

**AUSTRALIAN CATHOLIC COMMISSION FOR EMPLOYMENT RELATIONS:
OUTLINE OF SUBMISSIONS TO AUSTRALIAN INDUSTRIAL RELATIONS
COMMISSION FOR THE WORK AND FAMILY CASE**

INTRODUCTION

1. The Australian Catholic Commission for Employment Relations (“ACCER”) is an organisation established by the Australian Catholic Bishops’ Conference and supported by the Australian Conference of Leaders of Religious Institutes. Its Terms of Reference are to provide the Conference and Catholic Church organisations with advice, research and advocacy on matters affecting employment in the Australian workplaces, within the context of Catholic Social Teaching.

2. ACCER makes this submission based upon the principles contained within Catholic Social Teaching. The Catholic Church in Australia is also a major employer engaged in diocesan and parish administration, pastoral care, education, health and aged care and community services sectors. The Church as an employer is guided by Catholic Social Teaching. ACCER makes this submission on behalf of Catholic Church organisations involved in the sectors of health, education, community services and diocesan and parish administration. The Church is, therefore, in a unique industrial position, namely that of social advocate and employer.

3. On this basis ACCER seeks leave to intervene in proceedings numbered C2003/4198, 4199, 4203, 4301, 4302, 5142, 5143, 5144, 5166, 5167, 5168, 5268, and 5272, pursuant to section 43(1) of the *Workplace Relations Act* 1996 (Cth). The majority of these applications are made by various trade unions. However, as these claims are being pursued by the Australian Council of Trade Unions (“the ACTU”) they will be referred to as the ACTU claims.

CATHOLIC SOCIAL TEACHING: WORK AND FAMILY LIFE

4. Catholic Social Teaching is a set of teachings and principles based upon Christian values that aim to bring about a good and fair society. In this sense:

“the Church offers her social teaching as an indispensable and ideal orientation, a teaching which...recognizes the positive value of the market and of enterprise, but which at the same time points out that these need to be orientated towards the common good.”¹

5. The Church places great importance on the family:

“The family is a community of persons and the smallest social unit. As such it is an institution fundamental to the life of every society.”²

6. It is stated elsewhere:

“The family has a right to assistance by society in the bearing and rearing of children.”³

“Families have the right to be able to rely on an adequate family policy on the part of public authorities in the juridical, economic, social and fiscal domains, without any discrimination whatsoever.”⁴

¹ Pope John Paul II, ‘*Centesimus Annus: On the Hundreth Anniversary of ‘Rerum Novarum’*, (St Paul Publications: Homebush) 1991, paragraph 43.

² Pope John Paul II, *Letter to Families*, St Paul Publications, Homebush, 1994, paragraph 17.

³ The Holy See, *Charter of the Rights of the Family*, Rome, 22 October 1983, Article 3.

⁴ *Ibid*, Article 9.

*"Society, and in a particular manner the State and International Organizations, must protect the family through measures of a political, economic, social and juridical character, which aim at consolidating the unity and stability of the family so that it can exercise its specific function."*⁵

7. Catholic Social Teaching promotes the right of a person to work and the dignity of the worker. Work is considered to be one of the principal means by which people seek personal fulfilment, dignity and make their contribution to the common good. Work is described as:

*"personal, inasmuch as the energy expended is bound up with the personality and is the exclusive property of him who acts, and, furthermore, was given to him for his advantage. Work thus belongs to the vocation of every person; indeed, man expresses and fulfils himself by working. At the same time, work has a 'social' dimension through its intimate relationship not only to the family, but also to the common good, since 'it may truly be said that it is only by the labour of working-men that States grow rich'."*⁶

8. Pope John Paul II, in his Encyclical on human work entitled "*Laborem Exercens*", points to several important rights of workers. In particular, he refers to the right to work, the right to just wages, the right to form associations for the purpose of defending the vital interests of workers, the right to strike under certain circumstances, the right of women not to be discriminated against because they choose to form a family and the right to adequate rest.

⁵ Ibid, Preamble 1.

⁶ Pope John Paul II, '*Centessimus Annus: On the Hundreth Anniversary of 'Rerum Novarum'*', (St Paul Publications: Homebush) 1991, paragraph 6.

