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Part 1 Introduction

1. The Governments of Victoria, Queensland, New South Wales, Western Australia and Tasmania and the Australian Capital Territory and Northern Territory seek leave to intervene in the Work and Family Test Case 2004 in accordance with section 43 of the Federal *Workplace Relations Act 1996*.
2. The contentions of the States of Victoria, Queensland, New South Wales, Western Australia and Tasmania and the Australian Capital Territory and Northern Territory (the States and Territories) are in response to applications made by the Australian Council of Trade Unions (ACTU).
3. It is widely acknowledged that one of the biggest issues confronting Australian workers is how to achieve effective work and family balance. Work and family balance relates to the ability of both men and women to engage in paid employment opportunities and earn an adequate income, and at the same time meet their families' caring needs (adaptation of a definition by Russell and Bowman, 2000, p. 5).
4. With more diverse family structures and an ageing population, caring responsibilities are not only changing, but in many cases are intensifying as workers become responsible for the care and well being of not only children, but partners, parents, and other immediate family or household members. This has meant that a growing number of workers, especially female workers who assume primary responsibility for family caring, face pressure on a daily basis trying to reconcile their work and family responsibilities. If this situation is not addressed, it will have negative consequences for Australian businesses and the economy in the future.

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5. The States and Territories advocate that appropriate policy responses are required at the national and state level to assist workers with family responsibilities, and to deliver economic and social benefits across the Australian community.

6. The States and Territories welcome the opportunity afforded by this Test Case to address the issue of better work and family balance in the Australian industrial relations system.

7. The States and Territories contentions discuss:
 - the importance of better work and family balance for government, employers, employees and the wider community;
 - the position of the State and Territory Governments in response to the ACTU's applications;
 - the way in which the position of the States and Territories is consistent with the International Labour Organisation (ILO) Convention 156 concerning Equal Opportunities and Equal Treatment for Men and Women Workers - Workers with Family Responsibilities; the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); and the objects of the Federal *Workplace Relations Act 1996* and the Federal *Sex Discrimination Act 1975*;
 - the rationale underpinning the joint States and Territories position; and
 - the economic impact of the joint States and Territories position.

Part 2 The Importance of Work and Family Balance

8. The need for national and state policy responses directed at better work and family balance is being driven by demographic and labour force changes that have occurred in Australia over the past decade or so and the potential impact that these changes may have on future labour supply and economic growth.
9. Trends that are shaping the work and family balance agenda include:
 - changing family structures and working arrangements, with an on-going trend away from single-earner families towards dual-earner families and a sustained increase in lone parent employment;
 - child care arrangements;
 - an increase in female labour force participation, especially for women with children;
 - lower fertility rates;
 - ageing of the population and associated increase in aged care responsibilities; and
 - implications for future labour supply and labour force participation rates.

2.1 Changing Family Structures

10. The structure of Australian families and their working arrangements is far more diverse than twenty or even ten years ago. This has significant repercussions for workers in terms of the nature and extent of their caring responsibilities now and into the future.
11. In 2001, 82 per cent of Australians (i.e. 14.8 million people) lived with at least one other family member, forming 4.9 million families in Australia. Forty-seven per cent of all these families comprised couple families with

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children. Although this type of family is still the most prevalent in Australia, the number of couple families with children increased by only 3 per cent between 1986 and 2001. In contrast, couple families without children living with them increased by 33 per cent, while one parent families increased by 53 per cent (ABS, Australian Social Trends 2003, pp. 35-38). At the same time, the number of people living alone increased by 64 per cent, from 1 million in 1986 to 1.6 million in 2001 (ABS, Australian Social Trends 2003, pp. 35-38).

12. Although most families form around couple or single parent relationships, families other than couples or one parent families comprised 2 per cent of all families and were made up of mainly adult siblings living together. A small number of other single relatives were also part of couple or one parent families.

13. Given the changing nature of Australian families and households, families not only have caring responsibilities for dependent children, but are also responsible for the care of elderly, sick or disabled parents, partners, siblings or other family or household members. The nature and extent of these caring responsibilities affects not only whether people can engage in paid employment but also the nature of their engagement.

2.2 Changing Family Working Arrangements

14. Families seek to structure their work and caring arrangements in light of their economic and family circumstances, and this is where there have been major changes over recent decades. The traditional model of the male breadwinner family, that is a father working full-time and the mother at home caring for the family, is no longer the norm. Today families with children are adopting a variety of work and caring arrangements. They include two-parent families with two full-time earners, those with one full-time earner and one part-time earner (i.e. a one and a half earner model), those with a single full-time earner accompanied by a full-time

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carer, and one parent-families where the parent might work in a full-time or part-time capacity or provide full-time family care.

15. In the 1980s, the single full-time earner and full-time carer model reflected the working arrangements of the majority of Australian couples with children. However in 2001, only 28 per cent of couples with children opted for this arrangement, while around 43 per cent of all families with children under 15 years were couple families where both parents were employed (ABS, Australian Social Trends 2003, p. 41).
16. The ABS Census 2001 showed that the most common working arrangements for couple parents with children aged 0-4 years, was for the male parent to be working full-time, while the female parent was not in the labour force (36 per cent), followed by the female parent working part-time (26 per cent). There were only 23,446 couples (9 per cent), both working full-time with children in this age group.
17. However when families adopt the single full-time earner and a full-time carer model, this tends to be a temporary rather than permanent arrangement in response to the need to care for young children. For example, a 2001 OECD survey suggested a clear preference in OECD countries among couples with children under six to move further away from the single earner model towards the one full-time and one part-time earner model (OECD, Employment Outlook June 2001 cited by HM Treasury and the Department of Trade and Industry 2003, p.6).
18. For couples with children aged 5-12 years, the most common arrangement was for the male parent to be working full-time while the female parent worked part-time (31 per cent). This was followed by the female parent not being in the labour force (22 per cent). Seventeen per cent of couples with children aged 5-12 years were both working full-time.

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19. One-parent families increased between 1986 and 2001, from 499,300 to 762,600 families. The increase was mainly associated with increasing numbers of divorced and separated people. Lone parents are less likely to be in the labour force than couple families. In 2002, 30 per cent of lone fathers and 47 per cent of lone mothers were not in the labour force (Australian Social Trends, 2003).

20. Employed lone parents often work fewer hours than employed parents who have a partner. In 2002, approximately 38 per cent of employed lone parents worked less than 20 hours per week and 42 per cent worked 20 to 39 hours per week (ABS, Australian Social Trends, 2003). It is often a greater challenge for lone parents to participate in the labour market and at the same time find appropriate child care without the support of a partner.

2.3 Child Care Arrangements

21. In Australia the majority of couple families with children are responsible for the care of young children aged under 10. In 2001, 54 per cent of couple families with children had at least one child aged less than 10, while the percentage of couple families with children aged 15 and over was 29 per cent (ABS, Australian Social Trends, 2003, p. 37).

22. Obviously the caring needs for different aged children are not the same and have to be addressed by families in different ways. However the most intensive period of care is for children aged between 0 and 4 and figures indicate an increase in the number of pre-school age children in formal child care.

23. The Australian Government's 2002 Census of Child Care Services showed that an estimated 732,150 children attended Australian Government funded child care services, up by 27 per cent from the 577,500 children who attended such services in 1999 (Department of Family and Community Services, 2002 Census of Child Care Services, p.11).

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24. Approximately 86 per cent of children in Australian Government funded long day care services were under 5 years of age. Sixty-three per cent (i.e. 464,270 children) were in long day care in May 2002, an increase of 21 per cent since 1999 (Department of Family and Community Services, 2002 Census of Child Care Services, p.12).
25. ABS statistics also show that the percentage of all children aged under 3 in formal care was 25.2 per cent in 2002, up from 22.3 per cent in 1999. This compares with 36.9 per cent of children under 3 using informal care, down from 43 per cent in 1999. In contrast, the percentage of children aged 3 to 4 using formal care was 72.8 per cent in 2002, up from 65.7 per cent in 1999 (ABS, Australian Social Trends 2003, p.29).
26. However statistics reveal that most children in child care attend for less than 30 hours per week. For example, 79 per cent of children attending long day care centres were there for less 30 hours per week and 79 per cent of children attending family day care attended for less than 30 hours per week. Close to 60 per cent of children in long day care attended for less than 20 hours per week and 27 per cent attended for less than 10 hours per week. In family day care, 62 per cent of children attended for less than 20 hours and 33 per cent for less than 10 hours per week (Department of Family and Community Services, 2002 Census of Child Care Services, p.12).
27. ABS statistics reinforce that children's use of child care is usually less than 20 hours per week. The median weekly hours of formal and informal care received by children under 3 was 13 hours per week in 2002, up from 11 hours per week in 1999. In addition, 36.4 per cent of children aged 3 to 4 used informal childcare, down from 43.2 per cent. The median weekly hours of formal and informal care for these children was 16 hours per week, up from 14 hours per week in 1999 (ABS, Australian Social Trends, 2003, p.29).

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28. Overall figures suggest that while more pre-school aged children are accessing formal child care arrangements than in the past, there are still many children who are not. For example the ABS Child Care survey found that as at June 2002, 174,500 children were identified as requiring additional formal care (ABS, Child Care Australia, June 2002, p.6).
29. In addition most children in formal and informal child care settings are in such care for less than 20 hours per week. This means that families utilise other caring options for the rest of the week, which impacts on the way that they structure their working arrangements.
30. According to Thornthwaite, 60 per cent of workers with children under 5 have problems with child care arrangements due to the time that care is available; the costs of care; or breakdowns in child care arrangements when children are sick (Thornthwaite 2002, p. 37). Where families are unable to access satisfactory child care services, it is typically mothers who assume the responsibility for this care and adjust their labour market participation accordingly.
31. In 1999, just over half of all families with at least one parent employed and with children aged less than 12, reported using some form of flexible working arrangement to care for children. Flexible working hours were the most commonly used arrangement by these families, followed by permanent part-time work. However more women than men used flexible working arrangements to care for children. Where both parents were employed, 37.7 per cent of mothers used flexible working hours compared to 22.7 per cent of men; 34.3 per cent of mothers used part-time work compared to 2.1 per cent of fathers and 16.9 per cent of mothers worked from home compared to 9.6 per cent of fathers (ABS Australian Social Trends 2003, p. 43).
32. This information reveals that strong gender patterns are evident in the structuring of work and child caring commitments in Australian families. Men still spend longer hours in paid employment than women, leaving

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them with less time to spend with their families. In contrast women take on a greater proportion of child care than men and engage in part-time work.

33. To improve the options of both men and women in terms of time spent at work and time spent caring, working arrangements need to provide greater scope for all workers to meet their family responsibilities. Family-friendly working arrangements may facilitate greater participation by men in family caring and greater female participation in the labour market.

2.4 Female Participation in the Labour Market

34. The increasing prominence and importance of work and family issues can also be attributed to the trends and patterns of female participation in the labour market.
35. In contrast to a decline in men's labour force participation from 81 per cent in 1971 to 71 per cent in 2001, the female participation rate increased from 37 per cent in 1971 to 55 per cent in 2001 (ABS, Australian Social Trends, 2003). This is due to changing attitudes regarding female education and employment, and is also related to the creation of more opportunities for women to participate in paid work while raising a family (ABS, Australian Social Trends, 2003)
36. Women in couple relationships have accounted for much of the increase in female employment, as have women with dependent children. However the pattern of participation by women with dependent children differs substantially from that of men, as it is punctuated by periods of withdrawal from the labour market and part-time participation due to caring responsibilities. Therefore women tend to have lower labour force participation during the years that they are most likely to have very young children. The 2001 census data shows that for women in couple relationships with a youngest child under 5 years of age, the labour force

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participation rate was significantly lower than the average at 51.4 per cent. This rate rises dramatically to 69.7 per cent where the youngest child is 5 to 9 years old. Once the youngest child is 10 years or older, the increase in the participation rate tends to plateau. Where the youngest child is 10 to 14 years the participation rate is 76.0 per cent and for women with a youngest child 15 to 19 years it is only marginally higher at 77.8 per cent.

