Insert new clause 9A, "Flexibility To Balance Work And Family Responsibilities", as follows:

**9A. FLEXIBILITY TO BALANCE WORK AND FAMILY RESPONSIBILITIES**

**9A.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.

**9A.2** Agreed variations may be on an ongoing basis, or as single or periodic variations to accommodate particular employee requests.

**9A.3** Where agreement is made under this clause, that agreement shall apply notwithstanding any contrary provisions of this award.

**9A.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 9B, "Payment for Agreed Hours of Work", as follows:

**9B. PAYMENT FOR AGREED HOURS OF WORK**

**9B.1** All varied hours worked at the request of the employee and by agreement between employer and employee under clause 9A, *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.

**9B.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 9A.

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

[III]. Insert new clause 13.3.17, as follows:

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

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

**13.3.17(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.

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

[IV]. Insert new clause 13.4.4, as follows:

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

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

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

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

[V]. Insert new clause 16A, as follows:

**16A. UNPAID ABSENCE**

**16A.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.

**16A.2** Accruals of all entitlements will cease for the duration of any approved unpaid absence in excess of one week.

**16A.3** Approved unpaid absence will not break continuity of service.

**16A.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*

[VI]. Delete clause 23.6 "Make up time", and insert the following:

**23.6 Make up time**

**23.6.1** 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.

**23.6.2** 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. .

[VII]. Delete clause 24.10.4.

[VIII]. Renumber clause 24.10.5 as 24.10.4.

[IX]. Renumber clause 24.10.6 as 24.10.5

[X]. Insert new clause 28.5 as follows:

**28.5 Time off in lieu of penalty rates**

**28.5.1** 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.

**28.5.2** This clause does not apply to penalties / additional payments for shift work or overtime.

**28.5.3** Such time off shall be taken within 28 days or is accumulated and added to the period of annual leave.

[XI]. Insert new clause 29.5, as follows:

**29.5 Time off in lieu of penalty rates**

**29.5.1** 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.

**29.5.2** This clause does not apply to penalties / additional payments for shift work or overtime.

**29.5.3** Such time off shall be taken within 28 days or is accumulated and added to the period of annual leave.

## *Part 7 – Leave of absence and public holidays*

[XII]. Delete clause 30.3, and insert the following:

**30.3 Time of taking annual leave**

**30.3.1** Annual leave must be taken at a time mutually agreed upon by the employer and the employee, and in the absence of agreement at a time fixed by the employer, within a period not exceeding six months from the date when the right to annual leave accrued and after not less than six weeks' notice to the employee.

**30.3.2** 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.

**30.3.3** 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.

[XIII]. Insert new clause 30.7.3, as follows:

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

[XIV]. Insert new clause 30.8.1, as follows:

**30.8.1** 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 weekend penalty rates payable on annual leave, or shift work allowance payable on annual leave referred to in this clause may be taken as an equivalent amount of paid leave.

[XV]. Delete clause 30.9, and insert the following:

**30.9** – Deleted

[XVI]. Insert new clause 30.10, as follows:

**30A. Purchased Annual Leave**

**30A.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.

**30A.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:

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

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

This formula yields the following:

| Additional Weeks Leave Purchased | Proportion of Employee Wage | |
|---|---|---|
| 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% |

**30A.3** The 17½% annual leave loading payable under clause 30.7, or any additional weekend penalty or shift loading payable on annual leave under clause 30.8, will not be payable on any additional annual leave purchased under this sub-clause.

**30A.4** Any agreement under this clause shall operate for a minimum period of twelve months.

[XVII]. Delete clause 31.5.1, and insert the following:

**31.5.1** Paid leave entitlement:

**31.5.1(a)** An employee with responsibilities in relation to either members of their immediate family or household who need their care and support is entitled to use up to five days per year of their personal/carer's leave entitlement to provide care and support for such persons when they are ill. Leave may be taken for part of a single day.

**31.5.1(b)** By agreement, an employee may take accrued personal leave of more than 5 days per year as carers leave.

[XVIII]. Delete clause 32.2.2(b), and insert the following:

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

[XIX]. Insert new clause 32.2.2(c), as follows:

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

[XX]. Delete clause 32.6, and insert the following:

**32.6 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.

[XXI]. Delete clause 32.9.1, and insert the following:

**32.9.1** 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.

[XXII]. Delete clause 34.6, 'Payment for holidays', and insert the following:

**34.6 Payment for holidays**

Subject to clause 29.5 of this award, payment must be the amount the employee would have received had the day not

been a holiday and he/she had worked thereon for the usual time of the day.

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

Alexandra Allars
Workplace Relations Adviser

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]

*Workplace Relations Act 1996*

**AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

**APPLICATION FOR AN ORDER FOR SUBSTITUTED SERVICE**

In the matter of:

The *Retail and Wholesale Industry – Shop Employees – Australian Capital Territory – Award 2000* and in the application for the variation of the abovementioned award.

Application is made by Ms Alexandra Allars of the Confederation of ACT Industry (trading as the ACT and Region Chamber of Commerce and Industry) for an order for substituted service or other service dispensing with service as prescribed by the Rules of the Australian Industrial Relations Commission in the above matter and that service upon the undermentioned be good and sufficient service and be effected by sending by registered post true copies of the Application and of this Order to the organisations listed in Attachment A.

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

1. That there are a large number of parties to the abovementioned award, who carry on operations at various addresses throughout Australia and prompt service of the Application for Variation, cannot be effected.

2. When this award was previously before the Australian Industrial Relations Commission, the above parties or their representatives appeared.

3. Such other reasons as the Commission sees fit to consider.

Dated this 19th day of August 2003

Ms Alexandra Allars
APPLICANT

I, Alexandra Allars, am a Workplace Relations Adviser, of the Confederation of ACT Industry (trading as the ACT and Region Chamber of Commerce and Industry), an organisation of employers registered under the *Workplace Relations Act* 1996 and I am authorised to act in this matter.

Alexandra Allars
APPLICANT

ATTACHMENT A

Australian Business Industrial
7 National Circuit
Barton ACT 2600

Australian Municipal, Administrative, Clerical and Services Union
Level 4
377-383 Sussex Street
SYDNEY NSW 2000

Australian Retailers Association (NSW)
Level 3, 20 York Street
Sydney NSW 2000

Shop, Distributive and Allied Employees' Association
PO Box K230
Haymarket NSW 1240