

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1988

Conciliation and Arbitration Act 1904  
s.25 notification of industrial dispute

The Federated Miscellaneous Workers Union of Australia

and

Angus Nugent and Son Pty. Ltd. and others  
(C No. 23285 of 1988)

s.59 application for variation

Shop, Distributive and Allied Employees Association  
(C No. 23321 of 1988)

RETAIL AND WHOLESALE SHOP EMPLOYEES (AUSTRALIAN CAPITAL TERRITORY)  
AWARD 1983(1)  
(ODN C No. 03078 of 1982)

Various employees

Saddlery, leather and canvas industry  
and wholesale and retail trade

JUSTICE COHEN  
DEPUTY PRESIDENT MOORE  
DEPUTY PRESIDENT POLITES  
COMMISSIONER GRIFFIN  
COMMISSIONER TURBET

MELBOURNE, 26 JULY 1990

Leave - paternity leave - test case - granted up to one week unpaid leave available to fathers at the time of the birth - further 51 weeks unpaid leave will be available not extending beyond the child's first birthday - this amount to be reduced by any period of maternity leave taken by the mother - week available at time of the birth is for the purpose of providing care and support to the family; the extending period of leave is for the father to become the primary care-giver - maternity leave - not persuaded to depart from the original Full Bench decision providing unbroken period of maternity leave - statutory declaration required stating particulars of paternity or maternity leave - adoption leave - rationale for adoption leave accepted - 52 weeks unpaid leave available, up to three weeks at the time of placement taken concurrently by both parents and the remainder available to the primary care-giver not to be taken concurrently - part-time employment - rejected Confederation of Australian Industry claim - proceedings not a vehicle for establishing general unqualified right of employer to employ part-time - part-time employment will be available in conjunction with or independently of any leave only with the agreement of the employer - where employee has less than twelve months service will have no right to his or her former position - employee with twelve months or more service will have that right - entitlement will cease on the second birthday of the child - entitled to all pro rata entitlements - right to return to former position may be exercised only once - may commence prior to birth of the child - exempted from any requirement to work overtime.

DECISION

(1)Print F3127 [R017]

The matters before us constitute a test case for parental leave in federal private sector awards. The claims are brought by the Australian Council of Trade Unions (ACTU) on behalf of its affiliates against a background of existing provisions for maternity leave and adoption leave introduced as standards in private sector awards by decisions of Full Benches of the Australian Conciliation and Arbitration Commission on 9 March 1979(2) and 16 August 1985(3) respectively.

In essence the existing maternity leave prescription is for an unbroken period of not more than 52 weeks, of which six weeks following the birth is compulsory. The leave is unpaid and award entitlements do not accrue during the period of leave. Adoption leave, which is also unpaid, applies only to females. It is also for an unbroken period of up to 52 weeks, ceasing in any event when the adopted child attains the age of five years.

The claims now before us are concerned with two types of parental leave. The first involves up to 52 weeks unpaid leave for each parent in connection with the birth or adoption of a child. The second, which is referred to as "special family leave," is for up to five days unpaid leave for absences relating to the health or school requirements of a child. At the commencement of the proceedings, Ms I. Matthews who appeared for the ACTU, announced that the claim for special family leave would not be pursued until the first claim was determined. The submissions and evidence were therefore concerned only with parental leave preceding or following the birth or adoption of a child.

There are three parts to the claim: the granting of a new type of leave, paternity leave; changes to the existing standards of maternity leave and changes to existing standards of adoption leave. There were amendments to the claim during the proceedings and all three parts, as revised, are attached. In summary they are as follows:

(1) Paternity leave

The claim is for up to 52 weeks unpaid leave to be available in two periods:

- (i) "short paternity leave" of up to three weeks continuous leave following the birth of a child;
- (ii) the balance to be taken in an unbroken period after the short paternity leave and before the child's second birthday (to be known as "extended paternity leave").

(2) Maternity leave

The claim seeks that the existing period of 52 weeks leave be broken into two:

- (i) the first period to consist of any leave taken before the birth and six weeks compulsory leave following the birth of the child (to be known as "short maternity leave");
  - (ii) the remainder of the 52 weeks to be taken in an unbroken period between the seventh week after the birth and the child's second birthday (to be known as "extended maternity leave").
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(2)Print D9576; (1979) 218 CAR 120

(3)Print F9852; (1985) 298 CAR 321

## (3) Adoption leave

The claim seeks to vary the standard prescription:

- (i) to extend the entitlement to male employees;
- (ii) to provide for a period of leave to travel overseas for the purpose of taking custody of the child;
- (iii) to provide for a period of three weeks leave to be taken from the time of the placement of the child (this, plus leave taken under (ii) above, to be known as "short adoption leave"); and
- (iv) the balance of 52 weeks to be taken in an unbroken period at any time thereafter prior to a date two years after the placement (to be known as "extended adoption leave").

The ACTU claim includes provisions which would allow parents who qualify for parental leave to work part-time for a period of up to two years from the birth of a child, or its placement in the case of adoption. The draft clause submitted by the ACTU would permit the employee to take "part-time leave" in conjunction with part-time employment.

We should say at the outset that the concept of part-time leave is one which is not reflected in awards of this Commission or its predecessor nor, as far as we are aware, is it reflected in awards made by any State industrial tribunal. Its inclusion in the draft clause may have been to ensure that part-time employment associated with the birth or adoption of a child is seen as an integral part of a more general claim for parental leave. We propose to deal with this aspect of the claim as a claim for part-time employment. As proposed by the ACTU, it is an entitlement that is associated with the birth or adoption of a child and is intended to operate in areas where there is no award provision for part-time employment and independently of any restrictions in awards regulating part-time employment.

The claim seeks to integrate the three types of leave and to characterise them together as parental leave. In all cases the claim is for leave which can be taken by each of the two parents either sequentially or concurrently, prior to the child's second birthday or two years from the date of placement in the case of adoption. Relevant entitlements are extended to a de facto spouse.

The claims were advanced for the unions, as we have said, by the ACTU. The respondent employers were represented by the Confederation of Australian Industry (CAI).

The Minister for Industrial Relations intervened pursuant to the Industrial Relations Act 1988 (the Act), and leave to intervene was granted to the States of Queensland, New South Wales, Victoria, Tasmania, South Australia and Western Australia, the Northern Territory and the ACT. Leave to intervene was also granted to the Metal Trades Industry Association (MTIA), the Human Rights and Equal Opportunity Commission, the Australian Institute of Family Studies (the institute), the Women's Electoral Lobby of Australia, Parents Without Partners Victoria, the Australian Early Childhood Association, the National Council of Women of Australia, the United Nations Association Status of Women's Committee and the Union of Australian Women.

The ACTU submitted that the claim for parental leave is a logical extension of the existing maternity and adoption leave provisions. It stems from changes which have taken place in recent years in the role of men and women in Australia, changes to the composition of the work force, in social attitudes, in provisions for parental leave in other countries, and in international standards particularly as reflected in International Labour Organisation (ILO) Convention 156 and Recommendation 165. These changes, the ACTU said, have resulted in the existing maternity and adoption leave provisions becoming outdated. It also submitted that these provisions discriminate against men.

The Commission was taken to a detailed consideration of the operation of maternity leave provisions, based on a study of maternity leave entitled "Maternity Leave in Australia" which was carried out by the Australian Institute of Family Studies. The publication contains the results of three surveys conducted by the institute: first, of all women who gave birth in one week in May 1984; second, of private sector employers carried out in 1985 and third, a more limited survey concerning public sector employees. The surveys show that of all women employed during their pregnancy 44% took maternity leave, with the take up rate in the public sector being higher (76%) than in the private sector (21%). The study revealed that 60% of female employees, whether they took maternity leave or not, were back in employment by the time their child was 18 months old, and that there was a marked preference for part-time work amongst females returning to work. There was additional evidence to the effect that women now make up 41% of the work force, with a dramatic increase in the employment of married women with dependent children. In 1988, 44.7% of all married women with children under five years of age were in the work force compared with 31.8% in 1981, this increase being linked to the availability of part-time work.

It was argued that female participation in the paid work force is nevertheless hampered by an unequal sharing of parental and domestic responsibilities. The ACTU pointed to what it called the changing role of men in society. It said that it was now normal practice for fathers to be involved in family responsibilities before, during and after the birth of their child and that fathers were encouraged to take time off to visit their spouse in hospital, to assist in the care of the new baby and to care for other children. The institute found that 59% of "partnered" women in its survey had partners who took leave at the time of the birth of the child, whilst a further 7% had partners who were unemployed.

Material was also presented in relation to a number of males who had taken on the role of primary care-givers for children, because they were sole parents, because their partner had returned to the workforce or because of a desire that both parents should work part-time and assume the role of joint care-giver for their children. The ACTU submitted that this trend would continue. It was estimated that there were some 75000 males in Australia who have the responsibility for primary care of dependent children, with 8500 men being responsible for primary care of children under four.

Provisions relating to maternity, paternity and family leave in a large number of countries, including members of the OECD and countries in Eastern Europe, were reviewed. This material shows, the ACTU said, that Australia was lagging behind most industrialised countries in relation to parental leave for fathers; that fathers in these countries are generally entitled to a short period of leave at the time of the birth and a longer period later. The Commission was also referred to existing provisions for paternity and parental

leave in Australia to demonstrate that some form of short paternity leave at the time of the birth, with extended paternity leave after the birth, is well established in the public sector. A number of private sector awards which contain agreed provisions for paternity leave, generally a short period of one to five days at the time of the birth of a child, were also reviewed.