37. Notwithstanding this fact, women with children aged less than 5 years are more likely to be in the labour force than in the past, suggesting that mothers are returning to work sooner after the birth of their children than in the past (ABS, Australian Social Trends 2003, p. 41). However when they return to work they are more likely to be engaged in part-time rather than full-time employment due to their caring commitments.
38. Compared to mothers in couple relationships, lone mothers have substantially lower rates of employment.¹ Data from the 2001 census shows that the employment rate of lone mothers with a youngest child under 20 years old was 47.2 per cent compared to 61.6 per cent for couple mothers. This gap is greatest when the youngest child is young and decreases as the age of the youngest child increases. When the youngest child is between 0 and 4 years the employment rate for lone mothers and couple mothers was 29.7 per cent and 48.1, respectively. However, when the youngest child is aged 15 to 19 years, the difference is much smaller with employment rates of 68.0 and 75.2 per cent, respectively (Gray, M., Qu, L., De Vaus, D., and Millward, C. 2002).
39. In addition the proportion of working mothers who were lone parents has increased significantly in the past twenty years. For example, a total of 47.8 per cent of working mothers were lone parents in 2003 compared to

¹ We focus here on employment rates rather than participation rates because lone parents are much more likely to be looking for work and so be recorded as unemployed (thus distorting their participation rates) compared to couple parents who are less likely to look for work if they think none is available (that is, more likely to be discouraged workers and thus not in the labour force).

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32 per cent in 1983 (ABS Australian Social Trends 2003). Options for these women are far more limited when it comes to combining work and caring responsibilities and given financial imperatives full-time employment is the only option for many of these women.

40. Important issues for women workers, particularly for those with children under five, include access to affordable quality childcare and working arrangements that assist them to meet their caring and work commitments.
41. Better work and family balance strategies provide an important means of giving Australian women more opportunities to participate and remain in the labour market, while fulfilling their caring responsibilities.

2.5 Lower Fertility Rates

42. Between 1969 and 1979, the fertility rate declined from 2.9 to 1.9 babies per woman. This trend reflected a sharp decline in fertility rates of women in the 20-24 and 25-29 age groups. In the two decades since 1979, the fertility rate has decreased more slowly from 1.9 to 1.7 babies per woman. During this period the fertility rate of women under 30 years continued to decline, while the fertility rate of women aged over 30 increased. However, the increased fertility rate of women over 30 did not compensate for the decline in the fertility rate in younger age groups (ABS, Australian Social Trends, 2003). This means that many women are now having their first child later in life, with the consequence that they are having fewer children on average (RT Kinnaird and Associates, June 2002).
43. The declining fertility rate has been attributed to a number of economic and social factors, including the rising cost to women of withdrawing from the workforce to bear and raise children, relative to previous generations. Attitudes towards the role of women in society have

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significantly changed since the 1950s, and women are now more actively pursuing education and employment opportunities.

2.6 The Ageing of the Population and Aged Care Responsibilities

44. The low fertility rate means that the proportion of younger age groups in the population decreases and as a consequence the population becomes concentrated in the older age groups. This effect is intensified by increased life expectancy which has led to an increase in the average age of the Australian population. Mortality rates have fallen from 8.5 per one thousand people in 1971 to 6.7 per one thousand people in 2001 (Budget Paper Number 5, Intergenerational Report 2002-2003 p. 20).
45. In 2002, the proportion of the population aged 0 to 14 years was estimated at 20.3 per cent, while the proportion aged 65 and over was 12.7 per cent. Assuming the fertility rate declines from its current level of 1.73 to 1.6 in 2011 where it stays constant thereafter, it is projected that the proportion of the population aged 0 to 14 years will decline to 14.0 per cent in 2051, while the proportion aged 65 and over will increase to 27.1 per cent. In absolute terms, the population aged 0 to 14 years will decline by 7 per cent whilst the population aged 65 and over will increase more than 2.8 times over the next 5 decades (ABS, Population Projections Australia 2002 to 2101).
46. The ageing of the population means an increase in the dependency ratio, which is the number of children aged 0-14 years and persons aged 65 years and over per 100 persons of working age. An increasing dependency ratio indicates that the proportion of people of working age relative to the population of non-working age is decreasing. While Australia's dependency ratio has fallen from 53.5 to 49.1 over the past 20 years, in the next 50 years the dependency ratio is predicted to increase and reach 69.8 by 2051 (ABS, Population Projections Australia 2002 to 2101). The number of persons aged 65 and over per 100

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persons of working age (i.e. the aged dependency ratio) is projected to more than double, from 18.9 to 46.0.

47. The ageing of the population implies, among other things, an increase in the number of Australian workers providing care for elderly family members aged 65 and over, which will impact on their labour force participation.
48. The ABS Survey of Disability, Ageing and Carers 1998 identified 2.3 million carers in Australia, representing 13 per cent of people living in households (ABS, *Caring in the Community 2000*, p 4). These figures are consistent with government policy initiatives directed at supporting older people and people with disabilities to continue to live in the community rather than in institutional care facilities and given the ageing of the population, this pattern is expected to continue.
49. Women also assume most of the responsibility for caring for older or disabled family members. In 1998, women accounted for 56 per cent of all carers and an even greater proportion of females were primary carers. One in five carers were women aged 35 to 64, compared to 15 per cent of men (ABS, *Caring in the Community 2000*, p 4). This has implications for female labour force participation, attachment and earnings over time and means that policy responses are required to assist the emerging 'sandwich generation' of employees who face the challenge of caring for ageing family members and young children.

2.7 Labour Force Participation Rates and Future Labour Supply

50. The combined effect of a declining fertility rate and an ageing population has implications for future labour supply, and consequently, economic growth.
51. Over the next four decades the percentage of the population over 85 is expected to triple. At the same time, the proportion of the prime working

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age population, that is, those aged 15 to 64 is expected to fall (Budget Paper Number 5 Intergenerational Report 2002-2003). If this trend continues, labour force growth and labour supply rates will be adversely affected and Australia, like other OECD countries, may experience skill and labour shortages which will constrain future economic growth (Budget Paper Number 5, Intergenerational Report 2002-2003, p.31).

52. One strategy to help sustain Australia's labour supply is to increase the labour force participation of caregivers, who are mostly women. To do this, action needs to be taken to enable workers to maintain a long term attachment to the labour market, while still providing care for increasingly diverse families. While there are a range of factors that will influence a person's decision about whether or not to enter the workforce when they have caring responsibilities, work and family strategies are critical to this.
53. Work arrangements that help people balance their work and family commitments can play an important role in increasing people's ability to participate in the labour force.
54. International research has shown that where the most developed family leave and childcare arrangements exist, women's employment rates are higher. For example, the OECD Employment Outlook for June 2001 showed a strong correlation between a composite index of policies and practices that encourage work and family balance and the employment of women aged 30 to 34. Countries with the highest composite index recorded the highest employment rates for women between 30 and 34 years of age. Based on this composite index, the employment rate for women in Australia was just below 65 per cent, which was lower than the rates for women in the UK, Germany, the Netherlands, Sweden and Denmark (OECD, Employment Outlook, June 2001).
55. The capacity for work and family strategies to have a positive effect on labour force participation highlights the importance of the work and family balance in providing benefits across the spectrum – for employees

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and their families, for employers, and for the broader economy and society.

56. As outlined above, work and family initiatives can form part of wider strategies to increase labour force participation. In this sense, they provide broad economic benefits for business and the economy in terms of their future labour supply. Research shows that individual employers also benefit from work and family initiatives in terms of improved staff recruitment and retention, reduced absenteeism, and improved commitment to the organisation (Managing Work Life Balance, The Way Ahead Report on the Year 2004 Survey).
57. The benefits of work and family initiatives of course also apply directly to workers who can maintain their attachment to the workforce, and the families for whom they care. Working arrangements that enable parents to remain in the paid workforce provide positive economic, employment and social benefits for employees and their families. However while work can have many benefits for families, the way that people work can determine whether or not these benefits are maximised. Where employees lack the opportunity to access working arrangements that enable them to balance their work and family responsibilities, this may have a negative impact on them and their families. The State and Territories position in this Test Case is designed to address these issues.

Part 3 Action Required to Assist Workers with Family Responsibilities

58. Australia along with other developed countries faces the challenge of finding new strategies to help employees achieve a better balance between work and family responsibilities. A number of other countries such as Sweden, the Netherlands, Denmark and the United Kingdom have already responded to this challenge by introducing legislative or other measures to assist workers reconcile their work and family responsibilities.
59. For example in Sweden parents have generous maternity, parental and child rearing leave benefits and mothers with young children can work reduced hours in their current job. In the Netherlands the *Adjustment of Hours Act* has been introduced to allow employees to work reduced hours in their current job provided that it does not impose undue hardship on the employer. In Denmark employees also have access to generous parental leave entitlements, while in the United Kingdom employees have a right to request flexible working hours which employers must consider and not unreasonably refuse.
60. Better work and family balance is a priority for all States and Territories and each government has and continues to take action to improve work and family balance in their own jurisdiction. Attachment 1 provides details of the major initiatives in each State and Territory that have been implemented to assist workers with family responsibilities.
61. As major employers, the States and Territories have also implemented a range of family-friendly working conditions, which are outlined in Attachment 2.

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62. The expertise that the States and Territories have acquired in the area of work and family balance has guided the development of the position that is advocated in the Test Case.

**Part 4 The States and Territories' Position for a Better
Recognition of Work and Family Commitments in
the Australian Industrial Relations System**

63. Whether parents in Australia can effectively combine their work and care commitments largely depends on their access to family-friendly measures such as income support, taxation benefits, access to childcare and family-friendly employment conditions. While the federal government is responsible for income support, taxation and the funding of childcare, employment conditions are determined through the industrial relations system. And it is in this area where further action is required to provide working conditions that are conducive to employees who have family responsibilities.
64. As Alcorso has reported “the industrial relations system has been particularly important in workers’ access to work-family provisions in Australia, providing a vehicle for entitlements that in other countries are often delivered through dedicated parental rights legislation and/or social security” (Alcorso 2001 cited in Bittman et al, 2004, p. 25).
65. The States and Territories contend that the Australian industrial relations system needs to provide greater recognition of employees’ family and caring commitments through the adoption of an award safety net that enables employees to better balance their work and family responsibilities. However the position advocated by the States and Territories also acknowledges that the interests of employees and employers need to be balanced in terms of providing family-friendly leave and working arrangements through the award system.
66. Importantly, the States and Territories submit that this Test Case should not be used as a vehicle to erode award safety net provisions, nor to extend the spread of individual workplace agreements, as this could

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result in workers with family responsibilities suffering a diminution in employment conditions and protections, rather than improved access to family friendly working arrangements.

67. To provide practical assistance to workers with family responsibilities, the States and Territories submit that awards should provide:

1. An employee right to request and an employer obligation to consider and not unreasonably refuse an additional 52 weeks unpaid parental leave in relation to the birth or adoption of a child.
2. A right for both parents to take an unbroken period of up to 4 weeks unpaid simultaneous parental leave at the birth or placement of a child, plus an employee right to request and an employer obligation to consider and not unreasonably refuse an additional 4 weeks simultaneous unpaid parental leave.
3. An employee right to request and an employer obligation to consider and not unreasonably refuse, the employee working 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.
4. An employee right to request and an employer obligation to consider and not unreasonably refuse a variation in hours, times or the physical location of work to enable the employee to provide care and support for an immediate family or household member.
5. An employee right to request and an employer obligation to consider and not unreasonably refuse 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 better balance work and family responsibilities.

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6. An employee right to request and an employer obligation to consider and not unreasonably refuse a reasonable period of unpaid leave immediately following a period of paid annual leave, in order to assist employees to better balance work and family responsibilities.

7. In determining employee requests as outlined in points 1 to 6 , the States and Territories propose that employers should balance the needs of the business with the needs of the employee, considering the following factors:
 - the cost in accommodating the employee's request;
 - the capacity to reorganise work arrangements to accommodate the employee's request;
 - the impact on the delivery of customer service;
 - the particular circumstances of the employee, especially the nature of his/her caring need;
 - the impact on the employee and his/her dependents of the request not being granted.

8. Where an employer and employee cannot reach agreement in relation to an employee request as outlined in points 1 to 6, the States and Territories submit that the matter should be dealt with in accordance with the Dispute Resolution Procedure in the relevant award.

9. Periods of unpaid child rearing leave by agreement between the employer and employee, provided that the leave does not extend beyond the child reaching school age.

10. An employee right to a reasonable period of unpaid emergency leave where an employee has not otherwise applied for and been granted paid leave:

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- to provide assistance when an immediate family or household member is sick, gives birth or is injured or assaulted;
- to make arrangements for the provision of care for an immediate family or household member who is sick or injured;
- following the death of an immediate family or household member;
- where there has been a breakdown in usual care arrangements for an employee's immediate family or household member;
- to deal with an unexpected incident which involves a child of the employee.