9. The relationship between the employer and employees should be one of mutual respect and dignity, with both employer and employees working towards the objectives of the business and security of employment.
10. Work exists for the person, not the person for the work. It follows that human work should not be treated like any other resource or commodity in the market.
11. Catholic Social Teaching regards work as the foundation for the formation of family life. In relation to the balance between work and family life Pope John Paul II has written that:

“Work constitutes a foundation for the formation of family life, which is a natural right and something that man is called to. These two spheres of values – one linked to work and the other consequent on the family nature of human life – must be properly united and must properly permeate each other. In a way, work is a condition for making it possible to found a family, since the family request the means of subsistence which man normally gains through work... It must be remembered and affirmed that the family constitutes one of the most important terms of reference for shaping the social and ethical order of human work.”⁷

12. While a family is often dependent on the income earned through work, the formation of a family also requires a worker to have the right to rest and to be able to attend to family and community commitments and to provide for the emotional and spiritual care and support of family members.
13. Consistent with these principles, ACCER contends that the focus of any award variation should be to support families by assisting employees to balance their

⁷ Pope John Paul II, *Laborem Exercens*, St Paul Publications, Homebush, 1981, paragraph 10.

work and family responsibilities. Catholic Social Teaching supports the right of employees to rest away from the workplace in order to spend time with family members. Such time away from the workplace is particularly important in the early days of family life.

14. The ACTU claims are set out in Appendix A to this submission. ACCER supports, in principle, the applications to vary the awards to assist employees in balancing the relationship between work and family commitments.

ENTERPRISE BARGAINING

15. The ACTU claims are for changes to be made to the minimum employment standards in the award safety net that applies to Australian employers and employees. Opponents to the ACTU claims have argued that these matters should be left to enterprise bargaining.
16. From an industrial relations or workplace relations perspective, ACCER submits that enterprise bargaining is insufficient to assist employees to balance their work and family responsibilities. It does not necessarily guarantee fair and just minimum standards as its outcomes depend upon the ability or willingness of an employee and employer to negotiate effectively and their willingness to consider alternative or flexible working arrangements.
17. ACCER contends that variation of terms and conditions through the award system is the most appropriate means by which to set minimum standards.
18. The award system remains an important feature of the Australian industrial relations or workplace relations system. The award system operates as a benchmark. That is to say, employers and employees often use an award as a basis for prescription of and providing information about the terms and

conditions of employment within a particular industry or the type of work to be undertaken. As such, variations to the terms and conditions in awards may often have a wider influence than just the parties bound by the award. Therefore, the review and maintenance of the award system is necessary to ensure that employment conditions conferred by awards do not fall behind accepted community standards. It follows that a review of the award system enables awards to be varied to improve the living standards of those employees who may be unwilling or unable to negotiate directly with their employer.

19. The introduction of measures that assist employees to balance work and family commitments is also consistent with the Commission's obligation, under section 93A, to take into account principles in ILO 156 - Convention Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities. That is to say, it will assist workers with family responsibilities to enter and participate in economic activity (Article 1), promote effective equality of opportunity between men and women workers and potential workers by reducing the conflict between their employment and family responsibilities (Article 3) and promotes effective equality of opportunity between male and female workers and potential workers by taking account of their needs in setting terms and conditions of employment (Article 4).

CLAIMS SUPPORTED BY ACCER IN THE TERMS PROPOSED BY THE ACTU

20. For the reasons which follow and so as to assist employees to balance work and family responsibilities, ACCER supports the following claims by the ACTU:

(a) Reasonable Time off for Unpaid Emergency Leave

21. ACCER notes that the ACTU, ACCI/NFF and Ai Group have reached an agreement in respect of the ACTU applications for carer's leave and emergency leave.⁸ Accordingly, other than indicating in principle support for unpaid emergency and carer's leave, ACCER makes no submission in respect of these claims.

(b) Consultation during Parental Leave

22. ACCER supports an award variation which would require employers to consult with employees who are on parental leave regarding changes to the status, nature or responsibility levels or potential redundancy related to the position the employee held before commencing leave.

23. Consultation with employees is good work and management practice and communication between employer and employee may avoid potential anti-discrimination claims.

24. ACCER does not agree with concerns that the claim may require small businesses to establish new tracking systems to ensure compliance with the

⁸ ACTU Reply Contentions – Work and Family Test Case, 2 July 2004, paragraph 2.1.

award. It would merely require the employer to inform the employee of any significant changes in the employee's job and provide an opportunity to discuss the same. Arguably, this could be achieved by a meeting or telephone discussion between the employer and employee. The variation may also assist an employer, having consulted with the employee, to plan more effectively for workplace changes.

ACTU CLAIMS SUPPORTED SUBJECT TO VARIATION

25. ACCER supports in principle, but subject to variation, the following matters:

(a) 8 Weeks' Simultaneous Unpaid Parental Leave

26. ACCER disagrees with the Commonwealth's submission⁹ that the existing safety net provides an appropriate minimum standard and that agreement making provides an appropriate avenue to extend simultaneous parental leave.