As to the cost of granting the claims, the ACTU said this would be minimal, because the leave would be unpaid and because the take-up rate for extended paternity leave would, in the early stages, be small. Whereas the take-up rate for short term paternity leave would be considerably higher, this would not require replacement employees. Notwithstanding the low take-up rate for paternity leave envisaged in the immediate future, the ACTU emphasized the importance of the issue in promoting equal opportunity in the workforce. Once paternity leave became available, the take-up rate could be expected to grow, it said, as community attitudes changed and also as women moved into higher paid positions.

The claim was supported by the Commonwealth and, with some reservations, by the States and Territories. These governments each provided an overview of the conditions prevailing in relation to maternity, paternity and adoption leave in their own public sector. This revealed that, in addition to maternity and adoption leave, some of the States provide specifically for short paternity leave (usually paid) and extended parental leave (unpaid). Additionally, they all have available various forms of special leave which may be utilised by male employees as paternity leave. In Australian Government employment a period of three days paid special leave may be accessed by male employees for short paternity leave. There is also provision for up to 40 weeks unpaid parental leave for a male employee whose spouse is not eligible for APS maternity leave. Where both parents are public servants they may access a total of 66 weeks unpaid leave between them, in addition to the female's paid period of twelve weeks maternity leave, there being an interaction between the maternity and parental leave entitlements.

All of the governments were satisfied with the provisions applying in their respective areas of public employment although it would appear that unpaid paternity leave, where it is available in the public sector, is rarely utilized. The governments submitted that on the basis of their experience the costs of the claim would be minimal. They were not, however, able to provide the Commission with any useful details as to cost.

All governments argued that the claim relates to an industrial issue, that it is consistent with the structural efficiency principle of the August 1989 national wage decision(4) and with equal opportunity and sex discrimination initiatives they have taken. Further, the Commonwealth and the States expressed support for part-time work as claimed. The Commonwealth submitted that the growth of part-time work has contributed to the increase in the number of women resuming work after maternity leave, and welcomed the ACTU's proposal for excluding parents and replacement employees, working part-time in the context of parental leave, from any restrictive award provisions relating to part-time work.

The claim was also supported by the other interveners who made submissions. Generally they expressed support for a submission made by the ACTU that the present maternity and adoption leave entitlements discriminate against men. It was also said to be a discrimination against women if their partners

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(4)Print H9100



are denied leave to share the responsibility for child-care. In short, the absence of parental leave for men is seen as reinforcing the traditional role of women as the primary providers of child-care which contributes to their inability to compete equally in the work force. In its submission, Parents Without Partners emphasised the unequal position of male employees who have to assume the care of small children and who are denied the job protection afforded to women by maternity and adoption leave.

The case on behalf of private employers was presented by CAI which opposed the claim for paternity leave and the proposed amendments to the maternity and adoption leave provisions. CAI argued that the claim does not have industrial validity, that paternity leave is not an industrial issue in the same sense that maternity and adoption leave were accepted to be by the Commission. Maternity leave enabled women to combine motherhood with continued participation in the work force and adoption leave was granted for females on a similar basis. There was no evidence in this case, CAI said, to justify the conclusion that males require an enforceable right to paternity leave in order to combine participation in the work force with their family responsibilities. It contended that the approach of the ACTU and some of the interveners seeking the Commission's encouragement of greater involvement of men in child rearing, was directed to changing social attitudes or behaviour and not to resolving an industrial issue.

CAI further submitted that the claim could not be justified on the basis of eliminating discrimination between men and women. The ACTU submission required the Commission to adopt a policy position of encouraging men to place less emphasis upon work-place responsibilities and more on child-care. This approach went well beyond the decisions in such cases as the Equal Pay Case,(5) the Maternity Leave Case(6) and the Rockhampton City Council Case(7) where the Commission sought to eliminate discrimination. The maternity leave decision recognises women as the primary carers for children and such evidence as was available in these proceedings indicates that this situation remains largely unchanged.

CAI argued that there is little industrial need for a prescription for paternity leave. This submission was based on the results of a survey of employers which showed that most employers accommodate employees' requests for time off when their partner is having a child, and on other material before the Commission, which showed very low take-up rates for paternity leave where it is available.

The costs of the claims need to be viewed, CAI said, at two levels: in a national perspective and in relation to their impact on individual employers. At the national level the granting of the claims would involve a much greater period in aggregate during which employees would be out of the labour force. In relation to individual employers, costs associated with the need to find and train replacement employees would increase, as would the uncertainty connected with the return of employees from leave. Further, the disruption already associated with replacement employees and return to work after maternity leave would be compounded if the periods of maternity and adoption leave were allowed to be broken and if, in the three areas claimed, the entitlement to leave could be taken during a span of two years.

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(5)Print B8506; (1972) 147 CAR 172  
(7)Print D6553; (1978) 203 CAR 584

(6)Print D9576; (1979) 218 CAR 120

CAI further expressed concern that paternity leave would be open to abuse because leave granted to a father for child-care may not be used for that purpose. It suggested that the leave could even be used to trial or train for another job while the original employer was obliged to hold open his position.

As an alternative to granting the ACTU claim, CAI proposed a general broadening of award provisions relating to part-time employment. It submitted that a freeing up of part-time employment, enabling it to be worked without restriction, would go "a long way" to assisting men and women to attend to family responsibilities while participating in the work force. CAI maintained moreover that the ACTU proposal to free up part-time employment only for employees with very young children was unreasonable and discriminatory.

Before turning to examine the components of the claim we wish to deal with an important issue which arose during the argument. In the context of discussions of various forms of authorised leave, the question of superannuation entitlements was raised and in particular, the issue of the preservation of superannuation benefits and the maintenance of death and disability benefits during periods of leave. The Commonwealth advised that there is no legislative requirement for superannuation funds to provide death or disability cover and that there may be schemes which do not provide this form of benefit.

Awards associated with superannuation do not prescribe benefits which are an integral part of the scheme prescribed in the trust deed. Awards identify the industrial parties, nominate the scheme or schemes and, most importantly, set the contribution rates. In the context of this claim the ACTU seeks award provisions so that absence on maternity, adoption and paternity leave does not break continuity of service for superannuation purposes and to allow for the maintenance of death and disability benefits and for employees to maintain contributions if they desire.

The ACTU further submitted that the trust deeds of superannuation funds should be amended to make provision for maternity, adoption and paternity leave. It said:

"The changes to the trust deed should permit employees to choose whether to pay nothing and have their entitlements frozen or whether to keep up their own superannuation contributions. They should also be able to keep up their death and disability cover. The trust deed should also allow the company to make contributions if it wishes and to count the period of leave as service if it wishes."

It is not appropriate in this case for the Commission to act in the way suggested by the ACTU, assuming that we have the jurisdiction to do so. However, there are many reasons why death and disability benefits should be maintained during periods of authorized leave, and we raise this issue as one of importance for the parties, Government and the trustees of superannuation funds to consider.

We now turn to examine the components of the claim.

#### Paternity leave

Whilst the underlying issues involved in paternity leave are not the same as those applying to maternity leave and adoption leave, we are nevertheless satisfied that reconciliation of conditions of employment with parental responsibilities in the terms of the claim embodies an acceptable industrial

issue. What is essentially sought is the right for either parent to have the

option of taking leave, with job protection, in order to become the primary child-carer of a newborn or adopted child. The reconciling of work with family responsibilities in this manner is recognised as an industrial concern by Conventions and Recommendations of the ILO. Australia has now ratified ILO Convention 156, Article 3(1) of which is as follows:

"With a view to creating effective equality of opportunity and treatment for men and women workers, each Member shall 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."

We were given evidence that the Convention has been implemented to varying degrees in other countries by the provision for fathers of some form of paternity leave associated with the birth or adoption of a child. These provisions vary considerably and in many cases are linked to social security and labour market policies of particular governments.

We reject at the outset the argument of the ACTU and some of the interveners that the availability of maternity leave for female employees constitutes discrimination against male employees. The Full Bench which granted maternity leave recognised that women have special industrial interests because of their biological role in giving birth to children. In granting maternity leave the Full Bench said that it was addressing:

". . . the special industrial interests of those female employees who elect to combine motherhood with continued participation in the workforce. The preservation of job security in the event of maternity might well facilitate career opportunities and encourage career aspirations amongst women who have hitherto regarded termination of employment as an inevitable consequence of motherhood."(8)

The Bench went on to describe the leave it was granting as affording "reasonable flexibility for the needs of mother and child and sufficient time for the mother to make a decision in relation to her future participation in the workforce." It shows a complete misunderstanding of the decision, in our opinion, to characterise the provision of maternity leave as involving discrimination against males.

We are required under section 93 of the Industrial Relations Act to take account of the principles of the Sex Discrimination Act 1984. We reject the submission that the word "principles" in section 93 requires us to treat the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), upon which that Act is founded, as part of Australian domestic legislation. It is the provisions of the Sex Discrimination Act itself to which reference should be made when applying section 93 of the Industrial Relations Act. Sections 31 and 33 of the Sex Discrimination Act recognize the principle that special provisions may be created for women if they relate to pregnancy or childbirth and that such provisions are not and should not be treated as discriminatory. Maternity leave conforms with this principle.

