



Australian Government

FAMILY PROVISIONS CASE 2004

CONTENTIONS IN SUPPORT

14 MAY 2004

1. Introduction

- 1.1 These contentions in support are made on behalf of the Commonwealth in accordance with sub-section 44(1) of the *Workplace Relations Act 1996* (WR Act) and the directions issued by the Australian Industrial Relations Commission (the Commission) on 20 April 2004.
- 1.2 These contentions relate to those aspects of the applications in the Family Provisions Case – C Nos 2003/4198, 4199, 4203, 4301, 4302, 5142, 5143, 5144, 5166, 5167, 5168, 5268, 5272, 5326, 5787 - which the Commonwealth supports.
- 1.3 The Commonwealth will provide contentions in response to other claims in the Family Provisions Case by 2 July 2004 in accordance with the Commission's directions.
- 1.4 The Australian Government has consistently supported and actively encouraged agreed measures by employers to introduce family friendly policies and practices to address the needs of employees in balancing their work and family responsibilities.
- 1.5 These measures can range from changes to hours of employment or access to regular part-time employment through to arrangements such as employer sponsored childcare or paid maternity leave.

2. Commonwealth policy position

- 2.1 The Commonwealth contends that in order to maximise flexibility in working arrangements to assist employees in balancing their work and family responsibilities, employers and employees should take advantage of the full range of options available for agreement-making, such as Australian Workplace Agreements and Certified Agreements.
- 2.2 The Commonwealth's contentions are predicated on a strong view that agreement-making at the enterprise and workplace level is particularly suited to tailoring working conditions and arrangements in ways that assist employees to balance work and family, freed from the one-size-fits-all constraints of award prescription.
- 2.3 Workplace relations reforms have opened up flexibility for family friendly practices to be introduced at the workplace level. These reforms have been underpinned by legislative protections in the *Workplace Relations Act 1996* (WR Act) to assist women and parents in the workplace.
- 2.4 These legislative protections include equal remuneration for women and men workers for work of equal value, and helping to prevent and eliminate discrimination based, among other grounds, on pregnancy and family responsibilities. The legislative framework also provides up to 12 months unpaid parental leave for employees with at least 12 months continuous service with their current employer.

- 2.5 In terms of the award safety net, many of the allowable award matters provide employees with the choices needed to balance their working and family lives. The award safety net acts as a foundation for fair and effective agreement-making and as such is designed to underpin the workplace bargaining system.
- 2.6 The Australian Government has actively encouraged the spread of regular part-time work by removing unnecessary and restrictive award provisions such as limits on the number of hours that can be worked by part-time employees. The number of women in part-time jobs has increased from around 1.5 million in March 1996 to almost two million in March 2004¹.
- 2.7 The Commonwealth supports the maintenance of the primacy of the workplace bargaining system so that wages and conditions of employment can continue to be determined at the workplace level and tailored to the needs of individual employees and employers.

3. Benefits of agreement-making

- 3.1 Agreement-making has maximised the opportunities for employees to consider the range of flexibilities available for them to meet their work and family responsibilities and for employers to meet the productivity and flexibility requirements necessary to operate in highly competitive and global market places.

¹ ABS Labour Force Survey (Cat. 6202.0).

- 3.2 Productivity is a key performance measure of the economy. It is fundamental to sustained improvements in Australia's living standards. The move to workplace agreements as the primary means of determining wages and conditions has played an important role in increasing Australia's productivity. A significant factor in this has been the removal of inefficient work practices and overly prescriptive working conditions.
- 3.3 The way we work has been changing continuously over the last decade or more. The compositional structure of the Australian workforce has altered markedly, as have the types of jobs and the way in which we do them.
- 3.4 Over the past decade there has been a significant shift in the focus of the workplace relations framework with the objective being the achievement of productivity and efficiency improvement at the workplace level. The central tenet of the changes to the workplace relations framework has been the shift away from awards to an enterprise focus in setting wages and conditions of employment.
- 3.5 A decade ago most Australian employees were dependent on the award system for their wages and conditions. Today, the vast majority of the Australian workforce relies on formal and informal workplace agreements².
- 3.6 Workplace bargaining has enabled both employers and employees to put forward for negotiation matters that are of importance to their particular needs and interests and to achieve outcomes more directly aligned to these.

² ABS, Employee Earnings and Hours May 2002, (Cat. No. 6306.0).

- 3.7 The vast majority of workplace agreements address more flexible working arrangements through, for example, flexible modes and hours of work and use of paid and unpaid leave entitlements. These matters are central to assisting women and men to manage their work and family responsibilities.
- 3.8 Further discussion of the workplace relations framework and the extent of family friendly provisions arising from workplace agreements will be included in the Commonwealth's contentions in response to be lodged with the Commission by 2 July 2004.

4. Award safety net

- 4.1 The Commonwealth supports the employers' contention that there is scope to review the operation of award provisions. This must be done in a way that will retain the safety net role of awards in providing fair minimum wages and conditions to underpin workplace bargaining.
- 4.2 The Commonwealth supports the removal of out of date, inflexible or unduly prescriptive or process-laden award provisions. These can place unnecessary restrictions on the availability of different types of employment and the way in which hours of work and leave entitlements can be arranged to better suit the work and family needs of individuals.

Part-time, job share and casual work

- 4.3 The Commonwealth supports the notion that the role of 'non-full time work', be that part-time, job share or casual work, in balancing work and family is undeniable and foundational.