11. A requirement for meaningful consultation between an employer and employee on parental leave, where a definite decision has been made to introduce significant change at the workplace, and where any significant matter will affect the employee's decision regarding the duration of parental leave and the employee's intention to return to work.

12. Where required, consequential amendments to facilitate the employment of replacement employees by employers, where an employee is on parental or child rearing leave.

68. Sections 8 and 9 outline the States and Territories' position in more detail, along with the rationale underpinning the position, while Attachment 3 details the specific States and Territories response to each of the ACTU's claims.

**Part 5 International Labour Obligations and Conventions
on Work and Family**

69. The States and Territories' position is consistent with ILO Convention (No.156) concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities which has been ratified by Australia.
70. Section 93A of the *Workplace Relations Act 1996* requires the Australian Industrial Relations Commission (AIRC) to take account of the principles in Convention 156 in particular those relating to:
- a) preventing discrimination against workers who have family responsibilities; or
 - b) helping workers to reconcile their employment and family responsibilities.
71. The States and Territories' position would give greater practical effect to the Articles of Convention 156 in Australia, especially Articles 3 and 7. Article 3 requires Members to make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination, and to the extent possible, without conflict between their employment and family responsibilities. Article 7 requires Members to take measures compatible with national conditions and possibilities, to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities.
72. ILO Recommendation 165, which expands upon ILO Convention 156, provides that a worker with family responsibilities should be able to obtain leave of absence in the case of illness of a dependent child or

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another member of the employee's immediate family who needs that worker's care and support. Although ILO Recommendation 165 is not binding on Australia, the States and Territories' position is consistent with the intent of this Recommendation.

73. The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) refers to the social significance of maternity and the role of both parents in families and in the upbringing of children. The Convention recognises that a change in the roles of men and women in the family and society is needed to achieve full equality between men and women.
74. The Convention specifies measures that need to be taken in a range of areas to eliminate discrimination against women. Article 11 2 (c) specifies that appropriate measures should be taken to eliminate discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work including: encouraging the provision of necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life.
75. The States and Territories' position is consistent with the principles of CEDAW and would give some effect to Article 11 through the operation of Australia's industrial relations system.

Part 6 The Federal Legislative Framework for Work and Family

76. The States and Territories' position is consistent with the objects of the *Workplace Relations Act 1996*, particularly section 3 (j) which aims to prevent and eliminate discrimination in employment on a number of grounds, including family responsibilities and section 3 (i) of the *Workplace Relations Act 1996* which aims to assist employees balance their work and family responsibilities through the development of mutually beneficial work practices with employers.
77. The States and Territories' position would discourage potential discrimination against employees with family responsibilities and would provide practical assistance to employees in terms of balancing their work and family commitments. By balancing business and employee interests, the States and Territories position would lead to mutually beneficial outcomes for all parties.
78. The States and Territories' position is also consistent with object 3 (a) of the Act which encourages the pursuit of high employment, improved living standards, low inflation and international competitiveness through higher productivity and a flexible and fair labour market. The States and Territories contend that by assisting workers with family responsibilities through the award system, business will be better placed to utilise the skills and experience of a wider pool of talent. In addition improved access to family friendly working arrangements is likely to improve employee satisfaction and lead to higher organisational productivity and competitiveness. The States and Territories position will also facilitate greater employee and organisational flexibility, and at the same time will provide for fairer working arrangements for employees with family responsibilities.

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79. The States and Territories' position would also give effect to object 3(d) of the *Workplace Relations Act 1996* by providing a foundation of minimum work and family standards through the award safety. In addition, the States and Territories position is consistent with the allowable matters specified in section 89 A (2) of the *Workplace Relations Act 1996*.
80. By providing work and family provisions that assist workers with family responsibilities the States and Territories position is also consistent with requirements of the Federal *Sex Discrimination Act 1984* on a number of grounds such as sex, marital status or pregnancy and family responsibilities with respect to dismissals. The States and Territories position is also consistent with anti-discrimination legislation in State and Territory jurisdictions which also proscribe discrimination in employment on the grounds of parental or carer status or family responsibilities.

Part 7 Federal Work and Family Standards

81. The current parental leave standard which is incorporated in Schedule 14 of the *Workplace Relations Act 1996* is for 52 weeks unpaid leave on a shared basis in relation to the birth or adoption of a child under 5 and one week's simultaneous unpaid parental leave at the time of birth (or 3 weeks at the time of the adoption of a child), with no provision for consultation between the employer and employee during periods of parental leave. An employee is entitled to the position that they held immediately before taking parental leave.
82. In addition under part 5 of Schedule 1 A of the *Workplace Relations Act 1996* employees with the agreement of the employer may work part-time in one or more periods at any time from the seventh week after the birth of a child up until the child's second birthday, or up until the second anniversary of the placement of a child in the case of adoption.
83. Current federal standards with respect to work and family were derived from the Maternity Leave Test Case 1979, the Adoption Leave Test Case 1985, the Parental Leave Test Case 1990 and the Personal/Carers Leave Test Case 1994 and 1995.
84. In 1994 and 1995 the Personal/Carers Leave Test Case decisions provided that employees may use up to a maximum of five days of their own personal (sick and bereavement leave) to care for a sick family or household member. Additional measures were also introduced into awards to provide for greater flexibility, such as the taking of up to 5 single days for caring purposes.
85. The States and Territories contend that in light of changing demographics, family structures and working models, it is timely to build upon the minimum standards established in previous Test Cases and

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the *Workplace Relations Act 1996* and to propose award standards which provide further assistance to workers with family responsibilities.

Part 8 Other Work and Family Provisions

86. Current work and family related award provisions are minimum standards and entitlements above this minimum may be reached through formal agreements or informally. In recent times some more progressive enterprise agreements have included work and family balance provisions such as: up to 14 weeks paid maternity leave, extended periods of unpaid parental or family leave, extended periods of parental leave, part-time work after parental leave, employee access to accrued personal leave for caring purposes, and the ability to purchase additional leave.
87. Australia's Background Report to the OECD Review of Family Friendly Policies reported that 42 per cent of federal agreements certified in 2000 and 2001 contained at least one family-friendly provision covering three quarters of employees who were subject to agreements (Commonwealth of Australia, August, 2002, p.69).
88. The most prevalent measures were those providing access to some form of paid leave for caring purposes and access to part-time work. However the type and extent of other family-friendly initiatives in agreements was limited.
89. For example:
- 28 per cent of employees through 7 per cent of federal agreements had access to regular part-time hours;
 - family/carer's leave was provided in 27 per cent of agreements with 19 per cent providing for access to other leave for caring purposes;
 - 9 per cent of agreements covering 23 per cent of employees provided unpaid parental leave, while only 2 per cent of agreements

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covering just 6 per cent of employees provided extended unpaid parental leave; and

- only 3 per cent of agreements included 48/52 career break provisions.

(Commonwealth of Australia, August 2002, p.69).

90. It must also be recognised that family-friendly provisions in some agreements may only reflect existing rather than improved standards in terms of work and family balance.
91. An examination of work and family measures in Queensland and federal enterprise agreements also revealed that only 24.3 per cent of federal enterprise agreements contained any reference to family friendly measures (ACIRRT, May 2002, p.9) .
92. Family friendly provisions are also variable across industries and enterprises. While 48.4 per cent of agreements in recreation and personal services contained a reference to family friendly measures, only 25 per cent of agreements in financial services, 25 per cent of agreements in communication, 17.2 per cent in transport and storage and 10.3 per cent in metal manufacturing did so (ACIRRT, May 2002,p.9).
93. It has been reported that "...the agreement making process whether collective or individual has not been conducive to the provision of work-family measures, including leave for family purposes" (Alcorso 2001 cited in Bittman et al 2004 p 28). Other researchers have also found that although agreement making is not the best way of delivering family-friendly measures (Whitehouse cited in Bittman et al, 2004, p. 29).
94. In addition, progressive family-friendly working arrangements may not be available to the employees who actually need them the most. Research has revealed differential access to work arrangements based on various employee characteristics, and that employees with the greatest care

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commitments had no increased probability of reporting being able to access these work practices (Gray and Tudball, 2002). The research also showed that there were relatively few workplaces where a high proportion of employees reported having access to family-friendly work practices.

95. The evidence of differential access to flexible work practices, based on employee characteristics, suggests that there should be greater focus on increasing the availability of family-friendly working practices to all employees who would benefit from access to these practices. The finding that employees with the lowest levels of education, job tenure and organisation-provided training are least likely to have access to family-friendly working practices means that for reasons of equity, policies need to pay particular attention to this group of employees (Gray and Tudball 2002).
96. Other research (based on the experiences of 527 full-time employees from 83 different organisations) identified the family, job and workplace characteristics of employees who use work-family benefits and found that employees with higher incomes made more use of the alternative work arrangements than employees with lower incomes. The research also found that the type of organisation and workplace structure was an important predictor, as employees in both the public sector and the non-profit sector were more than twice as likely as those in the private sector to use alternative work arrangements (Secret 2000).
97. Although recent research by the Business Council of Australia of its member companies reveals that many are introducing improved family-friendly measures (BCA, Balancing Work and Family, 2003, p.7), these employers are the largest companies in Australia and their practices do not reflect those in small and medium-sized companies, where an increasing proportion of the workforce is employed, and where family friendly arrangements are subject to local agreement rather than through the award system.

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98. The States and Territories contend that employees need a firmer basis for accessing working arrangements that will assist them to balance their work and family commitments. To provide more equitable access to and use of family-friendly working arrangements, improved provisions in the award safety net are required. This is explored in the following section.

**Part 9 Rationale Underpinning the State and Territories’
Position**

99. Section two demonstrated the importance of better work and family balance to Australia’s future economic and societal well being. The States and Territories contend that appropriate policy responses to improve work and family balance will lead to economic and social benefits for employees and their families, employers, the economy and the wider community. There is now an urgency for such responses in light of changes in family structures and the labour market, which mean that more Australians will experience the pressures involved in combining work and caring responsibilities.
100. The issue of work and family covers a number of policy dimensions and as such, a range of policy responses are required to assist workers with family responsibilities. Working arrangements determined through the industrial relations system must form a key component of the work and family balance policy framework.
101. The central issue to be addressed in this Test Case is what can be done through the industrial relations system and the award safety net to help employees better balance their work and family responsibilities.
102. The ACTU proposes a package of working arrangements to help employees balance their work and caring responsibilities and to manage transitions in and out of the workforce at different stages of family life such as pregnancy and birth, caring in early childhood, caring for school children, and caring for the aged or people with disabilities. A common theme is to provide an opportunity for employees to have time away from the workplace to fulfil their caring responsibilities but be able to maintain their attachment to the paid workforce through the use of unpaid leave, part-time work or altered working hours. A key issue is the basis on

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which these working arrangements are made available.

103. The States and Territories contend that improved wages and conditions should not be restricted to those employees who are best placed to bargain for them in negotiations with their employer. This point was made recently by a full bench of the Australian Industrial Relations Commission in its Safety Net Review 2004 decision, where it stated:

“...no one would suggest that all employees are capable of bargaining. Bargaining is not a practical possibility for employees who have no bargaining power. It is to be inferred from the statutory scheme that the award safety net should be adjusted with the interests of these employees in mind.”

104. Consistent with this view, the States and Territories contend that to improve work and family balance there is a need to move beyond the status quo, where work and family matters are left to bargaining at the enterprise level.
105. As discussed in section 7, family-friendly provisions have benefited mainly highly skilled employees in large enterprises or in public sector agencies. However enterprise bargaining has not secured access to more family-friendly work practices for the majority of employees.
106. Another concern is that when work and family provisions are available subject to local agreement between an employer and employee, this often places a burden on the individual employee to negotiate these arrangements, particularly if the employer is reluctant or unwilling to consider alternative or flexible work options. As a result, the employee may not be prepared or be able to negotiate these arrangements and may instead leave the workplace, or continue with less than satisfactory working arrangements.

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107. To enhance employees' access to family-friendly employment conditions, stronger award safety net provisions are required as proposed by the States and Territories.

108. The ACTU is seeking to make a number of working arrangements available as award entitlements or rights, with others available on the basis of an employee right to request, with an employer to not unreasonably refuse.

109. In developing a joint position, the States and Territories have made an assessment of how each working arrangement proposed by the ACTU should be made available, based on the nature of the entitlement, the acuteness of the caring need it seeks to address, the demands it would place on an employer to accommodate, as well as a consideration of how it compares with current standards.

110. Based on this assessment, the State and Territory Governments are supporting the following position in response to each element of the ACTU's claim:-

111. A right to the following entitlements:

- 4 weeks simultaneous unpaid parental leave;
- reasonable time off for unpaid emergency leave; and
- meaningful consultation while on parental leave.