It is our view that under certain conditions discrimination can arise by purporting to treat equally persons whose circumstances are materially different. (See generally Australian Iron and Steel Pty. Ltd. v. Banovic and Others(9)). The Sex Discrimination Act reflects this conclusion in respect of the matters with which it deals.

(8)Print D9576; (1979) 218 CAR 120 at 123  
(9)64 ALJR 53

It is now eleven years since maternity leave was introduced as a standard in federal awards and we recognise that important changes have occurred during that time in the Australian workforce. Not only has there been a substantial influx of women, but it is of particular significance that approximately 45% of all married women with children under five years of age are now in the labour force. We recognise the desire of some working parents to share the responsibility of parenting small children. We also accept the submission put by Parents Without Partners that the job protection afforded to female employees by maternity and adoption leave should be similarly available for male employees who become the sole carer of a child.

Against this background we first consider the claim for short paternity leave. It was apparent from the evidence that it is now widely accepted that a father may be called upon to assist his spouse and care for the family at the time of the birth of their child. Currently leave of a variety of types, most commonly annual leave, is utilised for this purpose. We are prepared to grant leave for the express purpose of permitting fathers to meet this need. The leave will be for a period of up to one week and will be unpaid. It will be subject to the conditions and periods of notice set out in the draft clause attached. Some awards already provide for paid or unpaid paternity leave or special leave which may be taken for this or other limited purposes. We do not intend that this period of paternity leave which we are granting should be in addition to leave already available for this purpose. The period of one week of unpaid leave shall therefore be reduced by any period taken under such an existing entitlement. This is in accordance with the submissions of the ACTU and the Commonwealth which agreed that there should be no double counting.

Moving to the claim for "extended" paternity leave, we are persuaded that families should have a choice as to which parent becomes the primary care-giver of a child, when both wish to remain in the workforce. There may also be circumstances where only the father can provide primary care for a child and he wishes to remain in the workforce. We have therefore decided to grant a further unbroken period of up to 51 weeks unpaid paternity leave to male employees for this purpose, although this will be reduced by any period of maternity leave taken by his spouse. The leave will not extend beyond the child's first birthday. It follows that we do not accede to the extension of the total period of leave for a family to two years. As the leave is being granted for the purpose of child-care, we do not consider it appropriate, where both parents are in the work force, that they should be absent from their employment on maternity and paternity leave at the same time. In summary, the total of 52 weeks paternity leave shall be reduced by any period of maternity leave taken by the employee's spouse and, except for the week available at the time of the birth, shall not be taken concurrently with the spouse's maternity leave.

Our decision might not meet the needs of all families, particularly having regard to the limited availability of child-care for children under two years. However we are required by section 90 of the Act to take into account the public interest and, in particular, the economic impact of our decision. We are concerned about the cost implications of the claim. We do not accept the submissions as to minimal cost put by the ACTU and the interveners, which are almost totally predicated on a low take-up rate of extended paternity leave in the short term. There are considerable costs involved with extended paternity leave. They arise from the need to obtain and train replacement employees and from disruption and uncertainty connected with the employee's return to work. These cost factors were identified in all of the surveys relating to maternity leave. Whereas, currently, maternity leave involves costs to one employer, the claim for a further separate 52 weeks paternity leave, if granted, could impose

similar costs on a second or perhaps the same employer in relation to the birth

of the one child. The potential thus arises for at least a doubling of the aggregate costs, both to individual employers and at a national level. If an unqualified right to 52 weeks leave was provided for each parent and that leave could be taken over a span of two years, there would be a greater likelihood of both parents taking an extended period of leave in relation to the birth of the same child. Similarly, additional costs relating to replacement employees and disruption would arise if the period of maternity leave were able to be broken. The form of leave we have decided upon minimises these cost increases by limiting the combined period of leave to 52 weeks.

In relation to eligibility for paternity leave the ACTU proposed similar certification to that required in respect of maternity leave. We have adopted the basic format of the ACTU proposal, but we have taken account of the concerns expressed by CAI as to the possibility of abuse of paternity leave. For the extended period of paternity leave a statutory declaration will therefore be required, confirming that the purpose of the leave is for the employee to become the primary care-giver of the child. The declaration will also set out any period of maternity leave to be taken by the employee's spouse and the employee will declare that he will not engage in any conduct inconsistent with his contract of employment whilst on leave.

CAI submitted that if the Commission were to grant any paternity leave entitlements, we should exclude employers with 100 employees or less. No such restriction exists in relation to maternity leave and we are not satisfied that such a restriction should be placed on the availability of paternity leave.

#### Maternity Leave

In each case the claim for maternity, paternity and adoption leave embodies a short period of leave, to be followed by a second extended period of "parental leave". In relation to maternity leave the claim involves altering the existing provision to allow for the period of leave to be broken into two parts. This is to reflect the form of paternity leave claimed and to enable the leave to be extended to the child's second birthday.

Maternity leave, paternity leave and adoption leave address different circumstances. In our view, any attempt to make the clauses mirror each other would have the effect of creating provisions which do not meet the purposes for which they are intended. Maternity leave recognises the special industrial interests of female employees who elect to combine motherhood with continued participation in the workforce. The existing provisions are directed to the protection of the mother's health before and after the birth and the care of the newborn child. Adopting parents have different requirements as a result of the adoption process. Adoption leave does not involve pregnancy, confinement, medical factors concerning the mother etc. The existing maternity and adoption leave provisions recognise these differences. Again, paternity leave, as we are prepared to grant it, is for two distinct purposes. The week available at the time of the birth is for the purpose of providing care and support for the mother and the family. The second "extended" period of leave is for the father to become the primary care-giver of the child, whether through necessity or choice, for a period before the child's first birthday.

We consider it is inappropriate to try to match the form of maternity leave to the two periods of paternity leave. It would be wrong to describe and characterise the period of leave taken before the birth and the six weeks after the birth as "short maternity leave", as this may account for the preponderance of leave taken in some cases. In its present form the maternity leave clause is flexible. It allows a female employee to determine how the leave will be best



taken to suit her circumstances. The leave is for one unbroken period which encompasses a variety of needs, including the compulsory nature of the six weeks leave after the birth. This latter provision was prescribed in the maternity leave case on the basis of medical evidence and the compulsory nature of the leave was not put in issue in these proceedings.

On the material submitted, including the results of the Australian Institute of Family Studies survey, and what we have already said about the costs involved in permitting a period of leave to be broken, we are not persuaded that there is reason to depart from the original Full Bench decision providing for one unbroken period of maternity leave. It follows that the period of maternity leave will not extend beyond the child's first birthday.

It was brought to our attention that there is some uncertainty about the meaning of the eligibility prescription of the maternity leave clause in its present form. The matter was raised recently before the Commission in connection with appendix A to the Bank Officials' (Federal) (1963) Award.(9) It was decided in that case that an employee who qualifies once for maternity leave with twelve months continuous service with an employer is eligible for second and subsequent periods of leave with the same employer, so long as the contract of employment has not been broken.(10) We agree with this determination in relation to eligibility for all three types of leave. In addition, we think it should be clarified in relation to all three areas that leave, paid or unpaid, taken with the consent of the employer, does not break an employee's continuity of service. The following definition of "continuous service" will therefore be inserted into the maternity, paternity and adoption leave clauses:

"'Continuous service' means service under an unbroken contract of employment and includes:

- (i) any period of leave taken in accordance with this subclause;
- (ii) any period of leave or absence authorised by the employer or by the award."

Other changes have been made to the standard maternity leave clause to reflect our decision and to provide for uniformity of drafting. We mention just two matters. In relation to certification, a statutory declaration will be required stating particulars of paternity leave taken by the employee's spouse and declaring that she will not, during the period of leave, engage in any conduct inconsistent with the contract of employment. In relation to replacement employees, the following provision in the existing clause will not be included:

"A replacement employee shall not be entitled to any of the rights conferred by this clause, except where her employment continues beyond the twelve months qualifying period."

The eligibility provisions for maternity, paternity and adoption leave of themselves prescribe the entitlement of all employees, including replacement employees.

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(10)Print B4291 [B001]; (1969) 128 CAR 215

(11)Print J1899

## Adoption leave

The claim resulting in the 1985 adoption leave decision was for leave for females only. The ACTU, supported by all of the interveners, now submits that an employee who is an adopting father should have the right to take leave on the same basis as an adopting mother. In the light of our conclusions in relation to paternity leave we accept that the rationale for adoption leave applies equally to male and female employees, and we will so provide.

Further changes were sought to the present adoption leave clause. In respect of the period of leave the claim was for a period of 52 weeks to be taken as follows:

- (i) Leave may be taken if necessary in order for the employee to travel overseas for the purpose of taking custody of a child for the purpose of adoption.
- (ii) Up to three weeks continuous leave may be taken from the time of the placement of the child. (This leave plus any leave taken in (i) above, will be known as "short adoption leave").
- (iii) Up to 52 weeks (minus any short adoption leave) may be taken in an unbroken period at any time after the first period of leave and a date two years after the placement, subject to paragraph (a) hereof (this will be known as "extended adoption leave").