27. An extension from 1 week to 8 weeks' simultaneous parental leave would provide an opportunity for both parents to care for their newborn child and to assist with the adjustment to the emotional and practical changes to their lives.

28. The extended period of parental leave recognises that an increasing number of fathers want to be involved in their children's lives and that mothers need support following on child birth, in particular, in cases where they suffer post-natal depression or difficulties in breastfeeding.

29. ACCER considers the formulation advocated by the ACTU to be preferable to the proposal for 4 weeks' simultaneous parental leave advocated by States and

⁹ Commonwealth Contentions in Response, dated 2 July 2004, paragraphs 7.36-7.51.

Territories.¹⁰ As noted by the ACTU, the time of the birth of a child is a time of significant strain on families. The additional leave would provide an opportunity for fathers to provide support and care to new mothers at this time.¹¹

30. The fact that there may be a low “take up” of such leave by fathers, as the Commonwealth contends, has no bearing on whether the award should incorporate the entitlement. Indeed, the availability of such an entitlement in the award may serve as encouragement to employees to take advantage of the extended leave provisions.

(b) Extended Unpaid Parental Leave

31. ACCER supports an extension of unpaid parental leave from 52 to 104 weeks after 12 months’ continuous service by the employee.
32. An extension to parental leave would provide an opportunity for new mothers to care for their child while maintaining an attachment to the labour market. It increases caring options for employees and enables children to be cared for by a parent during important formative years.
33. The Commonwealth opposes the ACTU claim and refers to financial assistance provided to parents in the May 2004 budget.¹² However, such financial assistance, while beneficial to new parents, does not meet the needs of employees themselves who want or otherwise need to care for children aged less than 2 years.

¹⁰ Contentions of the State and Territory Governments, 14 May 2004, paragraph 11 and paragraphs 126-129.

¹¹ ACTU Outline of Contentions, dated 30 April 2004, paragraph 5.51.

¹² Commonwealth Contentions in Response, 2 July 2004, paragraph 2.7.

34. The fact that there is no financial advantage to employees who choose to take extended parental leave tends to the conclusion that the entitlement would be unlikely to be abused by employees.

(c) Unpaid Child-Rearing Leave

35. ACCER supports the right of an employee to apply for a period of 52 weeks' child-rearing leave in addition to parental leave. For the reasons given it regards as unduly optimistic the submission of the Commonwealth that such entitlements can be achieved through enterprise bargaining.¹³

(d) Part-Time Work following Birth or Placement of Child

36. ACCER supports an award variation which entitles an employee to work part-time in one or more periods from the birth or placement of the child (or if necessary or desirable during pregnancy) until the child reaches school age.
37. An entitlement to return to work in a part-time capacity provides a greater opportunity for employees to accommodate family responsibilities while at the same time participating in paid employment. The proposed variation may also be beneficial to employees with caring responsibilities who, for financial reasons, cannot use unpaid leave.
38. Although not currently proposed by the parties, ACCER submits that an award variation which enables an employee, who is unable to obtain part-time work from their employer following parental leave, to take leave of absence and work part-time elsewhere may also assist employees to balance work and family responsibilities.

¹³Ibid, paragraph 2.8.

39. As noted by the State and Territory Governments¹⁴ an entitlement to return to work in a part-time capacity also provides greater choice to employees. That is to say, employees would not need to choose between full-time caring responsibilities and full-time employment.
40. The Commonwealth supports the inclusion of regular part-time employment provisions in all federal awards.¹⁵ However, it notes at para 2.32 of its submissions that the ACTU claim, if granted, could lead to employment losses or act as a disincentive to the employment of women. This submission by the Commonwealth is unsustainable. Nor does it accord with the later submission in para 3.15 that “*the OECD has found that efforts to improve work and family balance may produce positive results for women’s employment. Greater workplace flexibilities will enable longer and more significant involvement by women in the paid workforce.*”

(e) 6 Weeks’ Unpaid or Purchased Leave

41. ACCER supports the right of an employee to request to take up to 6 weeks’ unpaid leave per annum or up to 6 weeks’ purchased leave per annum with pay averaged over a 52 week period in order to assist employees to better balance work and family responsibilities. For example, it would enable employees to attend to caring responsibilities during periods of illness, injury or death of a family member.
42. As previously noted, the fact that there is no financial advantage to employees who choose to take such leave tends against the entitlement being unlikely to be abused by employees.

¹⁴ Contentions of the State and Territory Governments, 14 May 2004, paragraph 146.

¹⁵ Commonwealth Contentions in Response, dated 2 July 2004, paragraphs 2.27-2.32.