112. An employee right to request the following entitlements, and an employer obligation to consider and not unreasonably refuse, with a specified list of factors for the employer to consider in determining an employee's request:

- extension of 12 months unpaid parental leave up to 24 months;
- extension of unpaid simultaneous parental leave from 4 weeks up to

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8 weeks;

- return to part-time work after parental leave;
- flexible work arrangements; and
- purchased leave and unpaid leave in conjunction with annual leave.

113. By agreement between the employee and employer:

- further periods of unpaid child rearing leave up until a child is school age.

114. The States and Territories contend that this is a balanced position that provides substantive support for working arrangements that assist workers to balance their work and family responsibilities, while taking into account the ability of employers to accommodate these arrangements.

115. The States and Territories' position supports some claims as 'rights' or 'entitlements,' where they deal with short-term acute caring needs such as reasonable time off for unpaid emergency leave and 4 weeks unpaid simultaneous parental leave. However the majority of the claims are supported by the States and Territories on the basis of an employee 'right to request' entitlement, with an obligation on the employer to consider such requests and not unreasonably refuse them. In the case of unpaid child rearing leave up until a child is school age, the States and Territories contend that this is best addressed by agreement between the employer and the employee.

116. The States and Territories contend that for the majority of the claims the 'right to request' model provides a viable middle ground between working arrangements that are subject to employer convenience and entitlements that provide automatic rights for employees. This model will help provide employees with greater access to a range of additional unpaid leave and flexible working arrangements to meet family

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commitments, while taking into account the ability of employers to accommodate these arrangements.

117. A similar 'employee right to request/employer obligation to consider and not unreasonably refuse' model was introduced in the United Kingdom in April 2003. The UK legislation gives eligible employees with children under six and employees with disabled children under 18, the right to request flexible work arrangements, including hours, times and place of work. Employers have a statutory duty to seriously consider such requests. The AIRC has used a similar approach to allow casual employees to request a conversion to permanent status.

118. Early survey results suggest the new provisions in the UK legislation have worked well for employees and employers. Although the UK legislation will not be officially reviewed until 2006, research by Lovell for the Chartered Institute of Personnel Development on the impact of the legislation six months after it commenced reveals that contrary to some alarmist predictions at the time, the legislation has not had a detrimental impact on business operations. In particular the Institute found that:

- 76 per cent of responding businesses reported that the impact of the legislation has been negligible and 90 per cent had no problems in complying with the new requirements, as the new right merely formalised existing arrangements for considering requests to work flexibly;
- 28 per cent of respondents reported an increase in the total number of requests received for flexible working;
- 65 per cent of respondents received requests for flexible working since April 2003;
- part-time work and coming in late or leaving early were the most frequently requested forms of flexible work;
- 62 per cent of respondents who received a request approved at least half of these requests;

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- 60 per cent did not believe that the requirement had tipped the balance too far in favour of working parents;
- 68 per cent believed that the opportunity to work flexibly had a positive effect on employees;
- the most common reasons for employers refusing requests related to an inability to reorganise the work among existing staff and a detrimental effect on the ability to meet customer demands, followed by detrimental impact on performance. However the burden of additional cost was the main ground for small employers refusing requests.

(Lovells, A parent's right to ask - A review of flexible working arrangements, October 2003).

119. The UK Department of Trade and Industry has also recently conducted a survey on the operation of the new laws. A total of 3485 employees were surveyed with a response rate of 65 per cent. Key findings from its April 2004 survey include:

- Around 13 per cent of all employees reported requesting flexible work arrangements since April 2003, most commonly requesting to work part-time (38 per cent) or flexitime (25 per cent). Female employees were more likely to request to flexible work arrangements than male employees (16 and 10 per cent respectively). A greater percentage of female employees requested part-time work than their male colleagues (41 per cent compared with 31 per cent).
- Meeting childcare needs was the most common reason given by employees for requesting to work flexibly (43 per cent), particularly women (58 per cent).
- The large majority (86 per cent) of flexible working requests made since April 2003 were either fully or partly accepted by employers. This is a marked improvement on the employer acceptance rate of 77 per cent immediately prior to the new employment rights. Only 11 per cent of flexible working requests made since April 2003 were

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declined. This represents a near halving of the rate of refusal by employers compared with the previous two years, suggesting the new employment laws have significantly increased employers' willingness to consider seriously employee requests.

(Palmer, 2004)

120. The States and Territories contend that the right to request model should incorporate key factors that employers would be required to take into account in determining employee requests, such as:

- the cost in accommodating the work arrangements;
- the capacity to reorganise work arrangements to accommodate the employee's request;
- the impact on the delivery of customer service;
- the particular circumstances of the employee, especially the nature of his/her caring need; and
- the impact on the employee and his/her dependents of the request not being granted.

121. The proposed business factors are consistent with the most common grounds that employers in the UK have reported as reasons why they have been unable to accommodate employee requests for varied working arrangements.

122. In some respects, the list of factors proposed by the States and Territories adapts the approach in the UK legislation which gives employers a right to reject an employee request on the following business grounds: burden of additional costs; detrimental effect on the ability to meet customer demand; inability to re-organise work among existing staff; detrimental impact on quality; detrimental impact on performance; insufficiency of work during the period the employee proposes to work; planned structural changes; and other grounds as prescribed by regulation.

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123. However the list of the factors used in the UK focus solely on the commercial considerations of the employer. The States and Territories contend that a more balanced approach needs to be taken, and that the factors for determining employee requests should therefore take account of both employer and employee needs.
124. Whether an employer has acted reasonably or not will depend on the individual circumstances of the business and the individual circumstances of the employee. The States and Territories propose that if a grievance arises in relation to an employee request for varied leave or working arrangements, it would be addressed in accordance with award dispute resolution procedures.
125. The following sections provide further detail on each element of the State and Territories' position.

Part 10 Elements of the States and Territories' Position

10.1 Rights

A right to 4 weeks simultaneous unpaid leave at birth or placement of a child and a right to request an additional 4 weeks simultaneous unpaid leave

126. The States and Territories propose that employees have a right to 4 weeks concurrent leave at the time of the birth or adoption of their child. This provision would quadruple the existing one week entitlement to concurrent leave at the time of the birth of a child and would provide an additional week's concurrent leave for employees adopting a child. The employee would then have a right to request an additional 4 weeks unpaid concurrent leave, up to a total of eight weeks.

127. This is considered to be a balanced position that provides an entitlement of four weeks unpaid leave at this particularly intense period of caring. It then allows the option of a further four weeks based on an assessment of employer and employee needs.

128. An increased period of simultaneous leave up to eight weeks would provide greater encouragement and opportunity for both parents to share fully in caring for their child in the critical period immediately following birth. It also reflects major changes in community views about parenting over the last 30 years or more with the expectation that fathers will want to be more involved than was previously the case. The additional concurrent leave is also particularly important for the well-being of the mother during this period.

129. Support for a greater period of simultaneous leave provides an appropriate recognition of the importance of this period in the lives of both parents and the needs of their newborn child.

Right to Unpaid Emergency Leave

130. Research indicates that many parents have difficulty in reconciling their work and family commitments when childcare arrangements breakdown for a host of reasons, but particularly when emergency situations arise (Thornthwaite 2002). Given the unexpected timing, nature and gravity of emergency situations, the States and Territories contend that a reasonable period of unpaid leave should be available to all employees to take action to deal with emergency situations, where paid leave has not otherwise been applied for or been granted.

131. It is proposed that this form of unpaid leave be available in the following circumstances:

- to provide assistance on an occasion when an immediate family or household member is sick, gives birth or is injured or assaulted;
- to make arrangements for the provision of care for a family or household member who is sick or injured;
- in consequence of the death of an immediate family or household member;
- where there has been a breakdown in the usual care arrangements for an employee's immediate family or household member; or
- to deal with an incident which involves a child of the employee and which occurs unexpectedly in a period during which an educational establishment which the child attends is responsible for the child.

132. The States and Territories also contend that an employee taking such emergency leave must inform his/her employer of the reason for his/her absence as soon as reasonably practicable and of the length of the expected absence. If required by the employer, upon returning to work the employee shall also provide evidence (such as a medical certificate, statutory declaration or other evidence) of the emergency circumstances.

133. The States and Territories do not believe that it is necessary to specify the amount time off that is reasonable, as this will vary according to the circumstances of the emergency. A reasonable period of leave will depend on the time necessary to help the employee address the emergency and to organise appropriate care arrangements. In addition no limit is proposed on the number of times that an employee can access this form of unpaid leave as the leave relates to genuine emergency situations, which may vary in number depending on the employee's circumstances.
134. A similar right to time off for dependants exists in the United Kingdom under section 57A of the *Employment Rights Act 1996* as amended by the *Employment Relations Act 1999*. This right also allows all employees to take reasonable time off work to deal with certain unexpected or sudden emergencies and to make any necessary longer term arrangements (Department of Trade and Industry, Time Off for Dependants - A guide for employers and employees).

Right to be consulted during parental leave

135. The States and Territories support an award clause that would require employers to consult with employees on parental leave regarding changes to the status, nature or responsibility levels of, or potential redundancy related to, the position they held before commencing the leave.
136. It would be appropriate to have a specific requirement in awards that recognises the importance of consulting with employees who are on parental leave. It would be expected that many employers would already comply with such a requirement as part of good work and management practices. There would be negligible cost associated with the proposal, only the cost of maintaining contact with the employee while they are on leave from the workplace.

10.2 Right to Request

Right to request up to 52 weeks additional unpaid parental leave

137. Providing new mothers with sufficient leave after childbirth appears to play an important role in maintaining female attachment to the labour market. Hofferth and Curtin (2003) examined the association between the availability of unpaid maternity leave and women's return to work. The study showed that women who had access to unpaid job-protected leave were more likely to remain with the same employer and return to work sooner after childbirth than those who did not have access to such a leave provision.
138. A right to request a period of up to 24 months unpaid parental leave would provide employees with more caring options over a longer period of time and would provide greater opportunity for fathers to avail themselves of parental leave during the first two years of their child's life if they so desired. Providing access to an additional 52 weeks unpaid parental leave through a right to request provision would assist some parents who because of their economic and family circumstances require or prefer additional parental leave after the birth of their child.
139. Based on ABS Career Experience Data, more women than men take longer periods of leave after the birth of their child (ABS, Career Experience, November 2002). As such, more women than men would be likely to request an additional 52 weeks unpaid parental leave
140. The ABS Career Experience data also shows that close to 6.6 per cent of female employees took less than 6 weeks off after the birth of their youngest child, 11.9 per cent took 6 weeks to 3 months, 50.8 per cent took 3 months to one year and 24.5 per cent took one year or more. Based on these statistics, up to a quarter of female employees having a

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child may request more than one year off. However due to financial imperatives it is unlikely that this percentage of women would request another 52 weeks unpaid parental leave.

141. A right to request additional unpaid parental leave would help mothers to maintain their attachment to the paid workforce, rather than force them to leave their existing job and then look for another job two years down the track.

142. The right to request model would require employers to consider employee requests for additional unpaid parental leave taking account of not only the employee's circumstances, but also the potential impact of the request on business operations. The list of factors proposed by the States and Territories would ensure that both employee and employer needs were taken into account in determining employee requests for additional unpaid parental leave.

A right to request part-time work after parental leave up until a child is school aged

143. The option of part-time work is a central ingredient in the mix of responses required to help employees balance their work and family responsibilities and to maintain their attachment to the paid workforce. For many families, it would be of more practical benefit than extra unpaid leave. The importance of part-time work has been recognised by both industrial and anti-discrimination tribunals across Australia that have found employers have an obligation in some circumstances to implement part-time or flexible work options for employees with family responsibilities. For example the decision in *Mayer v ANSTO* demonstrated that employers have an obligation under anti-discrimination legislation to allow employees to return to work on a part-time basis after parental leave to accommodate family responsibilities (*Mayer v ANSTO* (2003) FMCA 209, 6 August 2003).