Having regard to the nature of the adoption process, we think it reasonable that a period of up to three weeks unpaid leave should be available to adopting parents at the time of placement of a child. This would include any time taken to travel overseas to take custody of the child. In the circumstances of adoption we accept that such leave may be taken concurrently by both parents. This reflects our view as to differences underlying the three types of leave encompassed by the claim.

For the same reasons given in relation to paternity and maternity leave, we are not prepared to extend the total period of leave available to a family beyond 52 weeks. Accordingly the balance of the 52 weeks may be taken by either or both parents in order to be the primary care-giver of the child, but may not be taken by both concurrently. It follows that leave will always be taken by one parent as an unbroken period. As with maternity and paternity leave the period of adoption leave available to a family will come to an end no later than 52 weeks after the placement of the child.

Again, changes have been made to the standard adoption leave clause to reflect this decision and to provide for uniformity of drafting. We note a possible ambiguity in the definitions of "child" and "relative adoption" as they appear in the standard adoption leave clause. We were not addressed on this issue but we draw it to the attention of the parties in the event that clarification may be needed.

## Part-time employment

On the desirability of part-time employment there is, in a sense, no issue between the ACTU and CAI or any other party or intervener. As we noted earlier, much of the argument advanced by CAI was in support of award provisions which would make part-time work available generally and not only to employees who had assumed responsibility for caring for a child after birth or adoption. This part of the ACTU claim was thus subsumed by the CAI

counterclaim. The ACTU resisted, however, any suggestion that part-time work, unrestricted by provisions relating to part-time employment elsewhere in an

award, should be available to parents beyond the second birthday or the second anniversary of the placement of a child. It opposed these proceedings being used to establish a general award right to part-time employment. The issue therefore was not whether part-time work should be made available in connection with the birth or adoption of a child, but rather what limits, if any, should be placed on its availability.

There are a number of cogent reasons why part-time work should be more generally available for both men and women. This is a matter raised for the consideration of the trade union movement and employers by the August 1989 national wage decision. We do not believe, however, that these proceedings should become a vehicle for establishing a general unqualified right for an employer to employ people part-time which is, in essence, the CAI counterclaim. These proceedings have their origin in the desire of the ACTU to establish or advance a range of rights for the natural or adoptive parents of young children. It is on this basis that they have assumed the status of a test case and this decision is made, in all respects, on the basis that the ACTU has indicated that its affiliates will not resist the introduction into private sector awards of any of the provisions we may decide upon as part of an entire scheme benefiting the parents of young children.

There was, as we have said, no issue between the parties about the desirability of part-time employment for parents of young children. Further, the evidence before us makes clear the demand for such employment from parents, particularly women. The Commonwealth government and all of the States, as well as the other interveners, supported the introduction of part-time work as claimed. We have therefore decided to provide for part-time work for parents associated with the birth or adoption of their child.

The scheme we have determined allows for part-time employment to be taken in conjunction with or independently of any maternity, paternity or adoption leave. Consistent with the ACTU claim, part-time employment will only be by agreement with the employer. We have provided that an employee with less than twelve months continuous service may work part-time under the clause but has no award right to return to his or her former position. An employee who has twelve months continuous service before commencing part-time work has such a right. The right to part-time employment under these provisions will cease on the second birthday of the child or the second anniversary of the placement of an adopted child.

It is apparent from the material before us that child care is, and is likely to continue to be, more generally available for children over the age of two. Parents who are able to rearrange the pattern of their employment by working part-time so as to care for a child, may, on the child's second birthday, be confronted by award provisions which prevent the altered pattern continuing, notwithstanding that both the employer and employee desire the part-time employment to continue. The need for part-time employment for one or both of the parents may not diminish until the child, or the last of any subsequent children, reaches school age and even beyond. All of which suggests that part-time work should continue to be available after the second birthday of the child.

If we were to decide in this case, however compelling the reasons for doing so, that part-time work should be available beyond the period contemplated by the ACTU's claim, there could be resistance to the variation of awards to reflect the totality of our decision. We have decided, therefore, against the extension of part-time work in these proceedings beyond the second anniversary of the child's birth or placement for adoption. It is nevertheless

our opinion that there is no obvious reason for so limiting the period and

nothing in ILO Convention 156 supports this limitation. It is our view that the ACTU and its affiliates should give further consideration as to whether part-time employment associated with the care of a child should be so limited. It may be that after the scheme we are proposing has operated for a time, concern about part-time employment will be allayed.

Employees working part-time under the clause we propose will receive, pro rata, all award benefits. There was debate before us as to whether part-time employment, provided for as a result of these proceedings, should be described as "permanent" or "regular" part-time work. We see no need for either description. Any part-time employment under the draft award provision is as permanent or impermanent or regular or irregular as full-time employment under the relevant award in which it will be included. We emphasise that we are not providing for casual employment. It is employment on the same conditions as to tenure as full-time employment under the award. If, for example, a full-time employee can be terminated under the relevant award by the giving of one week's or one month's notice, then the part-time employee may likewise have his or her employment terminated on the same basis.

As to rates of pay, we intend that a part-time employee will be paid, on a pro rata basis, the rate prescribed in the award for the appropriate classification. In those awards where a loading is incorporated into a rate for part-time employees, as distinct from casual employees, the standard clause proposed will require modification to make clear that employees working part-time under the clause should be paid that loading. We wish to make it clear, however, that we do not intend to endorse award provisions for such loadings and their continued existence is a matter for consideration by the parties to the award.

Where part-time employment is undertaken by the employee between the time of birth or placement of the child and the second anniversary of the event, then if a right to return to the former position exists, such right may be exercised once only, even though an employee may work part-time for a number of periods during the two years. The right to return to the former position after part-time work is independent of and additional to any right to return to the former position which arises at the end of maternity, paternity or adoption leave.

We are in one respect extending the ACTU claim by allowing women, but not men, to work part-time with the consent of the employer, prior to the birth of a child. This is in the situation where such part-time work is, as a result of the pregnancy, necessary or desirable. There may well be situations where a woman, particularly in the later stages of pregnancy, would wish to work part-time but would not wish to take leave. Such a provision, in our opinion, is clearly justified and is of the type contemplated by section 31 of the Sex Discrimination Act. Another area of difference in the part-time work provisions for men and women arises because a female may only engage in part-time employment after six weeks from the birth. The six weeks compulsory leave, as we have indicated, was not put in issue in this case. We do not therefore propose to provide for an entitlement for females to work part-time during that period.

We have introduced a provision which requires the employer and employee to record essential elements of the part-time employment before it commences. It is desirable that the parties to the arrangement should have a clear understanding of the terms upon which part-time work will be performed. The part-time work need not be the same as that usually performed by the employee,

but we have decided that the type of work which may be performed part-time must be work which is covered by the award under which the right arises. If work were to be performed outside the scope of the award creating the opportunity to work part-time, this could, in our opinion, result in a complex, confusing and possibly conflicting array of rights.

As parents working part-time may make arrangements for child-care which depend upon definite commencing and finishing times, we have decided that employees working part-time under this clause should be exempted from any requirement to work overtime.

The last matter we wish to deal with on this issue is the question of other award provisions regulating part-time employment. It is a matter we touched on earlier. The ACTU has, on behalf of its affiliates, made it clear that part-time employment in the context of this claim would operate independently of other award provisions restricting its performance. While the ACTU accepted the removal of what it described as "restrictions" on part-time work elsewhere in an award, it did not accept that "benefits" in the award applying to part-time employees should also be removed. Provisions may be restrictions or benefits, depending on the perspective from which they are viewed. A prescription as to the minimum number of hours a part-time employee may work, as exemplified in subclause 13(b) of the Retail and Wholesale Shop Employees (Australian Capital Territory) Award 1983, one of the awards before us, may restrict an employer's capacity to offer part-time employment. It may also be seen as a benefit by the relevant union. Little is gained, in our view, by endeavouring to characterise such provisions. We believe, and the ACTU appeared ultimately to have accepted, that provisions limiting the availability of part-time work should have no application to part-time work performed within the context of this claim. This is fundamental to the clause we propose.

#### Conclusion

We have decided upon a package of leave and part-time work associated with the birth or adoption of a child which will provide additional choices for families. We have awarded a period of up to one week unpaid paternity leave to male employees at the time of the birth of their child to assist their spouse and care for the family. An additional unbroken period of up to 51 weeks unpaid paternity leave will be available to male employees in order to become the primary care-giver of the child prior to the child's first birthday. This will be reduced by any period of maternity leave taken by the employee's spouse. Male employees eligible for paternity leave will be afforded the same job protection as has been awarded to female employees.

We are not persuaded that there is reason to depart from the original Full Bench decision providing for one unbroken period of maternity leave. It follows that the period of maternity leave will not be extended beyond the child's first birthday.

Adoption leave will henceforth be available to male employees on the same basis as female employees and adopting parents will be able to take part of their entitlement, up to three weeks leave, at the time of placement of the child.

The total amount of maternity, paternity and adoption leave available to a family in respect of the birth or adoption of a child is 52 weeks. We emphasise that this does not constitute an erosion of the present maternity or adoption leave entitlements. Female employees are still entitled to take the full 52 weeks leave granted by the 1979 maternity leave and the 1985 adoption

leave decisions. They may now, however, choose to share the leave with their spouse or decide that it should be taken, in the main, by either parent.