- 4.4 The Commonwealth supports the contention that there needs to be a renewed effort to ensure that all awards provide the capacity for people with family responsibilities working in industries where part-time employment is not available to have access to part-time work opportunities by agreement with employers.
- 4.5 The Commonwealth is of the view that all awards can accommodate a clause for regular part-time employment. Part-time work is the primary means by which many employees, particularly women, seek to balance their work and family responsibilities. It is in the public interest that awards should provide various employment options both to help promote equal employment opportunity and facilitate women's participation in the workforce.
- 4.6 The Commonwealth supports the employer contentions that part-time and casual employment should not be subject to unnecessary award restrictions in terms of hours of work, days of work, times or patterns of work or the duration of employment.
- 4.7 The Commonwealth contends that the make-up of the workforce and the hours worked by casual and part-time employees should be able to be determined at the workplace level. The Commonwealth does not place one mode of employment above others. Employees and employers should have access to all forms of employment, thus enabling businesses to provide a range of employment options.
- 4.8 Both part-time and casual employment contribute to the improvement in the overall skills base of the labour market and, through increased productivity, improve Australia's competitive economic well-being.

- 4.9 Casual and part-time work enables employers to utilise the workforce effectively and efficiently. For employees, flexible modes of employment and working hours are ways in which they can reconcile their work and family responsibilities.
- 4.10 For people nearing retirement this flexibility enables the gradual easing out of the workforce and it provides better jobs for people whose health, age or disability makes it difficult for them to work full-time.
- 4.11 Both casual and part-time modes of work enable employees to maintain and improve their skills and make it easier to move into regular or full-time employment or re-enter the workforce for those who have had career breaks.

Facilitative provisions

- 4.12 The Commission's view is that facilitative provisions "should be used to promote the efficient performance of work at the enterprise level and to avoid the prescription of matters in unnecessary detail"³.
- 4.13 The Commonwealth supports the proposal by employer organisations to streamline the facilitative provisions introduced in the Family Leave and Personal/Carers' Leave Test Case decisions⁴ in relation to the use of make-up time, single day annual leave, time off in lieu of overtime (TOIL) and rostered days off (RDO) flexibility.
- 4.14 In addition, the Commonwealth supports the removal of prerequisites in facilitative provisions for majority agreement. Facilitative provisions requiring

³ Award Simplification Decision, 23 December 1997, Print P7500, p.44

⁴ Family Leave Test Case, 29 November 1994, Print L6900 and Personal/Carer's Leave Test Case - Stage 2, 28 November 1995, Print M6700

majority agreement are not appropriate for achieving the flexible needs of individuals whose family circumstances vary considerably and at different stages of their working lives.

- 4.15 The operation of facilitative provisions has not been particularly effective at facilitating family friendly working arrangements at the workplace level. Agreement-making provides the most effective means for this.
- 4.16 The removal of the requirement for the majority of the workforce to agree to changes in the use of award entitlements would provide more scope for individual employees to vary award entitlements directly with the agreement of their employers.

Flexible leave and hours of work provisions

- 4.17 The Commonwealth supports the contention that there is scope for existing award provisions to be made more operationally flexible and for the reduction or removal of red tape or over-prescription for the purposes of making entitlements more relevant in meeting the needs of employees with family responsibilities.
- 4.18 While the Commonwealth supports the introduction of greater flexibility in the use of existing award entitlements, targeted at those employees with family responsibilities, it strongly contends that the levels of the entitlements are generally appropriate and that no additional costs should be imposed upon employers through enriching the award safety net.
- 4.19 Employer organisations are seeking increased operational flexibility in award provisions relating to annual and long service leave, payment of leave loadings, TOIL, make-up time, RDOs and hours of work.

4.20 These measures would allow employers and employees to agree on flexibilities such as:

- taking additional single days of annual leave above the five days introduced in the 1994 Family Leave Test Case⁵;
- taking annual leave at half pay for double the period;
- taking long service leave in weekly or daily multiples, including single days, and doubling the period of long service leave on half pay;
- exchanging leave loading for extra days of leave;
- varying hours and make up time and banking hours for additional time off at a later stage;
- flexibility in the use of TOIL to enable time off in lieu of overtime and time off in lieu of payment of penalty rates; and
- banking of RDOs, substituting RDOs for alternate days, and taking RDOs in part-day amounts.

4.21 The Commonwealth supports an examination of the operation of these award provisions to provide more scope for businesses to accommodate the choices and priorities of their award-reliant employees in relation to their work and family needs.

⁵ Family Leave Test Case, 29 November 1994, Print L6900

- 4.22 However, the achievement of higher wages and conditions of employment through workplace agreements such as Australian Workplace Agreements and Certified Agreements remains the Government's policy priority.
- 4.23 This is consistent with the requirements under s.88A of the WR Act where the Commission is required in relation to making and varying awards to encourage the making of agreements between employers and employees at the workplace or enterprise level.

5. Conclusion

- 5.1 The Commonwealth's contentions reinforce the overriding focus of the workplace relations system on bargaining at the workplace level. It is through the bargaining system that the greatest flexibility for individuals balancing their work and family responsibilities can be offered and achieved.
- 5.2 In the Commonwealth's view there is significant scope for awards to be made less prescriptive and more accessible consistent with awards continuing to provide a safety net of fair minimum conditions.