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144. Although many full-time mothers prefer part-time work, limited access to part-time work arrangements means some women decide to leave the workforce at the end of their parental leave, rather than having to return to work on a full-time basis.
145. A right to request part-time work provision may also increase opportunities for quality part-time work in organisations that have not traditionally provided such arrangements. For instance, Gray and Tudball (2002) investigated the accessibility of family-friendly work practices in Australian organisations and found that in only 34 per cent of workplaces did the majority of employees (60 per cent and over) have access to this permanent part-time work if needed. In the remaining 66 per cent of the workplaces, only half or less of the employees could access this arrangement if needed.
146. A right to request part-time work would help mothers with the transition back to paid work. Rather than having to choose between either full-time caring responsibilities or full-time work, they could choose to balance the two and maintain their attachment to the paid workforce. Providing this option until a child reaches school age would be of ongoing benefit in balancing work and family, and could lead to business benefits in terms of increased staff retention, and increased workforce participation.
147. The right to request model provides a stronger onus on employers to consider such requests, while recognising the need to consider the potential impact on business operations. The list of factors proposed by the States and Territories will help ensure that employer and employee needs are taken into account in determining employee requests for part-time work.

A right to request a variation in working hours, times or physical location of work

148. There is currently no general entitlement for employees to have access

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to flexible working arrangements to meet their caring responsibilities. Access to such arrangements is generally subject to the matters being negotiated and included in agreements or through other informal arrangements agreed between employer and employee. Some awards may provide for an employee, with the consent of their employer, to work “make-up” time, where the employee takes time off during their ordinary hours and works these hours at a later time.

149. Flexibility in working arrangements, not only in terms of leave options, but also hours, times and location of work, is a central strategy for helping to balance work and family responsibilities and providing employees with some degree of control over their working arrangements. This recognises that, inherently, it will be more important for an employee to have time off at certain times of the day, week or year than others, depending on their individual circumstances. Employers who unreasonably refuse flexible working arrangements may also be found to be discriminating against persons with parental or family responsibilities and be in breach of anti-discrimination law.
150. From an employer perspective, concern could be expressed about the possible cost or practicality of offering such arrangements in some instances. However employee access to flexible working arrangements such as flexible working hours is equally important, especially for parents of pre-school or school age children whose hours of work do not coincide with the hours of operation of schools or child care centres.
151. Research by Gray and Tudball (2002) indicates that managers and professionals are most likely to have control over working hours. In 44 per cent of workplaces only half or less of the employees reported that they had control over start and finish times. In only 6 per cent of workplaces all employees reported that they had control over their start and finish times.
152. The States and Territories therefore support an employee right to

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request flexible working arrangements, with the employer obliged to consider the request and not unreasonably refuse it. The list of factors proposed by the States and Territories provide appropriate recognition of the needs of employers and employees in determining employee requests for flexible work arrangements in terms of hours, times and place of work.

A right to request up to 6 weeks unpaid leave per annum or up to 6 weeks purchased leave per annum to assist employees balance their work and family responsibilities for caring

and

A right to request a reasonable period unpaid leave immediately following a period of paid annual leave to assist employees balance their work and family responsibilities

153. The ability to request additional periods of leave in the form of either unpaid or purchased leave would be of benefit to families with school aged children or with elderly or infirm family members. The right to request this type of additional leave would be particularly helpful to families during school holiday periods or when other family members require respite care.
154. The experience of many public service organisations that have introduced purchased leave arrangements is that the take-up of purchased leave is not extensive. However the reasons for this primarily relate to organisational and cultural barriers.
155. The States and Territories support these types of leave arrangements as an employee right to request, which can then be determined on the basis of both employee and business needs.

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Unpaid child rearing leave up until a child is school age by agreement

156. The States and Territories recognise that employee access to further periods of unpaid child rearing leave up until a child is school age may be difficult for a number of businesses to accommodate given that an employee could potentially take up to 5 years off after the birth of each child.
157. Issues related to replacing employees for this period of time and to retraining the employee when they return from such leave could be problematic for some organisations. However it is unlikely that a significant proportion of employees would take extended periods of unpaid child rearing leave in light of financial and employment considerations.
158. Therefore the States and Territories propose that further periods of unpaid child rearing leave up until a child is school age be by agreement between the employer and employee, rather than an employee right to request and an employer obligation to consider and not unreasonably refuse.

Part 11 Economic Impact

159. The States and Territories contend that their position will have minimal cost implications for business, as no new paid leave entitlements are being proposed.
160. Some indirect administrative costs may be entailed in accommodating some of the unpaid leave and varied work arrangements such as recruiting replacement employees if an employee requests extended parental leave up to 104 weeks in duration. However this cost may already be incurred if an employer had already hired a replacement employee the initial 52 weeks of parental leave. The return on the costs of training a replacement employee are also spread over 2 years, rather than one year.
161. However the State and Territories recognise that some businesses may have less scope than others to make adjustments to provide employees with extended periods of leave or altered working arrangements. For this reason, the States and Territories propose 'right to request' provisions that are to be determined in light of factors that include business considerations, such as the cost of accommodating an employee's request, as well as the needs of employees.
162. Any potential cost impact of the States and Territories position should also be assessed against the benefits that can result from improving work and family balance. Cost offsets are likely because organisations are expected to benefit from better staff morale, lower absenteeism, and increased ability to attract and retain staff.
163. Research shows that business can reap improved productivity and savings as a result of family-friendly initiatives. The Department of Family and Community Services Research Paper Number 22 reports on

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numerous research findings which have found that family-friendly initiatives enable employers to retain highly skilled and experienced staff, lead to improved employee satisfaction and organisational commitment and to lower recruitment and retraining costs, as a result of lower labour turnover (Bittman et al 2004, pp10 -12).

164. The annual Managing Work/Life Balance Report -The Way Ahead Report on the Year 2004 Survey, reinforces these findings, showing that work-life issues have contributed to the bottom line through reduced turnover by an average of 4.5 per cent; reduced absenteeism by an average of 3.5 per cent; an increased return rate from parental leave by an average of 24 per cent; and increased employee satisfaction by an average of 11 per cent (p. 6).
165. Work and family initiatives can also have broader economic and social benefits, particularly in terms of improved labour force participation. By addressing the needs of workers with caring responsibilities at significant times of caring need, and enabling them to maintain their attachment to the paid workforce, the States and Territories proposal offers a reasonable and practical approach to help maximise labor market participation rates.
166. In turn, this will also help improve the longer term employment prospects and economic outcomes, especially for women in Australia. Participation in the labour market with adequate wages and conditions continues to be a key factor in alleviating poverty and maintaining and improving living standards.
167. Finally, any cost impact associated with work and family provisions should also be viewed in light of the economic and social costs of current working arrangements that inhibit or fail to address work and family balance. These costs are not easily quantified, but it can be argued, that at present the costs of 'family-unfriendly' working arrangements are mainly being borne by employees and their families rather than

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businesses. The ability to transfer these costs to the community creates a significant disincentive for some organisations to recognise and manage work and family balance. As such, any costs associated with the States and Territories position could be viewed as a necessary investment to improve work and family balance.

Part 12 Conclusion

168. Reconciling work and family commitments is an issue that affects all Australians at some stage in their life. As a consequence, it also affects all businesses, the economy and the broader community. While work and family has always been an important policy issue, major demographic and labour market changes mean that more people than ever before are facing the pressure of juggling work and family responsibilities.
169. There are more couple families where both parents work, and there are more sole parent families. These families face pressure everyday working and caring for their children, many of whom are young children. At the same time there are increasing numbers of people who have elder care responsibilities, as well as, or instead of child care responsibilities. However as women typically assume the primary responsibility for caring, they experience significant difficulty and disadvantage in terms of combining work and family commitments.
170. It is no longer possible to marginalise caring responsibilities and to ignore the fact that the majority of employees have family responsibilities. Appropriate policy responses are required urgently to assist these employees reconcile their work and family commitments. Work and family strategies will not only assist workers and their families, but will deliver significant economic and social benefits, by increasing labour market participation rates and the overall labour supply. At an organisational level, work and family balance initiatives will improve staff retention and attendance and as such reduce costs. They will also contribute to improved organisational productivity and competitiveness.
171. For these reasons better work and family balance is high on the agenda of all States and Territories and they have implemented a range of

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initiatives to assist workers with family responsibilities in their own jurisdictions.

172. From a national perspective the States and Territories contend that the Australian industrial relations system should provide for a better recognition of work and family commitments and that it is necessary to build upon existing award standards with respect to work and family provisions. In addition, there is a need to move beyond the status quo where work and family matters is the subject of negotiation between the employer and employee at the workplace level.

173. The States and Territories propose that the award safety net set the parameters for flexible leave and work arrangements to assist workers with family responsibilities. In this way employee access to better work and family balance arrangements will be maximised.

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Attachments

1. Work and Family Initiatives in States and Territories
2. States and Territories Public Service Work and Family Standards
3. States and Territories' Position – Comparison with ACTU's Claims

Attachment 1

WORK AND FAMILY TEST CASE STATE AND TERRITORY GOVERNMENT INITIATIVES

For all States and Territories better work and family balance is a priority and each government is taking action to alleviate the pressures faced by employees in meeting their work and family commitments. This attachment outlines the major initiatives being introduced by each government to assist workers with family responsibilities.

Victoria

In *Growing Victoria Together*, the Victorian Government's vision for the future of Victoria, the Victorian Government identified building cohesive communities and reducing inequalities as one of ten strategic goals of importance to Victoria's future. To help achieve this goal, the Government has nominated several priority actions, including the need to encourage employers, workers and families to better balance their work and family responsibilities.

In 2003 the Victorian Government committed \$2 million over four years to be directed to:

- working in partnership with employers to fund pilot projects;
- extending successful initiatives to other businesses through promotional activities including publications, seminars and case studies;
- funding research; and
- supporting work and family balance in the public sector.

To implement this commitment a Work and Family Team has been established in Industrial Relations Victoria.

In November 2003 the Victorian Government launched the *Action Agenda for Work and Family Balance* (Victorian Government, 2003), which outlines action to be taken by the Victorian Government over the next two years to promote the adoption of family friendly policies and practices in Victorian workplaces.

The Victorian Government's Workplace Excellence Awards provide recognition for innovative work and family practices.

Queensland

The Queensland Government recognises the complex interplay between work and family lives and has made a number of commitments aimed at helping Queenslanders balance work and family, including the establishment of a Work and Family Unit, a Ministerial Taskforce on Work and Family, research projects on work and family issues, and the introduction of a work and family legislative package for casual employees in 2001.

In September 2003, the Queensland government launched the *Agenda for Women and Girls 2003-2008*. The Agenda's directions statement has adopted a number of work and family initiatives which form the *Balanced Work, Family and Lifestyles Strategy*. This strategy was developed by the Department of Industrial Relations (DIR) in collaboration with the Office for Women.

Section 3(e) of the *Industrial Relations Act 1999* provides that 'helping balance work and family life' is one of the objectives of the Act.

Northern Territory

The Northern Territory Government's *Work Life Balance Policy* for the Northern Territory Public Sector is expected to be presented to Cabinet in late May 2004. The Policy reaffirms the Northern Territory Government's commitment to the development of a responsive, flexible public sector and addresses the challenges of balancing work and personal lives. The Policy is supported by the "*Implementing Work Life Balance in the NTPS, 2004-2006*" action plan to ensure a coordinated sector-wide approach for implementing work life balance initiatives.

The Government's *Remote Workforce Development Strategy 2003-2006*, supported by funding of \$1M per annum, also includes initiatives which support work life balance for rural and remote employees.

A range of work practices such as flexible working hours, part time work and job sharing are currently available for Northern Territory public sector employees, by agreement. Employees may also access a range of leave provisions to accommodate caring responsibilities. A series of further work life balance initiatives are currently under consideration, eg. purchased leave. To date, individual arrangements for employees have been approved on a case by case basis to meet specific needs.

In October 2002, the Northern Territory Public Sector was the first jurisdiction to improve paid maternity leave provisions by increasing the entitlement to 14 weeks.

Western Australia

In 2001 the Western Australian Government reaffirmed its commitment to helping working men and women to achieve an improved quality of life and a balance between their work and personal lives. The Government also highlighted its commitment to promote and implement family friendly work policies to assist employees to achieve a balance between work and home and promote workplace practices that support women's right to choose to breastfeed at work. (*Industrial Relations and Better Opportunities for Women Policy Statement*)

The WA Department of Consumer and Employment Protection actively promotes work and family initiatives and family friendly work practices throughout the public and private sector in enterprise bargaining agreements and through seminars, publications and website information papers.

The Government has developed a comprehensive Caring for Carers Policy that seeks to address the needs of carers. The Government is committed to working with carer's organisations and employer and employee peak organisations to develop and implement carer friendly employment policies

and practices to enable carers to continue in paid employment and fund a range of initiatives to provide more formal and practical recognition of carers and the vital role they play. (*Caring for Carers Policy Statement*)

In 2004, the Government commissioned a Labour Relations Benchmarking project to examine indicators of performance of the Western Australian labour market. As part of this project a Work Life Balance survey of a cross-section of Western Australians of working age is being conducted.