Parents will, moreover, be able to care for their child over a span of two years by combining leave entitlements with part-time work with the consent of their employer. Alternatively they may work part-time throughout the two year period. A female employee may also work part-time in one or a number of periods during her pregnancy, where this is necessary or desirable.

The scheme we have decided upon establishes a flexible range of choices for families and is a further step towards the reconciliation of work with family responsibilities.

#### Implementation

The draft clause we propose is attached to the decision. It will be clear from this and from what we have said that we see the benefits to be provided as a result of this decision as being inter-related. Accordingly, they will be implemented in the form of a single, indivisible clause which sets out the entitlements to the three types of leave as well as to part-time employment. It may be necessary to tailor the provisions of the clause to fit the context of particular awards, but it is not our intention that parties to awards shall be able to apply the provisions of the clause selectively. We emphasise that we have decided upon a package and implementation of our decision will be on this basis.

The unions are directed to prepare and lodge draft orders giving effect to our decision in the two matters before us. The parties will be given the opportunity to speak to the orders before the Bench on a date to be fixed. The orders will operate from the date of their execution and will remain in force for a period of twelve months.

#### Appearances:

I. Mathews and S. Harper appearing for The Australian Council of Trade Unions, with J. Sullivan for the Shop Distributive and Allied Employees Association, also with C. Christodoulou for The Federated Miscellaneous Workers Union of Australia and on behalf of the Federated Clerks Union of Australia.

E.H. Callander and later G.R. Watson, R. Hamilton (intervening) appearing on behalf of the Confederation of Australian Industry; Federated Tanners Association; Queensland Confederation of Industry; Australian Chamber of Manufactures, Victorian division; Australian Chamber of Manufactures, New South Wales division; Chamber of Commerce and Industry, South Australia; Confederation of Western Australian Industry; Employers Federation of New South Wales; Confederation of ACT Industry and the Retail Traders Association of New South Wales.

L. Tacy with L. Kendall appearing for the Minister for Industrial Relations and with V. Pratt for the Affirmative Action Agency (intervening).

D.J. Cavanagh, later G. Shanahan (NT) and later S. Beach (Qld) appearing on behalf of the Queensland Government and the Northern Territory Government (intervening).

B.D. Hodgkinson and later Phillipa Hall of counsel appearing on behalf of Her Majesty the Queen in right of the State of New South Wales (intervening).

P.A. Nolan appearing on behalf of Metal Trades Industry Association of Australia (intervening).

A. Pearce appearing on behalf of Her Majesty the Queen in right of the State of Tasmania (intervening).

J. McCabe with J. O'Brien and later Mr Ewens (SA) appearing on behalf of Her Majesty the Queen in right of the State of Victoria; Her Majesty the Queen in right of the State of South Australia (intervening).

J. Woodrow and later Dr H. McKenna appearing on behalf of the Government of the Australian Capital Territory (intervening).

Q.A.L. Bryce appearing for the Human Rights and Equal Opportunity Commission (intervening).

D.R. Mansfield and later Mr Whish-Wilson appearing on behalf of Her Majesty the Queen in right of the State of Western Australia (intervening).

Dr D. Edgar with H. Glezer appearing on behalf of the Australian Institute of Family Studies (intervening).

M. Salmon appearing on behalf of the Women's Electoral Lobby of Australia (intervening).

A. Cornwall appearing on behalf of Parents Without Partners Victoria (intervening).

M. Waniganayake and P. Cahir and later J.G. Gifford appearing for the Australian Early Childhood Association (intervening).

P. Whately and later Ms Horne appearing on behalf of the National Council of Women of Australia and D. Alley for the United Nations Association of Australia Status of Women Committee (intervening).

L. Connor appearing on behalf of the Union of Australian Women (intervening).

S. Beach appearing on behalf of the State of Queensland (intervening).

Dates and place of hearing:

1989.

Melbourne:

July 24, 25, 27;

August 3, 4, 16, 17;

November 28, 29;

December 6, 7.

1990.

Melbourne:

February 12, 13, 14;

March 19, 20, 21, 22;

April 9, 10, 11.

## SUMMARY OF DECISION

Our decision is summarized as follows:

1. After twelve months continuous service a period of up to one week unpaid paternity leave will be available to male employees at the time of confinement of their spouse in order to assist her and to care for the family.
2. An additional unbroken period of up to 51 weeks unpaid paternity leave will be available to male employees in order to become the primary care-giver of the newborn child. Paternity leave ceases on the child's first birthday.
3. The total amount of maternity and paternity leave available to a family is 52 weeks.
4. Paternity leave is reduced by any period of maternity leave taken by the employee's spouse and, except for the week at the time of the birth, shall not be taken concurrently with her maternity leave.
5. The entitlement of female employees to maternity leave remains unaltered. Maternity leave is reduced, however, by any period of paternity leave taken by the employee's spouse and, except for a week at the time of the birth may not be taken concurrently with paternity leave.
6. The entitlement to adoption leave is extended to male employees on the same basis as for female employees.
7. Up to three weeks unpaid leave shall be available to adopting parents at the time of placement of a child; this includes leave to travel overseas to take custody of the child. This period of three weeks "short" adoption leave may be taken by both parents concurrently.
8. The total period of leave available to adopting parents is 52 weeks. The balance of the 52 weeks may be taken by either parent or both in order to be the primary care-giver of the child, but may not be taken by both concurrently.
9. Parents may engage in part-time employment associated with the birth or adoption of their child in the following manner:
  - . such part-time employment may only be worked by agreement with the employer;
  - . such part-time employment will operate independently of any award provisions restricting its performance;
  - . it may be worked either in conjunction with or independently of maternity, paternity or adoption leave;
  - . the right to work part-time ceases on the child's second birthday or two years after the placement of the child in the case of adoption;

. an employee with twelve months continuous service prior to commencing such part-time work has the right to return to his or her former position;

- with . an employee who has less than twelve months continuous service
- an employer may engage in part-time work in relation to the birth or adoption of a child but has no award right to return to his or her former position;
- . in addition to part-time work engaged in after the birth of her child, a female employee may work part-time during the pregnancy where this is necessary or desirable;
- . a male employee may work part-time during the period between the birth of his child and its second birthday, or in the case of adoption during a period of two years after the placement of the child;
- . an employee who has the right to return to his or her former position after working part-time may exercise that right once only, notwithstanding that he or she may work part-time during a number of periods. This is, however, independent of any right to return to the former position which arises at the end of maternity, paternity or adoption leave. The right to return to her former position after part-time work arises for a female employee only after part-time work performed after the birth;
- . the part-time work engaged in need not be the same as the work usually performed but must be work otherwise covered by the award under which the right arises;
- . an employee working part-time under this clause will receive pro rata rates of pay and pro rata conditions prescribed for the award classification.

## ATTACHMENT A - DRAFT PARENTAL LEAVE CLAUSE

## PARENTAL LEAVE

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

## (A) MATERNITY LEAVE

## Nature of leave

- (1) Maternity leave is unpaid leave.

## Definitions

- (2) For the purposes of this subclause:

- include
- (a) "Employee" includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- in
- (b) "Paternity leave" means leave of the type provided for in subclause (B) whether prescribed in an award or otherwise.
- one
- (c) "Child" means a child of the employee under the age of one year.
- contract
- (d) "Spouse" includes a de facto spouse.
- (e) "Continuous service" means service under an unbroken contract of employment and includes:
- (i) any period of leave taken in accordance with this subclause;
- (ii) any period of leave or absence authorised by the employer or by the award.

## Eligibility for maternity leave

(3) An employee who becomes pregnant, upon production to her employer of the certificate required by paragraph (4) hereof, shall be entitled to a period of up to 52 weeks maternity leave, provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse and, apart from paternity leave of up to one week at the time of confinement, shall not be taken concurrently with paternity leave.

Subject to paragraphs (6) and (9) hereof the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.

The employee must have had at least twelve months continuous service with that employer immediately preceding the date upon which she proceeds upon such

leave.

## Certification

(4) When applying for maternity leave the employee must produce to her employer a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement.

The employee must also produce to her employer a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

## Notice requirements

(5) (a) An employee shall, not less than ten weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.

in (b) An employee shall give not less than four weeks notice writing to her employer of the date upon which she proposes to commence maternity leave, stating the period of leave to be taken.

(c) An employer, by not less than fourteen days notice in writing to the employee, may require her to commence maternity leave at any time within the six weeks immediately prior to her presumed date of confinement.

(d) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subparagraph (b) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

## Transfer to a safe job

(6) Where, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of paragraphs (10), (11), (12) and (13) hereof.

## Variation of period of maternity leave

(7) (a) Provided the maximum period of maternity leave does not exceed the period to which the employee is entitled under paragraph (3) hereof:

(i) the period of maternity leave may be lengthened once only by the employee giving not less than fourteen days notice in writing stating the period by which the leave



is to be lengthened;

(ii) the period may be further lengthened by agreement between the employer and the employee.

the (b) The period of maternity leave may, with the consent of employer, be shortened by the employee giving not less than fourteen days notice in writing stating the period by which the leave is to be shortened.