43. The Commonwealth appears to support an employee's right to request purchased leave.¹⁶ However, it suggests that purchased leave could be achieved through enterprise bargaining. For the reasons outlined above, this contention is unduly optimistic.

(f) Variation in Hours, Times, Place of Work

44. ACCER supports a variation in the hours, times or the physical location of work to enable the employee to provide care and support for a family member or member of the employee's household.

45. In particular circumstances, this would enable an employee to work from home or from an alternative location if a member of the employee's household is sick or in circumstances where there is a breakdown in other caring arrangements. Flexibility in the hours and location of work may also assist employees who have caring responsibilities outside standard school hours.

46. ACCER recognises that factors such as:

- the nature of the employee's work;
- the employee's family and personal circumstances;
- the cost of accommodating the employee's request;
- the capacity to re-organise work arrangements to accommodate the employee's request;

¹⁶ Commonwealth Contentions in Response, dated 2 July 2004, paragraphs 10.1-10.2.

- the parameters of other relevant industrial prescription and obligations;
- the impact of accommodating the employee's request on third parties including co-workers and service recipients such as customers and clients; and
- the effect on the employee and his/her dependents of the request not being granted,

are important factors in determining whether these “entitlements” can be agreed to and duly implemented in every workplace.

47. In addition to the employee's family commitments, it is important to recognise that the nature of the work performed by the employee, the costs of accommodating the employee's request, the capacity to re-organise the employee's work, the requirements of other industrial laws affecting the employer and employee and the impact on third parties such as fellow workers and clients. These issues will affect the employer's ability to grant a request. ACCER recognises that the existing claims do not relate to awards in other sectors, such as education or community services. However, by way of example, if a teacher sought to take unpaid leave or work part-time it would be important to consider the impact on third parties such as students whose studies might be disrupted and fellow teachers whose responsibilities or work loads might be affected if the request were granted. In considering the impact on third parties and co-workers, ACCER also notes that the claims are made on the basis of a typical 38 hour week, an employee entitlement of 4 weeks' annual leave and standard parental leave entitlements. This is not generally the case in the education field and in some other industries. Such matters would need to be taken into account in determining whether to grant the

employee's request. Similarly, if a counsellor were to request unpaid leave or part-time work it would be necessary to consider the impact on the patient and also the interests of co-workers whose duties may be affected if the request were granted. It is also important to recognise that unmarried employees and employees who do not have young families may also have caring responsibilities which should be considered in assessing the impact on third parties.

48. In essence, it is necessary to treat each request on a case by case basis and to balance the needs of both the employee and employer and the impact on third parties in determining whether to grant a request.
49. If the employer and the employee cannot reach an agreement, an internal review may be conducted. The review should involve discussions between the employee and their nominated representative, if any, and a more senior level of management. The employer may also invite to the discussions an officer of the employer organisation to which they belong.
50. If the matter cannot be resolved it may be referred to a Registrar of the Australian Industrial Relations Commission.
51. For example, ACCER proposes the following prescription:
 - (i) *[The employee's right to request the relevant award entitlement].*
 - (ii) *An employer must not unreasonably refuse an employee's request for leave under sub-paragraph (i) above.*
 - (iii) *Whether a refusal under sub-paragraph (ii) is unreasonable depends on all the relevant circumstances of the case including –*

- *the nature of the employee's work;*
 - *the employee's family and personal circumstances;*
 - *the cost of accommodating the employee's request;*
 - *the employer's capacity to re-organise work arrangements to accommodate the employee's request;*
 - *the requirements of other industrial laws affecting the employer and employee;*
 - *the impact of accommodating the employee's request on third parties including co-workers and service recipients such as customers and clients;*
 - *the effect on the employee and his/her dependents of the request not being granted.*
- (iv) *If an employer refuses to grant the employee's request the employer will provide to the employee written reasons for such refusal.*
- (v) *If an employer refuses an employee's request the employee may seek without delay an internal review of the decision.*
- (vi) *The internal review will involve discussions between the employee and his or her nominated representative, if any, and a more senior level of management. The employer may invite to the discussions*

an officer of the employer organisation to which the employer belongs.

(vii) If the matter cannot be resolved it may be referred to a Registrar of the Australian Industrial Relations Commission.

(viii) While the parties attempt to resolve the matter work will continue as normal unless the employee has a reasonable concern about an imminent risk to his or her health or safety.