Other initiatives include the *Western Australian Work and Family Award 2004*; the development of a new *Work Life Balance Strategy* to take the work life initiative into the future; and research about new and innovative work practices to assist employees with family responsibilities.

Family friendly provisions are also found in legislation:

- the *Equal Opportunity Act 1984* prohibits, among other things, discrimination on the grounds of family responsibility and pregnancy in employment; and
- the *Minimum Conditions of Employment Act 1993* contains a number of family friendly leave entitlements for employees.

ACT

The ACT Government provides a range of family friendly employment conditions, including:

- paid maternity leave of 14 weeks;
- access to regular part-time employment for a period up to two years on return from maternity leave;
- an entitlement to annual leave and long service leave at half pay in conjunction with maternity leave;
- 14 weeks leave for the primary care giver of a new born or adopted child;
- home-based work arrangements; and
- reimbursement of certain family care costs associated with additional care arrangements for employees who have to work outside their regular pattern of work.

A proposed payroll tax exemption was included in the 2004/05 ACT Budget for private sector employees who access paid maternity, primary care-giver and adoption leave. This includes full time and part time employees and would be available for a maximum of 14 weeks. Subject to the passage of legislation, the exemption will commence on 1 July 2005, and will apply while employees are on leave.

The Canberra Plan, launched on 11 March 2004, commits the ACT government to promoting family-friendly work solutions. The Economic White Paper, part of the Canberra Plan, also included a commitment for the Government to undertake a feasibility study of shared work-based childcare for ACT businesses. This project will commence in 2004/05.

Tasmania

One of the economic goals of the *Tasmania Together* project is to increase job and meaningful work opportunities in Tasmania. An indicator of measuring success against a standard of increasing the number of secure, flexible and well-paid jobs is the proportion of employees with flexible leave options. Flexible leave options are defined as “options which provide employees with flexibility as to the structuring of working hours and leave arrangements particularly to meet the needs of those with family responsibilities”. Targets for achieving this particular goal are to be established by 2005.

New South Wales

The NSW Work and Family Taskforce and strategy were established in February 1996, in recognition of the need for a co-ordinated approach across the NSW Government, community services and workplaces to work and family issues.

In 1999 the *Working Families, Working Futures* strategy produced a range of initiatives on work and family including a maternity rights awareness campaign, publications on flexible work practices, and seminar and training programs. *Making it Work*, the NSW 2001-2003 strategy, focused on practical and affordable ways to combine work and family responsibilities and family commitments to meet the needs of both employers and employees.

A range of publications help management and employees deal with work and family issues. The recent development of a dedicated NSW government Work and Family website provides information for workers and employers to assist them develop solutions to work and family balance issues.

The landmark *Equal Remuneration and Other Conditions Principle* was established in June 2000, with subsequent pay increases to librarians and archive workers to redress the gender based undervaluation of their wages.

Legislative reforms in the area of work and family:

- The *Industrial Relations Act 1996* provides protection for workers with family responsibilities. It contains entitlements to maternity, paternity and adoption leave, outlaws all forms of discrimination in awards and enterprise agreements, and promotes pay equity;
- the *Anti-Discrimination Amendment (Carers' Responsibilities) Act 2000* makes it unlawful to discriminate against workers on the basis of caring responsibilities. This acknowledges the fact that many carers, particularly women, are unfairly disadvantaged in the workplace as they try to juggle the dual tensions between paid work and caring responsibilities;
- casual employees have access to 12 months maternity, paternity and adoption leave; and
- increased access to leave entitlements for parents who adopt children.

The NSW Government has supported both employers and employees in their move towards creating innovative and flexible workplace

WORK AND FAMILY TEST CASE
STATES AND TERRITORIES PUBLIC SERVICE WORK AND FAMILY STANDARDS

May 2004

This table provides a summary of specific entitlements that are currently available to assist public service employees in each State and Territory in relation to their work and family balance, against each of the ACTU claims. Not all of these provisions are available to other public sector employees in each State or Territory.

ACTU	NSW	VICTORIA	QUEENSLAND	WESTERN AUSTRALIA	TASMANIA	NORTHERN TERRITORY	AUST CAPITAL TERRITORY
Part time provisions upon a return to work from parental leave	Department heads may grant leave without pay, including part-time leave without pay, if there is good and sufficient reason.	If agreed between employer and employee, return to work can be on a part time employment (PTE) basis up until the commencement of the child's schooling. If requested by an employee, the employer cannot unreasonably withhold agreement.	Section 2.6.1 of the Family Leave Award - QPS provides that a female employee who is pregnant and an employee who is the parent of a child may apply for part-time work. If the employee is the natural parent the application must be made before the child's 2 nd birthday, and if the employee is the adoptive parent before the child's second anniversary of placement. An application must be approved by the chief executive who may reject or approve the application.	The Public Service Award now provides that public service employees may return to work on a part-time basis after parental leave in accordance with the part time provisions in the award. Subject to the employer's approval, the employee may revert to full time work within 2 years of returning to work. Nothing prevents the employee from continuing as a part-time employee.	Agencies are encouraged to implement family friendly conditions including access to part-time work. Employees may elect to work part-time because of pregnancy, but on a return to work following birth the employer must offer the employee her pre part-time work arrangements.	Part-time work arrangements may be implemented where agreed between an employer and employee. Industrial Agreement provides that an employer cannot convert an employee to part-time without the employee's consent and notice to the relevant union.	Automatic right to work part time for a period up to the child's age of 2 years. Can also request to work part time at any time. Can apply for part time work whether or not pregnancy an issue.
Right to request a variation in the hours, time and place of work	Departmental discretion to vary staff member's hours of attendance because of transport, urgent personal reasons, community or family reasons. Flexible working hour schemes are available to most public service employees although access is variable	A range of flexible work options are available with agreement of employer: part-time, flexi time, compressed hours, work from home, purchased leave. These are not specific to parental leave/return to work provisions or caring responsibilities (apart from part time following	No specific comparable provision. However, section 3.5 of the Family Leave Award – QPS provides that an employee may elect, with the consent of their employer, to work “make-up time”, under which the employee takes time off ordinary hours and work those hours at a later time during the spread of ordinary hours provided in the parent	No specific comparable provision, however the award allows the employer to approve flexitime arrangements where employees can choose their own starting and finishing times within a prescribed range, subject to approval of the supervisor and operational needs.	No specific provisions	Industrial Agreement provides for flexible work arrangements, including work hours, rosters and flexitime, which may be implemented by agreement between an employer and employee, with involvement of the relevant	No provision, but variances to core hours can be agreed between employee and manager.

ACTU	NSW	VICTORIA	QUEENSLAND	WESTERN AUSTRALIA	TASMANIA	NORTHERN TERRITORY	AUST CAPITAL TERRITORY
	depending on operational requirements.	maternity leave).	awards, at ordinary rates. In addition, section 6.1.3 (b) of the Queensland Public Service Award – State 2003 provides that the ordinary starting and finishing times of various groups of employees or individual employees may be staggered, provided there is agreement between the employer and the majority of employees concerned.	<p>An employee may apply for up to 2 days flexi-leave in a 4 week settlement period if sufficient hours have been accrued.</p> <p>Employees generally may request to change their hours to work on a part-time basis, their time of work or roster, subject to their employer’s approval; and place of work subject to a suitable job being available.</p> <p>The new proposed agreement will allow for the banking of an additional 37.5 hours, which can be used as needed, subject to the prior approval of the employer.</p>		union. An employee may request to change their place of work subject to work requirements and a suitable job being available.	
Unpaid leave taken in conjunction with annual leave	Short term LWOP is available at discretion of Department Head subject to operational requirements.	An employee may be granted leave without pay by the employer for any purpose.	The Ministerial Directive on Special Leave without Salary (10/01) provides that the chief executive may grant special leave without salary to an officer for any purpose.	The award provides that employers may approve a public service employee taking leave without pay for any period subject to the conditions that the	Head of Agency may grant leave without pay, or on reduced pay, for a period not exceeding three years and which may be	An employer may approve an employee taking leave without pay for any period subject to sufficient cause and work	There is capacity to purchase additional leave up to a maximum of 4 weeks.

ACTU	NSW	VICTORIA	QUEENSLAND	WESTERN AUSTRALIA	TASMANIA	NORTHERN TERRITORY	AUST CAPITAL TERRITORY
			The chief executive shall determine whether accrued recreation leave or long service leave should be taken prior to commencement of any leave without salary. This entitlement applies to public service officers only.	work of the department is not inconvenienced and all other leave credits of the employee are exhausted. Each application will be considered on its merits.	extended on approval of the Minister.	requirements.	
Annual leave in single day absences	Periods of as little as one quarter of a day are currently available, subject to operational requirements (as is all annual leave). At least two weeks recreation leave must be taken every 12 months.	No limitation on how annual leave is taken.	The Ministerial Directive on Recreation Leave (7/01) does not provide any specific information on single day absences, although the general practice is that employees may take annual leave in single day absences. The Directive states that employees are encouraged to use other forms of leave for short absences that are less than one day, before using recreational leave.	The award and agreement are silent on this, however there is nothing to prevent employees taking annual leave in single days. Employees are generally able to apply for single day absences. Under the proposed new agreement, employees will be able to take accrued long service leave in single day absences.	Whilst not specified, custom and practice would indicate that flexible arrangements are in place across Agencies concerning single day absences.	Employees may take annual leave in single days.	Annual leave can be taken in single days.
Purchased leave	No expressed provisions.	Ability to purchase up to an additional 8 weeks annual leave, receiving salary qual (?) to the period worked spread over 52 weeks (by	The majority of public sector enterprise agreements provide for a 48/52 arrangement where an employee can, with the agreement of the CEO, take four extra unpaid	The Award now provides that employees can purchase up to 4 weeks additional leave, and agree to take a reduced salary spread over the full	Under Accumulated Leave Scheme arrangements an employee may elect to work full-time over an agreed period but	Purchased leave and pay averaging arrangements for individual employees are by agreement, including the	There is capacity to purchase additional leave up to a maximum of 4 weeks

ACTU	NSW	VICTORIA	QUEENSLAND	WESTERN AUSTRALIA	TASMANIA	NORTHERN TERRITORY	AUST CAPITAL TERRITORY
		agreement).	weeks of leave a year and receive a proportionate salary across the entire 12 months.	52 weeks (48/52). The proposed new Agreement will extend this to 8 weeks of additional purchased leave (44/52). The award also now provides that with the agreement of the employer, employees may elect under the deferred salary scheme to purchase a full year of leave by receiving 80% of their salary over a four year period and then take the fifth year as paid leave on 80% salary (the remaining 20% x 4).	receive a proportion of their normal salary. The banked extra hours are then taken as accumulated leave whilst the employee continues to be paid the proportional salary. There are no prescribed minimum or maximum work/leave arrangements.	relevant union, with the employer's approval.	
Leave without pay	Department heads may grant leave without pay, including part-time leave without pay, if there is good and sufficient reason.	An employee may be granted leave without pay by the employer for any purpose.	The Ministerial Directive on Special Leave without Salary (10/01) provides that the chief executive may grant special leave without salary to an officer for any purpose. The chief executive shall determine whether accrued recreation leave or long service leave should be taken prior to commencement of any	The award provides that employers may approve an employee taking leave without pay for any period subject to the conditions that the work of the department is not inconvenienced and all other leave credits of the employee are exhausted. Each application will be considered on its	Head of Agency may grant leave without pay, or on reduced pay, for a period not exceeding three years and which may be extended on approval of the Minister.	An employer may approve an employee taking leave without pay for any period subject to sufficient cause and work requirements. Leave without pay is generally approved for periods of up to 12 months which may be extended	Leave without pay can be taken for various reasons and lengths of time by agreement with the manager.