Cancellation of maternity leave

(8) (a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.

leave (b) Where the pregnancy of an employee then on maternity terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time, nominated by the employer, which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

Special maternity leave and sick leave

(9) (a) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then:

(i) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or

(ii) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.

suffers (b) Where an employee, not then on maternity leave, illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under paragraph (3) hereof.

hereof, (c) For the purposes of paragraphs (10), (11) and (12) maternity leave shall include special maternity leave.

a (d) An employee returning to work after the completion of period of leave taken pursuant to this paragraph shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who

was transferred to a safe job pursuant to paragraph (6) hereof, to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing she shall be entitled to a position as nearly comparable in status and pay to that of her former position.

#### Maternity leave and other leave entitlements

- (10) (a) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under paragraph (3) hereof, an employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is entitled.

absences (b) Paid sick leave or other paid authorised award (excluding annual leave or long service leave) shall not be available to an employee during her absence on maternity leave.

#### Effect of maternity leave on employment

(11) Subject to this subclause, notwithstanding any award or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

#### Termination of employment

- (12) (a) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.
- (b) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

#### Return to work after maternity leave

- (13) (a) An employee shall confirm her intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- leave or (b) An employee, upon returning to work after maternity the expiration of the notice required by subparagraph (a) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to paragraph (6) hereof, to the position which she held immediately before such transfer or in relation to an employee who has worked part-time during the pregnancy the position she held immediately before commencing such

part-time work.

## PARENTAL LEAVE CASE

Where such position no longer exists, but there are other positions available which the employee is qualified for and is capable of performing, she shall be entitled to a position as nearly comparable in status and pay to that of her former position.

## Replacement employees

(14) (a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.

(b) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

employee

(c) Before an employer engages a person to replace an temporarily promoted or transferred in order to replace an employee exercising her rights under this subclause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

requiring an

(d) Nothing in this subclause shall be construed as employer to engage a replacement employee.

## (B) PATERNITY LEAVE

## Nature of leave

(1) Paternity leave is unpaid leave.

## Definitions

(2) For the purposes of this subclause:

(a) "Employee" includes a part-time employee but does not include an employee engaged upon casual or seasonal work.

in

(b) "Maternity leave" means leave of the type provided for subclause (A) (and includes special maternity leave) whether prescribed in an award or otherwise.

the age

(c) "Child" means a child of the employee's spouse under of one year.

(d) "Spouse" includes a de facto spouse.

(e) "Primary care-giver" means a person who assumes the principal role of providing care and attention to a child.

(f) "Continuous service" means service under an unbroken contract of employment and includes:

(i) any period of leave taken in accordance with this subclause;

(ii) any period of leave or absence authorised by the employer or by the award.

## Eligibility for paternity leave

(3) A male employee, upon production to his employer of the certificate required by paragraph (4), shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances:

- (a) an unbroken period of up to one week at the time of confinement of his spouse;
- (b) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child, provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse and shall not be taken concurrently with that maternity leave.

The employee must have had at least twelve months continuous service with that employer immediately preceding the date upon which he proceeds upon either period of leave.

## Certification

- (4) (a) When applying for paternity leave the employee must produce to his employer a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date on which the birth took place.
- (b) In relation to any period to be taken under subparagraph (3)(b) hereof, the employee must also produce a statutory declaration stating:
  - (i) he is seeking that period of paternity leave to become the primary care-giver of a child;
  - (ii) particulars of any period of maternity leave sought or taken by his spouse; and
  - (iii) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

## Notice Requirements

- (5) (a) The employee shall, not less than ten weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certification required in paragraph (4) hereof.
- (b) The employee shall not be in breach of this paragraph as a consequence of failure to give the notice required in



subparagraph (a) hereof if such failure is due to:

- (i) the birth occurring earlier than the expected date; or
- (ii) the death of the mother of the child; or
- (iii) other compelling circumstances.

(c) The employee shall immediately notify his employer of any change in the information provided pursuant to paragraph (4) hereof.

#### Variation of period of paternity leave

(6) (a) Provided the maximum period of paternity leave does not exceed the period to which the employee is entitled under paragraph (3) hereof:

(i) the period of paternity leave provided by subparagraph (3)(b) may be lengthened once only by the employee giving not less than fourteen days notice in writing stating the period by which the leave is to be lengthened;

(ii) the period may be further lengthened by agreement between the employer and the employee.

(3)(b) (b) The period of paternity leave taken under subparagraph hereof may, with the consent of the employer, be shortened by the employee giving not less than fourteen days notice in writing stating the period by which the leave is to be shortened.

#### Cancellation of paternity leave

(7) Paternity leave, applied for under subparagraph (3)(b) hereof but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.

#### Paternity leave and other leave entitlements

(8) (a) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under paragraph (3) hereof, an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part thereof to which he is entitled.

(b) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave) shall not be available to an employee during his absence on paternity leave.

#### Effect of paternity leave on employment

(9) Subject to this subclause, notwithstanding any award or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

#### Termination of employment

- (10) (a) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this award.

employee (b) An employer shall not terminate the employment of an  
 on the ground of his absence on paternity leave, but  
 otherwise the rights of an employer in relation to  
 termination of employment are not hereby affected.

Return to work after paternity leave

(11) (a) An employee shall confirm his intention of returning to work  
 by notice in writing to the employer given not less than four  
 weeks prior to the expiration of the period of paternity  
 leave provided by subparagraph (3)(b) hereof.

leave or (b) An employee, upon returning to work after paternity  
 the expiration of the notice required by subparagraph (a)  
 hereof, shall be entitled to the position which he held  
 immediately before proceeding on paternity leave, or in  
 relation to an employee who has worked part-time under this  
 clause to the position he held immediately before commencing  
 such part-time work.

Where such position no longer exists but there are other  
 positions available which the employee is qualified for and  
 is capable of performing, he shall be entitled to a position  
 as nearly comparable in status and pay to that of his former  
 position.

Replacement employees

as (12) (a) A replacement employee is an employee specifically engaged  
 a result of an employee proceeding on paternity leave.

(b) Before an employer engages a replacement employee the  
 employer shall inform that person of the temporary nature of  
 the employment and of the rights of the employee who is being  
 replaced.

employee (c) Before an employer engages a person to replace an  
 temporarily promoted or transferred in order to replace an  
 employee exercising his rights under this subclause, the  
 employer shall inform that person of the temporary nature of  
 the promotion or transfer and of the rights of the employee  
 who is being replaced.

requiring an (d) Nothing in this subclause shall be construed as  
 employer to engage a replacement employee.

(C) ADOPTION LEAVE

Nature of leave

(1) Adoption leave is unpaid leave.

Definitions

(2) For the purposes of this subclause:

employee (a) "Employee" includes a part-time employee but not an engaged upon casual or seasonal work.

- has
- (b) "Child" means a person under the age of five years who not previously lived continuously with the employee concerned for a period of six months, or who is not a child or step-child of the employee or of the spouse of the employee, and is placed with the employee for the purposes of adoption.
- is
- (c) "Relative adoption" occurs where a child, as defined, adopted by a parent, a spouse of a parent or other relative being a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).
- principal
- (d) "Primary care-giver" means a person who assumes the role of providing care and attention to a child.
- (e) "Spouse" includes a de facto spouse.
- contract
- (f) "Continuous service" means service under an unbroken of employment and includes:
- (i) any period of leave taken in accordance with this subclause;
- (ii) any period of leave or absence authorised by the employer or by the award.

#### Eligibility

(3) An employee, upon production to the employer of the documentation required by paragraph (4) hereof, shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances:

- the
- (a) an unbroken period of up to three weeks at the time of placement of the child;
- its
- (b) an unbroken period of up to 52 weeks from the time of placement in order to be the primary care-giver of the child. This entitlement shall be reduced by:
- (i) any period of leave taken pursuant to subparagraph (a) hereof; and
- taken or
- (ii) the aggregate of any periods of adoption leave to be taken by the employee's spouse.

Such leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse.

The employee must have had at least twelve months continuous service with that employer immediately preceding the date upon which he or she proceeds upon

such leave in either case.

## Certification

- (4) Before taking adoption leave the employee must produce to the employer:
- (a) (i) a statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or
- authority (ii) a statement from the appropriate government confirming that the employee is to have custody of the child pending application for an adoption order.
- (b) In relation to any period to be taken under subparagraph (3)(b) hereof, a statutory declaration stating:
- (i) the employee is seeking adoption leave to become the primary care-giver of the child;
- or (ii) particulars of any period of adoption leave sought taken by the employee's spouse; and
- will not (iii) for the period of adoption leave, the employee engage in any conduct inconsistent with his or her contract of employment.

## Notice requirements

- (5) (a) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within two months of such approval shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of a relative adoption, the employee shall notify as aforesaid upon deciding to take a child into custody pending an application for an adoption order.
- after (b) An employee who commences employment with an employer the date of approval for adoption purposes shall notify the employer thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take. Provided that such employee shall not be entitled to adoption leave unless the employee has not less than twelve months continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave.
- the (c) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than fourteen days before such placement, give notice in writing to the employer of such date, and of the date of the commencement of any period of leave to be taken under subparagraph (3)(a) hereof.



of

(d) An employee shall, ten weeks before the proposed date commencing any leave to be taken under subparagraph (3)(b) hereof, give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.

(e) An employee shall not be in breach of this subclause, as a consequence of failure to give the stipulated period of notice in accordance with subparagraphs (c) and (d) hereof if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.