52. The Australian Industry Group, the Australian Chamber of Commerce and Industry, the National Farmers Federation and other respondent employers have also applied to the Commission for variation of particular awards to assist employees to balance their work and family responsibilities. These measures include time off in lieu of penalty rates, use of leave loading to purchase additional annual leave and changes to the method of taking and remuneration for long service leave. In broad terms, the variations proposed by the employer groups seek to use, in a more flexible manner, existing employee entitlements. However, some of the variations proposed by the employer groups have the effect of eroding existing award entitlements such as shift penalties and leave loading.

53. In comparison, the clauses sought by the ACTU, as moulded above, do not detract from existing award entitlements. On this basis, ACCER contends that the formulation of the ACTU's claims, as so moulded and subject to the variations suggested in this submission, is preferable to the measures sought by the employer respondents.

CONCLUSION

54. ACCER supports award variations that will assist employees to balance work and family responsibilities. Such variations are consistent with Catholic Social Teaching which recognises the dignity of the worker and the importance of achieving a balance between work and family life. ACCER supports the ACTU's claim in respect of consultation during parental leave. It recognises that an agreement has been reached in respect of emergency leave and carer's leave which will assist employees to balance work and family commitments.

55. ACCER also supports award variations that entitle an employee to request 8 weeks' simultaneous parental leave, extended parental and child-rearing leave, part-time work following birth or placement of a child, 6 weeks' unpaid or purchased leave and a variation in the hours, time and place of work and for an employer to consider such a request. In considering whether the request will be granted it is necessary to balance the needs of both the employee and employer and to consider the impact on third parties whose interests and responsibilities might be affected by the decision.

56. Any award variations made by the Australian Industrial Relations Commission will provide an important foundation for future improvements in work/family balance. Federal and State Governments, employers, employees and organisations that represent the interests of employees and employers should continue to work towards developing innovative approaches to the organisation of work and to assist employees to balance more effectively their work and family commitments.

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19 November 2004

APPENDIX A

Unpaid parental Leave and Child Rearing Leave

ACTU Claim: After 12 months' continuous service, parents are entitled to a combined total of 104 weeks unpaid 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.

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.

An employer may only refuse the application in the employee's attendance at the workplace is necessary and no other options will meet the needs of the workplace or enterprise.

Part-time Work on Return from Parental Leave

ACTU Claim: 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, because of pregnancy, is necessary or desirable) until the child reaches school age.

Before commencing a period of part-time employment under this subclause, the employee and employer shall agree: (i) upon the hours to be worked by the employee, the days upon which they will 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 the period of part-time employment.

The terms of this agreement may be varied by consent.

Purchased Leave

ACTU Claim: In order to assist in better balancing work and family or caring responsibilities, an employee may apply to take up to 6 weeks' unpaid leave per annum.

An employee may also apply to purchase the additional leave in return for a reduction in the employee's weekly wage.

An employer to whom an application under this clause is made must consider the application and must not unreasonably refuse such an application.

Where an employer forms the 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 employee's attendance at the workplace is necessary and no other options will meet the needs of the workplace or enterprise.

Variation to Hours and Place of Work

ACTU Claim: An employee may apply to his/her employer for a change in his/her terms and conditions of employment if (i) 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 (ii) the purpose in applying for the change is to enable the employee to provide care and support for an immediate family member or member of the employee's household.

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. Where an employee is making application for temporary change, he or she shall indicate the period of time for which they are applying for a change. An agreement reached under this provision must comply with Facilitative Provision. An employer shall not grant an application which would result in the employee working in contravention of hours of work clauses. An employer to whom an application is made must consider the application; and must not unreasonably refuse such an application. 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 employee's attendance at the workplace is necessary and no other options will meet the needs of the workplace or enterprise.

Simultaneous Unpaid Parental Leave

ACTU Claim: 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 time of the birth of the child.

An employer may grant any additional period of simultaneous leave as is agreed between employer and employee.

Consultation during Parental Leave

ACTU Claim: Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

- (i) Make information available in relation to any significant effect the change will have to the status or responsibility level of the position the employee held before commencing parental leave.
- (ii) Provide an opportunity for the employee to discuss any significant effect the change will have to the status or responsibility level of the position the employee held before commencing parental leave.

The employee shall take all reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding when the duration of parental leave to be taken, whether the employee intends to return to work on a part time basis or a full time basis.

The employee shall also notify the employer of changes of address or other contact details that would affect the employer's capacity to communicate.

Unpaid Emergency Leave

ACTU Claim:

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:

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 dependent is sick, gives birth or is injured or assaulted;
- (ii) To make arrangements for the provision of care for a dependent 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 dependent.
- (v) To deal with an incident which involves a child of the employee and which occurs unexpectedly in a person 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.

An employee must inform his or her employer of the reason for his [sic] absence as soon as reasonably practicable, and, where practical, for how long he/she expects to be absent.