ACTU	NSW	VICTORIA	QUEENSLAND	WESTERN AUSTRALIA	TASMANIA	NORTHERN TERRITORY	AUST CAPITAL TERRITORY
			leave without salary. This entitlement applies to public service officers only.	merits.		on approval.	
Unpaid parental leave entitlement	<p>Maternity Leave- Up to 9 weeks leave prior to birth. A further period of up to 12 months leave after the birth. With permission, the leave may be taken on a part-time basis up until the child's second birthday. The employee retains the right to her former job if she returns to work within 12 months of the date of birth.</p> <p>Parental Leave (for partners)</p> <p>1 week's short unpaid parental leave plus 12 months unpaid extended parental leave (less the short parental leave). Extended parental leave may commence any time up to 2 years from date of birth of child or taking custody of child.</p>	<p>52 weeks of parental leave (includes 14 weeks paid maternity, 8 weeks adoption leave and 1 week paternity leave). With the agreement of the employer, leave without pay may be granted as an extension of parental leave. Total leave cannot exceed 7 years. The employee must make an application for the extension of the leave each year.</p>	<p>The Family Leave Award – Queensland Public Sector provides that a period of parental leave must be not more than 52 weeks. However, the chief executive of a Department may extend the period of leave if, in the chief executive's opinion, there are reasons, for example, the health and well-being of the employee, the employee's spouse or the employee's child, that warrant an extension being granted (cl. 2.1.3 (c)).</p>	<p>All employees are entitled to 52 weeks of unpaid parental leave if they are the primary care giver.</p> <p>The Award now provides that subject to all other leave entitlements being exhausted, employees can apply for leave without pay following parental leave to extend their leave by up to 2 years. The employer's approval is required. Any period of leave without pay must be approved in advance and will be granted on a year by year basis.</p>	<p>Specifically, up to 40 weeks for both maternity and adoption leave.</p> <p>In addition, Head of Agency may grant up to 3 years leave without pay, or on reduced pay which may be further extended by approval of the Minister.</p>	<p>Employees are entitled to elect for unpaid parental leave up to the child's sixth birthday on a shared basis.</p>	12 months

ACTU	NSW	VICTORIA	QUEENSLAND	WESTERN AUSTRALIA	TASMANIA	NORTHERN TERRITORY	AUST CAPITAL TERRITORY
	With permission, the leave may be taken on a part-time basis over two years.						
Child rearing leave following parental leave	The department head may grant <u>leave without pay</u> to an employee if good and sufficient reason is shown. Leave without pay may be full-time or part-time. Paid leave entitlements do not have to be exhausted first.	With the agreement of the employer, leave without pay may be granted as an extension of parental leave. Total leave cannot exceed 7 years. The employee must make an application for the extension of the leave each year.	The Family Leave Award – Queensland Public Sector provides that the chief executive of a Department may extend the period of leave if, in the chief executive's opinion, there are reasons, for example, the health and well-being of the employee, the employee's spouse or the employee's child, that warrant an extension being granted. (cl. 2.1.3 (c))	The Award now provides that subject to all other leave entitlements being exhausted, employees can apply for leave without pay following parental leave to extend their leave by up to 2 years. The employer's approval is required. Any period of leave without pay must be approved in advance and will be granted on a year by year basis.	Head of Agency may grant up to 3 years leave without pay, or reduced pay which may be further extended by approval of the Minister.	Employees are entitled to elect for unpaid parental leave up to the child's sixth birthday on a shared basis.	Leave can be either 52 or 54 weeks depending on whether primary care giver leave a factor. Only operates while child is young, not to school reaching age.
Simultaneous parental leave	1 week's short parental leave Note that the award does not require an employee accessing parental leave to state whether their spouse is also taking parental leave	Employees are entitled to one week simultaneous parental leave on the birth of a child.	The Family Leave Award – Queensland Public Sector provides that an employee must not take parental leave at the same time as the employee's spouse takes parental leave. (cl. 2.1.4), except for the period of one week from the time of confinement of the employee's spouse (cl. 2.3.1), or in the case of adoption leave, a	The Award provides that employees are entitled to one week partner leave (simultaneous parental leave) on the birth of a child and 3 weeks on the placement of a child for adoption.	Special leave provides that the employer may grant up to 5 days paid leave for the purpose of an employee attending the birth of a child of the partner.	Employees are entitled to simultaneous parental leave for one week on the birth of a child or for three weeks on the placement of an adopted child.	5 days unpaid leave to spouse on birth of a child.

ACTU	NSW	VICTORIA	QUEENSLAND	WESTERN AUSTRALIA	TASMANIA	NORTHERN TERRITORY	AUST CAPITAL TERRITORY
			period of not more than 3 weeks on the placement of the child with the employee (cl. 2.4.1)				
Consultation while an employee is on parental leave	No specific provision. General consultation requirements usually apply to Departments during restructures.	No specific provision.	No specific comparable provision. The Queensland Public Service Award applies the TCR standard.	The award provides that all employees are entitled to be informed of any action that will have a significant effect on them including redundancy, and to discuss the likely effect and any measures that could be taken to avoid or minimise the effect. This obligation is not diminished if an employee is on leave.	Not specified	Industrial Agreement highlights the role of management to consult with affected employees where change will have a significant impact on their employment. This commitment is not diminished if an employee is on leave.	No provision but is standard practice.
Unpaid emergency leave	If Family and Community Services and Carer's Leave not applicable Department heads may grant leave without pay, including part-time leave without pay, if there is good and sufficient reason	<i>No specific emergency leave entitlement. Employees have access to carer's leave, when appropriate, or leave without pay for other purposes.</i>	Section 3.1 (a) of the Family Leave Award – QPS provides that an employee with responsibilities in relation to members of their immediate family or household who need their care and support, are entitled to use any sick leave entitlement accrued after July 1995 to provide such care and support. Section 3.2 provides that an employee may	<i>The award provides that public service employees are entitled to 3 days paid short leave per year, not exceeding 2 consecutive days, which the employer can approve subject to sufficient cause being shown.</i> The award also provides for	<i>Head of Agency may grant leave without pay or on reduced pay, for a period not exceeding three years and which may be extended on approval of the Minister.</i>	<i>Employees are entitled to 3 days paid emergency leave per annum with sufficient cause and the employer's approval; access to 10 days paid sick leave credits per annum for caring</i>	<i>Covered by unpaid leave.</i>

ACTU	NSW	VICTORIA	QUEENSLAND	WESTERN AUSTRALIA	TASMANIA	NORTHERN TERRITORY	AUST CAPITAL TERRITORY
			<p>elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a family member who is ill.</p> <p>The Ministerial Directive on Special Leave without Salary (10/01) provides that the chief executive may grant special leave without salary to an officer for any purpose. The chief executive shall determine whether accrued recreation leave or long service leave should be taken prior to commencement of any leave without salary.</p> <p><i>This entitlement applies to public service officers only.</i></p>	<p>employees to use up to 5 days of their sick leave entitlements per year as paid <u>carers leave</u> to care for an ill family member. Carer's leave can be taken on an hourly basis or part thereof.</p> <p>The proposed new Agreement will provide <u>Personal Leave</u> of 15 days (of which 13 is accruable) to replace sick leave, carer's leave and short leave. This is to give employees greater flexibility for leave on full pay for a variety of personal reasons.</p> <p>Employees can take up to 2 days paid <u>bereavement leave</u> on the death of a (specified) family or household member.</p> <p>Employees can apply to take up to 2 days <u>flexi-leave</u> in any four week settlement period if they have a sufficient number of hours accrued.</p>		<p><i>purposes; 3 days paid <u>bereavement leave</u> on each occasion; and access to <u>other leave entitlements</u>, eg. annual leave and leave without pay.</i></p>	

<i>ACTU</i>	<i>NSW</i>	<i>VICTORIA</i>	<i>QUEENSLAND</i>	<i>WESTERN AUSTRALIA</i>	<i>TASMANIA</i>	<i>NORTHERN TERRITORY</i>	<i>AUST CAPITAL TERRITORY</i>
				<p><u>Annual leave</u> can be used for family emergencies.</p> <p><u>Leave without pay</u> may be requested in accordance with award provisions (as outlined above), but only if all other paid leave entitlements are exhausted.</p>			

WORK AND FAMILY TEST CASE

STATES AND TERRITORIES' POSITION

Comparison with ACTU's Claims

<p style="text-align: center;">ACTU CLAIMS</p> <p style="text-align: center;">Key provisions at the end of conciliation</p>	<p style="text-align: center;">STATES AND TERRITORIES' POSITION</p>
<p>CONTRACT OF EMPLOYMENT: PART-TIME EMPLOYMENT, JOB-SHARING AND CASUAL EMPLOYMENT</p> <p><u>Part-time Provisions Relating to Return from Parental Leave</u></p> <p>“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 is, because of the pregnancy, necessary or desirable) until the child reaches school age.</p> <p>Before commencing a period of part-time employment under this subclause the employee and employer shall agree:</p> <p>(i) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;</p> <p>(ii) upon the classification applying to the work being performed; and</p> <p>(iii) upon the period of part-time employment.</p> <p>The terms of this agreement may be varied by consent.</p> <p>The terms of this agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.</p> <p>The terms of this agreement shall apply to the part-time employment.</p> <p>The employment of a part-time employee under this clause, may be terminated in accordance with the provisions of this award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this clause or has enjoyed or proposes to enjoy any benefits arising under this clause.</p> <p>An employer may request but not require, an employee working part-time in accordance with this clause to work outside or in excess of the employee’s ordinary hours of duty as agreed in this clause. Where as a result of the employer’s request work is performed in excess or outside these hours the employee shall be paid overtime in accordance with clause xxx of this award.”</p> <p>Consequential amendments</p> <p>“An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:</p> <p>(i) of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) – at least ten weeks;</p> <p>(ii) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken and whether the employee intends to return part-time – at least four weeks.”</p>	<p>An employee shall have the right to request part-time work in one or more periods from the date of the birth or placement of the child (or if necessary or desirable during pregnancy) until the child reaches school age and the employer shall be obliged to consider and not unreasonably refuse such a request.</p> <p>In determining an employee’s request, employers shall balance the needs of the business with the needs of the employee, considering the following factors:</p> <ol style="list-style-type: none"> 1. The cost in accommodating the employee’s request; 2. The capacity to reorganise work arrangements to accommodate the employee’s request; 3. The impact on the delivery of customer service; 4. The particular circumstances of the employee, especially the nature of his/her caring need; and 5. The impact on the employee and his/her dependents of the request not being granted. <p>Where an employer and employee cannot reach agreement regarding the employee’s request, the matter shall be dealt with in accordance with the relevant award’s dispute resolution procedure.</p> <p>Hours, classification and period of part-time work are to be agreed in writing and varied by consent between the employer and employee.</p> <p>An employer may request but not require an employee working part-time to work outside or in excess of their ordinary hours of duty. Where, as a result of the employer’s request, work is performed in excess or outside these hours, relevant award provisions with respect to overtime payable on part-time work shall apply in relation to the additional hours of duty.</p> <p>Consequential amendments</p> <p>An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:</p> <p>(i) of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) – at least ten weeks;</p> <p>(ii) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken and whether the employee wants to return part-time – at least four weeks.</p>

<p style="text-align: center;">ACTU CLAIMS</p> <p style="text-align: center;">Key provisions at the end of conciliation</p>	<p style="text-align: center;">STATES AND TERRITORIES' POSITION</p>
<p>Returning to work after a period of Parental Leave “An employee will notify of their intention to return to work after a period of parental leave at least four weeks prior to the expiration of the leave.</p> <p>Where an employee has indicated an intention to return to work on a part-time basis the employee will confirm their intention to return to work part-time.”</p>	<p>Returning to work after a period of Parental Leave An employee shall notify the employer of their request to return to work on a part-time basis at least 4 weeks before the expiration of their leave.</p>
<p>ORDINARY HOURS OF WORK, OVERTIME AND MAKE-UP TIME</p> <p><u>Special Provision for Workers with Family Responsibilities – Right to Request Variation in Hours or Place of Work</u></p> <p>“An employee may apply to his/her employer for a change in his/her terms and conditions of employment if:</p> <ul style="list-style-type: none"> (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. <p>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 a temporary change, he or she shall indicate the period of time for which they are applying for a change.”</p> <p>Relationship to Rest of Award</p> <p>“An agreement reached under this provision must comply with clause xxx (Facilitative Provisions). An employer shall not grant an application which would result in an employee working in contravention of clauses xxx (Hours of Work).”</p> <p>Responsibilities of Employers</p> <p>“An employer to whom an application under clause xx is made must consider the application and must not unreasonably refuse such an application.</p> <p>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.</p> <p>Where an employer and employee cannot reach agreement regarding an application under clause xxx the application shall be dealt with in accordance with clause xxx (Dispute Resolution Procedure).”</p>	<p>An employee shall have a right to request a variation in hours, times or the physical location of work to enable the employee to provide care and support for an immediate family member or household member, and the employer shall be obliged to consider and not unreasonably refuse such a request.</p> <p>In determining an employee’s request, employers shall balance the needs of the business with the needs of the employee, considering the following factors:</p> <ol style="list-style-type: none"> 1. The cost in accommodating the employee’s request; 2. The capacity to reorganise work arrangements to accommodate the employee’s request; 3. The impact on the delivery of customer service; 4. The particular circumstances of the employee, especially the nature of his/her caring need; and 5. The impact on the employee and his/her dependents of the request not being granted. <p>Where an employer and employee cannot reach agreement regarding the employee’s request, the matter shall be dealt with in accordance with the relevant award’s dispute resolution procedure.</p> <p>Any variation to working arrangements made under this provision must comply with and not contravene the relevant Hours of Work and Facilitative Provisions clauses of the award.</p>