Variation of period of adoption leave

(6) (a) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under paragraph (3) hereof:

(i) the period of leave taken under subparagraph (3)(b) hereof may be lengthened once only by the employee giving not less than fourteen days notice in writing stating the period by which the leave is to be lengthened;

(ii) the period may be further lengthened by agreement between the employer and employee.

(b) The period of adoption leave taken under subparagraph(3)(b) hereof may, with the consent of the employer, be shortened by the employee giving not less than fourteen days notice in writing stating the period by which the leave is to be shortened.

Cancellation of adoption leave

(7) (a) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.

(b) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time, not exceeding four weeks from receipt of notification, for the employee's resumption of work.

Special leave

(8) The employer shall grant to any employee who is seeking to adopt a child such unpaid leave, not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee, the employer may require the employee to take such leave in lieu of special leave.

Adoption leave and other entitlements

(9) (a) Provided the aggregate of any leave, including adoption leave taken under this subclause, does not exceed the period to which the employee is entitled under paragraph (3) hereof, an

employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part thereof to which he or she is entitled.

absences

(b) Paid sick leave or other paid authorised award

(excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.

## Effect of adoption leave on employment

(10) Subject to this subclause, notwithstanding any award or other provision to the contrary, absence on adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

## Termination of employment

(11) (a) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this award.

(b) An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

## Return to work after adoption leave

(12) (a) An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of adoption leave provided by subparagraph (3)(b) hereof.

(b) An employee, upon returning to work after adoption leave, shall be entitled to the position held immediately before proceeding on such leave, or, in relation to an employee who has worked part-time under this clause, the position held immediately before commencing such part-time work.

Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee shall be entitled to a position as nearly comparable in status and pay to that of the employee's former position.

## Replacement employees

(13) (a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.

(b) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(c) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising rights under this subclause, the employer shall inform that person of the temporary nature of the

promotion or transfer and of the rights of the employee who is being replaced.

requiring an (d) Nothing in this subclause shall be construed as employer to engage a replacement employee.

## (D) PART-TIME WORK

## Definitions

(1) For the purposes of this subclause:

- for a
- pregnant or
- or male
- contract
- (a) "Male employee" means an employed male who is caring child born of his spouse or a child placed with the employee for adoption purposes.
- (b) "Female employee" means an employed female who is is caring for a child she has borne or a child who has been placed with her for adoption purposes.
- (c) "Spouse" includes a de facto spouse.
- (d) "Former position" means the position held by a female employee immediately before proceeding on leave or part-time employment under this subclause, whichever first occurs or, if such position no longer exists but there are other positions available for which the employee is qualified and the duties of which he or she is capable of performing, a position as nearly comparable in status and pay to that of the position first mentioned in this definition.
- (e) "Continuous service" means service under an unbroken of employment and includes:
- (i) any period of leave taken in accordance with this subclause;
- (ii) any period of leave or absence authorised by the employer or by the award.

## Entitlement

(2) With the agreement of the employer:

- periods at
- periods
- periods
- (a) A male employee may work part-time in one or more any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.
- (b) A female employee may work part-time in one or more while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable.
- (c) A female employee may work part-time in one or more at any time from the seventh week after the date of birth of the child until its second birthday.

periods

(d) A female employee may work part-time in one or more  
at any time from the date of the placement of the child until  
the second anniversary of that date.

Return to former position

- (3) (a) An employee who has had at least twelve months continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the expiration of the period of such part-time employment or the first period, if there is more than one, the right to return to his or her former position.

(b) Nothing in subparagraph (a) hereof shall prevent the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.

Pro rata entitlements

(4) Subject to the provisions of this subclause and the matters agreed to in accordance with paragraph (5) hereof, part-time employment shall be in accordance with the provisions of this award which shall apply pro rata.

Part-time work agreement

(5) (a) Before commencing a period of part-time employment under this subclause the employee and the employer shall agree:

- (i) that the employee may work part-time;
- (ii) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;
- (iii) upon the classification applying to the work to be performed; and
- (iv) upon the period of part-time employment.

(b) The terms of this agreement may be varied by consent.

(c) 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.

(d) The terms of this agreement shall apply to the part-time employment.

Termination of employment

(6) 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.



## Overtime

(7) An employer may request, but not require, an employee working part-time under this clause to work overtime.

## Nature of part-time work

(8) The work to be performed part-time need not be the work performed by the employee in his or her former position but shall be work otherwise performed under this award.

## Inconsistent award provisions

(9) An employee may work part-time under this clause notwithstanding any other provision of this award which limits or restricts the circumstances in which part-time employment may be worked or the terms upon which it may be worked including provisions:

- (a) limiting the number of employees who may work part-time;
- (b) establishing quotas as to the ratio of part-time to full-time employees;
- (c) prescribing a minimum or maximum number of hours a part-time employee may work; or
- (d) requiring consultation with, consent of, or monitoring by a union;

and such provisions do not apply to part-time work under this clause.

## Replacement employees

- (10) (a) A replacement employee is an employee specifically engaged as a result of an employee working part-time under this subclause.
- (b) A replacement employee may be employed part-time. Subject to this paragraph, paragraphs (4), (5), (6) and (9) of this subclause apply to the part-time employment of a replacement employee.
- (c) Before an employer engages a replacement employee under this paragraph, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (d) Unbroken service as a replacement employee shall be treated as continuous service for the purposes of subparagraph (1)(e) hereof.

## ATTACHMENT B

## ACTU CLAIM AS REVISED IN EXHIBIT ACTU 22

## PATERNITY LEAVE CLAUSE

## (1) Eligibility for paternity leave

A male employee shall, upon production to his employer of the certificate required in subclause (3), be entitled to short and extended paternity leave to care for a child providing that he has had not less than twelve months continuous service with that employer immediately preceding the date upon which he proceeds upon the first period of leave.

The twelve months continuous service with an employer, immediately preceding the date upon which the employee proceeds upon paternity leave for one child, shall make the employee eligible for paternity leave for all subsequent children, provided that continuity of service with that employer is not broken.

## (2) Definitions

For the purposes of this clause:

- (a) "An employee" shall include a part-time employee but shall not include an employee engaged upon casual or seasonal work.
- (b) "Paternity leave" shall mean unpaid paternity leave.
- (c) "Child" refers to a person under the age of two years.
- (d) "Spouse" includes a de facto spouse.

## (3) Certification

To apply for paternity leave the employee must produce for his employer, subject to subclause (5) below:

- (a) a certificate from a duly qualified medical practitioner naming the employee's spouse or the woman bearing the employee's child, stating that she is pregnant and the expected date of birth or the date on which the birth took place; and
- (b) a letter from the woman named in the medical certificate saying that the person seeking leave is her spouse or the father of her child and that he intends to take the leave for the care of the child; or  
  
a statutory declaration or other letter of authority saying the employee seeking paternity leave is the father of the child or the person taking responsibility for the child.

## (4) Period of leave

- (a) Paternity leave shall be for a period of up to 52 weeks in total.
- (b) Leave may be taken as follows:
  - (i) Up to three weeks continuous leave may be taken from the time of the birth (this will be known as "short paternity leave").

(ii) Up to 52 weeks (minus any short paternity leave) may be taken in an unbroken period at any time between three weeks after the birth and the child's second birthday (this will be known as "extended paternity leave").

(5) Notice requirements

(a) The employee shall, not less than ten weeks prior to each proposed period of leave, give notice in writing to the employer stating the dates on which the employee proposes to start and finish the period of leave, (including any period of part-time leave as per subclause (13) below), and the certification required in subclause (3) above.

(b) The employee shall not be in breach of this clause as a consequence of failure to give the notice required in paragraph (a) hereof if such failure is due to:

(i) the birth occurring earlier than the expected date; or

(ii) the death of the mother of the child; or

(iii) other compelling circumstances.

(6) Variation of period of paternity leave

(a) Providing the addition does not extend paternity leave beyond 52 weeks, the period of extended paternity leave may be lengthened once only, save with the agreement of the employer, by the employee giving not less than fourteen days notice in writing stating the period by which the leave is to be lengthened.

(b) The period of extended paternity leave may, with the consent of the employer, be shortened by the employee giving not less than fourteen days notice in writing stating the period by which the leave is to be shortened.

(7) Cancellation of paternity leave

Paternity leave, applied for but not commenced, shall be cancelled when the pregnancy terminates other than by the birth of a living child.

(8) Paternity leave and other leave entitlements

Provided the aggregate of leave does not exceed 52 weeks:

(a) an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part thereof to which he is then entitled;

(b) paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during his absence on paternity leave.

(9) Effect of paternity leave on employment

Notwithstanding any award or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any

purpose of any relevant award or agreement.

## (10) Termination of employment

- (a) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this award.
- (b) An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

## (11) Return to work after paternity leave

- (a) An employee shall confirm his intention of returning to work by notice in writing to the employer, given not less than four weeks prior to the expiration of the period of extended paternity leave.
- (b) An employee, upon returning to work after short paternity leave or the expiration of the notice required by paragraph (a) hereof, shall be entitled to the position which he held immediately before proceeding on paternity leave. Where such position no longer exists but there are other positions available for which the employee is qualified and the duties of which he is capable of performing, he shall be entitled to a position as nearly comparable in status and salary or wage to that of his former position.