<p style="text-align: center;">ACTU CLAIMS Key provisions at the end of conciliation</p>	<p style="text-align: center;">STATES AND TERRITORIES' POSITION</p>
<p>LEAVE AND RELATED MATTERS</p> <p><u>Unpaid Leave Taken in Conjunction with Annual Leave</u></p> <p>“In order to assist employees to better balance work and family responsibilities 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 (i.e. four weeks of annual leave immediately followed by two weeks of unpaid leave.)</p> <p>An employer to whom an application under this clause is made must consider the application and must not unreasonably refuse such an application.</p> <p>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.”</p> <p>“An employee may elect 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.”</p>	<p>To meet his or her caring responsibilities, an employee shall have the right to request a reasonable period of unpaid leave immediately following a period of paid annual leave, and the employer shall be obliged to consider and not unreasonably refuse such a request.</p> <p>In determining an employee’s request, employers shall balance the needs of the business with the needs of the employee, considering the following factors:</p> <ol style="list-style-type: none"> 1. The cost in accommodating the employee’s request; 2. The capacity to reorganise work arrangements to accommodate the employee’s request; 3. The impact on the delivery of customer service; 4. The particular circumstances of the employee, especially the nature of his/her caring need; and 5. The impact on the employee and his/her dependents of the request not being granted. <p>Where an employer and employee cannot reach agreement regarding the employee’s request, the matter shall be dealt with in accordance with the relevant award’s dispute resolution procedure.</p> <p>By agreement with the employer, an employee’s annual leave pay may be averaged over the total period of leave.</p>
<p>ANNUAL LEAVE</p> <p><u>Annual Leave Single Day Absences</u></p> <p>“Notwithstanding the provision of this clause, an employee who has responsibility for the care and support of a family member or member of their immediate household may elect, with the consent of the employer, to take annual leave in single day periods not exceeding a total of 38 hours for every 152 hours of annual leave.”</p>	<p>An employee with caring responsibilities for a family member or immediate household member may elect, with the consent of the employer, to take annual leave in single day periods not exceeding a total of 38 hours for every 152 hours of annual leave, except where single day periods of annual leave in excess of 38 hours are otherwise provided for in an award or agreement.</p>
<p>PURCHASED LEAVE</p> <p><u>Purchased Leave for Family and Caring Responsibilities</u></p> <p>“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.</p> <p>An employee may also apply to purchase the additional leave in return for a reduction in the employee’s weekly wage.</p> <p>An employer to whom an application under this clause is made must consider the application and must not unreasonably refuse such an application.</p>	<p>To meet his or her caring responsibilities, an employee shall have the right to request up to 6 weeks unpaid leave per annum or up to 6 weeks purchased leave with associated pay averaging over a 52 week period, and the employer shall be obliged to consider and not unreasonably refuse such a request.</p> <p>In determining an employee’s request, employers shall balance the needs of the business with the needs of the employee, considering the following factors:</p>

<p style="text-align: center;">ACTU CLAIMS Key provisions at the end of conciliation</p>	<p style="text-align: center;">STATES AND TERRITORIES' POSITION</p>
<p>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.</p> <p>The purchased leave must be taken at a time or times nominated by the employee but agreed upon by the employer.</p> <p>The purchased leave must be taken within 12 months of accruing such leave. The employer and employee can agree to extend this period.</p> <p>The employee may cease accruing purchased leave and revert to his or her usual weekly wage by giving no less than 2 weeks notice in writing to the employer or notice equivalent to the length of the pay cycle or whichever is greater. The employer and employee can agree to a shorter period of notice.</p> <p>The maximum amount of purchased leave which an employee can accrue in a 12 month period is 6 weeks.</p> <p>Annual leave loading, shift loadings and weekend penalty loadings are not payable on purchased leave accrued in accordance with this clause."</p> <p><i>(The averaging calculations are now over 52 weeks.</i></p> <p><i>Further detail and examples pertaining to this clause are not included here)</i></p>	<ol style="list-style-type: none"> 1. The cost in accommodating the employee's request; 2. The capacity to reorganise work arrangements to accommodate the employee's request; 3. The impact on the delivery of customer service; 4. The particular circumstances of the employee, especially the nature of his/her caring need; and 5. The impact on the employee and his/her dependents of the request not being granted. <p>Where an employer and employee cannot reach agreement regarding the employee's request, the matter shall be dealt with in accordance with the relevant award's dispute resolution procedure.</p> <p>Except where otherwise agreed between the employer and employee, purchased leave must be taken in 12 months of accruing such leave.</p> <p>The maximum amount of purchased leave which an employee can accrue in a 12 month period is 6 weeks.</p> <p>Annual leave loading, shift loadings and weekend penalty loadings are not payable on purchased leave in accordance with this clause.</p>
<p>PARENTAL LEAVE</p> <p><u>Basic Entitlement</u></p> <p>"After 12 months continuous service, parents are entitled to a combined total of 104 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child.</p> <p>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."</p>	<p>After 12 months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of a child (<i>which is the existing entitlement</i>). In addition parents shall have a right to request an additional combined total of 52 weeks unpaid parental leave on a shared basis on the birth or adoption of a child, and the employer shall be obliged to consider and not unreasonably refuse such a request.</p> <p>In determining an employee's request, employers shall balance the needs of the business with the needs of the employee, considering the following factors:</p> <ol style="list-style-type: none"> 1. The cost in accommodating the employee's request; 2. The capacity to reorganise work arrangements to accommodate the employee's request; 3. The impact on the delivery of customer service; 4. The particular circumstances of the employee, especially the nature of his/her caring need; and 5. The impact on the employee and his/her dependents of the request not being granted.

<p style="text-align: center;">ACTU CLAIMS Key provisions at the end of conciliation</p>	<p style="text-align: center;">STATES AND TERRITORIES' POSITION</p>
	<p>Where an employer and employee cannot reach agreement regarding the employee's request, the matter shall be dealt with in accordance with the relevant award's dispute resolution procedure.</p>
<p>PARENTAL LEAVE</p> <p><u>Child Rearing Leave</u> "In addition to any other form of parental leave, an employee may apply for a further period of 52 weeks child rearing leave.</p> <p>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.</p> <p>An employer may only refuse the application if the employee's attendance at the workplace is necessary and no other option will meet the needs of the workplace or enterprise."</p>	<p>If agreed between the employer and the employee, the employee may take a period of unpaid child rearing leave. An employee may apply on an annual basis for an extension of this unpaid child rearing leave for no more than 52 weeks at any one time, provided that the total period of leave does not extend beyond the child reaching school age.</p>
<p>PARENTAL LEAVE</p> <p><u>Simultaneous Leave</u> "Subject to xxx, 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 8 weeks at the time of the birth of the child.</p> <p>An employee (employer?) may grant any additional period of simultaneous unpaid leave as is agreed between employer and employee."</p>	<p>An employee shall be entitled to take an unbroken period of unpaid simultaneous leave of up to 4 weeks at the time of the birth or adoption of the child. In addition the employee shall have the right to request an additional 4 weeks simultaneous unpaid leave at the time of the birth or the adoption of the child, and the employer shall be obliged to consider and not unreasonably refuse such a request.</p> <p>Additional periods of simultaneous leave in excess of 8 weeks may be agreed between employer and employee.</p> <p>In determining an employee's request, employers shall balance the needs of the business with the needs of the employee, considering the following factors:</p> <ol style="list-style-type: none"> 1. The cost in accommodating the employee's request; 2. The capacity to reorganise work arrangements to accommodate the employee's request; 3. The impact on the delivery of customer service; 4. The particular circumstances of the employee, especially the nature of his/her caring need; and 5. The impact on the employee and his/her dependents of the request not being granted. <p>Where an employer and employee cannot reach agreement regarding the employee's request, the matter shall be dealt with in accordance with the relevant award's dispute resolution procedure.</p>

<p style="text-align: center;">ACTU CLAIMS Key provisions at the end of conciliation</p>	<p style="text-align: center;">STATES AND TERRITORIES' POSITION</p>
<p>PARENTAL LEAVE</p> <p><u>Communication During Parental Leave</u> “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:</p> <ul style="list-style-type: none"> (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. <p>The employee shall take all reasonable steps to inform the employer about any significant matter that will affect the employee’s decision regarding the duration of parental leave to be taken, whether the employee intends to return to work, and whether the employee intends to return to work on a part-time basis or full-time basis.</p> <p>The employee shall also notify the employer of changes of address or other contact details that would affect the employer’s capacity to communicate as set out in subclause xxx (above).”</p>	<p>Where a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to provide information and discuss with the employee on parental leave or child rearing leave any significant effect the change will have on the status or responsibility of the position that the employee held before commencing parental or child rearing leave.</p> <p>and</p> <p>The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee’s decision regarding the duration of parental or child rearing leave to be taken; whether the employee intends to work on a full-time basis or intends to request a return to work on part-time basis after parental or child rearing leave.</p> <p>The employee shall also notify the employer of their change of address or other contact details that would affect the employer’s capacity to communicate as above.</p>
<p>PARENTAL LEAVE</p> <p><u>Consequential Amendments</u> Replacement Employees “A replacement employee is an employee specifically engaged or temporarily promoted or transferred as a result of an employee proceeding on parental leave.</p> <p>Before an employer engages a replacement employee the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.</p> <p>The employer shall advise the replacement employee of the period of leave that the employee has applied for, and of that employee’s right to apply for one variation of the period of leave.</p> <p>Where an employer receives notice under clause xxx that an employee on parental leave intends to return to work:</p> <ul style="list-style-type: none"> (i) where the replacement employee was specifically engaged to replace the employee on parental leave, an employer may terminate the employment to accommodate the return to work; or (ii) where the replacement employee was promoted or transferred to replace the employee on parental leave an employer may rescind any temporary promotion or transfer, of a replacement employee to accommodate the return to work.” 	<p>Where required, consequential award amendments are to be made to remove award restrictions on the employment of temporary employees to allow an employer to employ a replacement employee where an employee is on parental or child rearing leave.</p>

<p style="text-align: center;">ACTU CLAIMS Key provisions at the end of conciliation</p>	<p style="text-align: center;">STATES AND TERRITORIES' POSITION</p>
<p>EMERGENCY LEAVE</p> <p><u>Unpaid Leave for Family or Dependant Care</u></p> <p><u>Emergencies</u> “The provisions of this clause shall apply to all employees, and are in addition to those specified in clause xxx.</p> <p>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:</p> <ul style="list-style-type: none"> (i) to provide assistance on an occasion when an immediate family member or member of the employee’s household is sick , gives birth or is injured or assaulted; (ii) to make arrangements for the provision of care for an immediate family member or member of the employee’s household who is sick or injured; (iii) in consequence of the death of an immediate family member or member of the employee’s household; (iv) where there has been a breakdown in the usual care arrangements for an employee’s immediate family member or member of the employee’s household; (v) to deal with an incident which involves a child of the employee and which occurs unexpectedly in a period 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. <p>An employee must inform his/her employer of the reason for his (or her) absence as soon as reasonably practicable and where practical for how long he/she expects to be absent.</p>	<p>An employee who has not otherwise applied for and been granted paid leave, shall be entitled to a reasonable period of unpaid emergency leave during the employee’s working hours in order to take action which is necessary:</p> <ul style="list-style-type: none"> i) to provide assistance on an occasion when an immediate family or household member is sick, gives birth or is injured or assaulted; ii) to make arrangements for the provision of care for a family or household member who is sick or injured; iii) in consequence of the death of an immediate family or household member; iv) where there has been a breakdown in the usual care arrangements for an employee’s immediate family or household member; or v) to deal with an incident which involves a child of the employee and which occurs unexpectedly in a period during which an educational establishment which the child attends is responsible for the child. <p>An employee must inform his/her employer of the reason for his/her absence as soon as reasonably practicable and the length of the expected absence. Upon return to work, the employee if required by the employer shall provide evidence (eg. medical certificate, statutory declaration or other evidence) of the emergency circumstances.</p>