## (12) Replacement employees

- (a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
- (b) Before an employer engages a replacement employee under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (c) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (d) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (e) A male replacement employee shall not be entitled to any of the paternity leave rights conferred by this clause except where his employment continues beyond the twelve months qualifying period.
- (f) When an employee on "extended paternity leave" takes part-time work as in subclause 13 below, any replacement employee who is taken on a part-time basis as a result, will be employed on the conditions set out in 13(b) and 13(c) below.

## (13) Part-time extended paternity leave

- (a) An employee may, with the agreement of the employer, take "extended paternity leave" as part-time leave, or as a combination of full-time and part-time leave beyond 52 weeks, up to the child's second birthday.

- (b) Part-time work provided on the basis of paragraph (a) hereof would be on a basis of "permanent" part-time work and not on the basis of casual employment. Such employment would provide all award provisions on a pro rata basis.
- (c) Part-time work, as provided on the basis of paragraph (a) and (b) hereof would be separate to, and in no way constrained by, any restrictions in regard to part-time employment in this award or any other award.
- (d) An employee who seeks part-time work as above will have the right to return to full-time employment at the completion of such part-time work.

MATERNITY LEAVE CLAUSE - VARIATIONS TO FEDERAL MATERNITY LEAVE STANDARD CLAUSE

- (1) Eligibility for maternity leave

Line 3, before "maternity" insert "short and extended"

Line 5, delete "such" and insert "short maternity"

Insert a new second paragraph as follows:

"The twelve months continuous service with an employer immediately preceding the date upon which the employee proceeds upon maternity leave for one child, shall make the employee eligible for maternity leave for all subsequent children, provided that continuity of service with that employer is not broken."

Insert 2 new subclauses:

- (c) "Child" refers to a person under the age of two years.
- (d) "Spouse" includes a de facto spouse.
- (2) Period of leave and commencement of leave
  - (a) Line 2 - delete words "an unbroken" and insert "a". Insert three new subclauses:
    - (b) Leave may be taken in one or two periods, as long as the aggregate does not exceed 52 weeks.
    - (c) Leave may be taken as follows:
      - (i) The first period will consist of leave taken prior to the birth and up to the end of the six week "compulsory" leave period after the birth. (This will be known as "short maternity leave").
      - (ii) The remainder of the 52 weeks may be taken in an unbroken period between six weeks after the birth and the child's second birthday. (This will be known as extended maternity leave).
  - (b) Change to (d) line 2 delete "the presumed date of confinement" and insert "each proposed period of leave". At end of sentence add "or birth certificate".
  - (c) Change to (e) line 3 before word "maternity" insert "short".

New (f) an employee shall give not less than ten weeks notice in writing to her employer of the date on which she proposes to commence extended maternity leave stating the period of leave to be taken, (including any period of part-time leave as per subclause 12 below).

- (d) Change to (g).
- (e) Change to (h) line 3 letter (c) change to "(e) or (f)," line 4 after "earlier" insert "or later", after "date" add "the death of the spouse or other compelling circumstances".
- (4) Variation of period of maternity leave
  - (a) Line 2 before the word "may" insert "of short or extended maternity leave (but not both)".
  - (b) Line 1 before the word "leave" insert the words "extended maternity".
- (10) Return to work after maternity leave
  - (a) Line 3 before the word "maternity" insert the word "extended".
  - (b) Line 1 after the word "upon" insert the words "returning to work after short maternity leave or".
- (11) Replacement employees
  - (e) Before "replacement" insert "female", before "rights" insert "maternity leave".
  - (f) When an employee on "extended maternity leave" takes part-time work as in subclause 12 below, any replacement employee who is taken on a part-time basis as a result, will be employed on the conditions set out in 12(b) and 12(c) below.
- (12) Part-time extended maternity leave
  - (a) An employee may, with the agreement of the employer, take "extended maternity leave" as part-time leave, or as a combination of full-time and part-time leave beyond 52 weeks, up to the child's second birthday.
  - (b) Part-time work provided on the basis of paragraph (a) hereof would be on a basis of "permanent" part-time work and not on the basis of casual employment. Such employment would provide all award provisions on a pro rata basis.
  - (c) Part-time work, as provided on the basis of paragraph (a) and (b) hereof would be separate to, and in no way constrained by, any other provision in regard to part-time employment in this award or any other award.
  - (d) An employee who seeks part-time work as above will have the right to return to full-time employment at the completion of such part-time work.

#### ADOPTION LEAVE - VARIATIONS TO FEDERAL ADOPTION LEAVE STANDARD CLAUSE

- (1) Eligibility for adoption leave

First line: delete words "A female" and replace with "An," delete word "her"



and replace with "the".

Paragraph (i) line two: delete word "her" and replace with "the employee".

Paragraph (ii) line two: delete word "she" and replace with "the employee".

Line beginning with the words "be entitled": before "adoption" insert "short and extended", delete word "she" and replace with "the employee".

Line beginning with the words "the date": delete the word "she" and replace with "the employee first".

Insert a new paragraph as follows:

"The twelve months continuous service with an employer immediately preceding the date upon which the employee proceeds upon adoption leave for one child, shall make the employee eligible for adoption leave for all subsequent children, provided that continuity of service with that employer is not broken."

Paragraph (c) line four: delete words "her spouse" replace with "the spouse of the employee".

(2) Period of leave and commencement of leave

Paragraph (a) line two: delete words "an unbroken" and insert "a". After "weeks" add "in total".

After (a) insert two new paragraphs.

(b) Leave may be taken as follows:

- (i) Leave may be taken if necessary in order for the employee to travel overseas for the purpose of taking custody of a child for the purpose of adoption.
- (ii) Up to three weeks continuous leave may be taken from the time of the placement of the child. (This leave plus any leave taken in (i) above, will be known as "short adoption leave").
- (iii) Up to 52 weeks (minus any short adoption leave) may be taken in an unbroken period at any time after the first period of leave and a date two years after the placement, subject to paragraph (a) hereof (this will be known as "extended adoption leave").

Paragraphs (b) through to (d) reletter (c) through to (e).

New paragraph (c).

Line 2: delete word "her" and replace with "the".

Line 2-3: delete words "that she has been so approved" and replace with "of such approval".

Line 3: delete word "she".

Line 4: delete word "her" and replace with "the". Change word "period" to "period(s)".

Line 5: delete words "which she" and replace with "the employee".

Line 7: delete word "her".

New paragraph (d).

Line 1: delete words "A female" and replace with "An employee".

Line 2: delete word "her".

Line 3: change word "period" to "period(s)".

Line 4: delete word "she" and replace with "the employee".

Line 6: delete word "she" and replace with "the employee".

Line 8: delete words "she proceeds on such leave" and replace with "leave commences".

New paragraph (e).

Line 1: delete word "she" and replace with "the employee".

Line 4: delete word "her" and replace with "the".

Line 5: before the words "adoption leave" insert the word "short" (twice).

Make new paragraph (f):

"An employee shall, ten weeks before the proposed date of commencing extended adoption leave, give notice in writing to the employer of the date of commencing extended adoption leave and the period of leave to be taken, (including any period of part-time leave as per subclause 11 below)."

New paragraph (g).

Line 3: change (d) to "(e) and (f)".

Line 5: after "earlier" insert "or later", after "child" insert "the death of the spouse or other compelling circumstances".

### (3) Variation of period of adoption leave

Paragraph (a) line 2 - before "may" insert "of extended adoption leave".

Paragraph (b) line 1 - before word "leave" insert "extended adoption".

### (6) Adoption leave and other entitlements

Paragraph (a) line 3: delete word "she" and replace with "the employee".

Paragraph (b) line 3: delete word "her" and replace with "the employee's".

### (8) Termination of employment

Paragraph (a) line 1: delete word "her" and replace with "the".

Paragraph (b) line 2: delete word "her" and replace with "the".

Line 3: delete word "her" and replace with "the".

(9) Return to work after adoption leave

Paragraph (a):

Line 1: delete word "her" and replace with "the".

Line 3: delete word "her" and replace with "the". After words "period of" insert "extended".

Paragraph (b):

Line 1: after the word "upon" insert the words "returning to work after short adoption leave or".

Line 3: delete words "which she".

Line 6: delete words "the duties of which she is".

Line 7: delete word "she" and replace with "the employee".

Line 8: delete word "her" and replace with "the employee's".

(10) Replacement employees

Paragraph (c) line 3: delete word "her".

Paragraph (e):

Line 1: after "the" add "Adoption leave".

Line 2: delete word "her" and replace with "such".

New paragraph (f):

"When an employee on 'extended adoption leave' takes part-time work as in subclause 11 below, any replacement employee who is taken on a part-time basis as a result, will be employed on the conditions set out in 11(b) and 11(c) below."

11. Add new subclause as follows:

(11) Part-time extended adoption

(a) An employee may, with the agreement of the employer, take "extended adoption leave" as part-time leave, or as a combination of full-time and part-time leave beyond 52 weeks, up to the child's second birthday.

(b) Part-time work provided on the basis of paragraph (a) hereof would be on a basis of "permanent" part-time work and not on the basis of casual employment. Such employment would provide all award provisions on a pro rata basis.

(c) Part-time work, as provided on the basis of paragraph (a) and (b) hereof would be separate to, and in no way constrained by, any other provision in regard to part-time employment in this award or any other award.

(d) An employee who seeks part-time work as above will have the right to return to full-time employment at the completion of such part-time work.

\*\* End of Text \*\*

\* \* END OF TEXT \* \*