

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1988
s.113 applications for variations

Australian Liquor, Hospitality and Miscellaneous Workers Union

Finance Sector Union of Australia

Shop, Distributive and Allied Employees Association

LAUNDRY INDUSTRY (VICTORIA) INTERIM AWARD 1993
(ODN C No. 21626 of 1992)
[Print K8194 [L0125]]
(C No. 20277 of 1994)

INSURANCE OFFICERS (CLERICAL INDOOR STAFFS)
CONSOLIDATED AWARD 1985
(ODN C No. 00571 of 1983)
[Print H4379 [I0002]]
(C No. 30482 of 1994)

RETAIL AND WHOLESALE SHOP EMPLOYEES (AUSTRALIAN
CAPITAL TERRITORY) AWARD 1983
(ODN C No. 03078 of 1982)
[Print J5408 [R0017]]
(C No. 30434 of 1994)

Various employees

Various industries

PRESIDENT O'CONNOR
VICE PRESIDENT ROSS
SENIOR DEPUTY PRESIDENT MARSH
COMMISSIONER McDONALD
COMMISSIONER HOLMES

SYDNEY, 29 NOVEMBER 1994

Leave - family leave - test case - rejected unions claim for additional leave - found that family responsibilities could best be met by increased flexibility in arrangements of award provisions with aggregation and extension of existing leave provisions - two stage implementation - Stage 1 - Commission approved extended access to sick leave - certain conditions apply - greater flexibility in taking annual leave, hours of work and taking unpaid leave - facilitative provision to allow agreement at enterprise level to allow up to one week annual leave to be taken as single days, provision of time off in lieu arrangements and unpaid leave - Stage 2 - further hearing and review in August 1995 - proposed existing sick leave, compassionate and bereavement leave provisions to be aggregated - intended that additional facilitative provision provide for greater flexibility for rostered days off and part-time work.

REASONS FOR DECISION

1 - BACKGROUND

In order to give effect to ILO Convention 156 and Recommendation 165 concerning Workers with Family Responsibilities, section 170KAA of the Industrial Relations Act 1988 (the Act) requires that in defined circumstances the Commission is to conduct a hearing to determine the basis upon which an employee is given an entitlement to leave of absence to provide care or support for a member of the employee's immediate family who is ill.

As soon as practicable after making such a determination the Commission is required to provide the Minister with recommendations for legislation to give effect to the determination.

Subsection 170KAA(1) provides that the Commission's obligations to conduct such a hearing and make a determination only arise in the absence of an application being made to the Commission by 1 March 1994 for a test case to establish entitlements for employees to leave of absence to provide care or support for a member of the employee's immediate family who is ill. An application by the Australian Council of Trade Unions (the ACTU) for the determination of a test case with respect to special family leave was lodged by the relevant date.

Accordingly the Commission's specific obligations under subsections 170KAA(2) and (3) do not arise as the precondition in subsection 170KAA(1) has not been met.

This decision deals with the ACTU's application for a test case standard with respect to special family leave.

On 20 April 1994 a conference of the parties was convened before the President for the purpose of programming. A further conference was convened on 26 May 1994, at which it was agreed by the parties that a common exhibit relating to leave and allied provisions in a number of federal awards would be produced under the auspices of the Commission. This exhibit, which later became Joint Exhibit 3, was prepared in consultation with the major parties in the case. Two other joint exhibits were also prepared by the major parties and these later became Joint Exhibits 1 and 2.

Given the volume of material which was submitted during the hearing of this matter it has not been possible to include a discussion of all of it in this decision. We have considered all of the material in reaching our conclusions and a full list of exhibits is set out at Attachment A.

2 - THE CLAIMS

The claims for special family leave were in each instance based upon an application to vary the relevant award by the insertion of a new clause as set out below:

SPECIAL FAMILY LEAVE

Eligibility for Leave

- (a) dependent
- (i) An employee with responsibilities in relation to their child or children or to other members of their immediate family who need their care and support shall be entitled to special family leave for absences relating to illness of the family member.
 - (ii) An employee shall include a part-time employee but shall not include an employee engaged in casual or seasonal work.
 - (iii) An employee shall not be eligible for special family leave unless he/she has had no less than 30 days continuous service with the employer immediately preceding the date upon which the employee is absent on such leave.
 - (iv) If the employer requests proof of the employee's responsibility for the family member in paragraph (i) hereof, the employee should provide written evidence in the form of a birth certificate, letter from adoption agency, statutory declaration or other letter of authority.

Period of Paid Leave

- (b) to
- (i) An employee shall be entitled to be paid for absences related to special family leave up to five days per year.
 - (ii) The period of paid leave above shall not be increased where an employee is responsible for more than one member of their immediate family who need their care and support.
 - (iii) Such paid family leave will not be cumulative from year to year.

Leave and Other Entitlements

- (c) (i) Special family leave will be in addition to the employee@s existing paid sick leave, holiday leave and other entitlements, paid and unpaid.
- (ii) Such leave will not be available to employees who are on parental, including maternity leave, paternity leave or adoption leave.

Notification

- (d) (i) Where possible, the employee shall give the employer notice prior to the absence of the intention to take such leave, the name of the child or member of the immediate family, and their relationship to the employee, the reasons for taking such leave, and the estimated length of absence.
- (ii) If it is not possible for the employee to give notice in advance of being absent, the employee will notify the employer by telephone of such absence at the first opportunity on the day of absence, as in paragraph (i) hereof.
- (iii) All absences relating to a family members illness will be supported by a medical certificate if the absence is for more than one day.

3 - THE LEGISLATIVE FRAMEWORK

The Industrial Relations Reform Act 1993 (the 1993 Reform Act) extensively amended the Act. The August 1994 Review of Wage Fixing Principles decision [Print L4700] sets out in summary form the changes to the legislative framework introduced by the 1993 Reform Act. The sections of the Act which are of particular relevance to the determination of the claim before us are:

Section 3 - the objects of the Act provide, among other things, that the Commission is to:

encourage and facilitate workplace and enterprise bargaining (s.3(a));

provide the means for:

establishing and maintaining an effective framework for protecting wages and conditions of employment through awards; and

ensuring that labour standards meet Australia@s international obligations (s.3(b));

help to prevent and eliminate discrimination on the basis of family responsibilities (s.3(g)).

Section 88A - which specifies the objects of Part VI including the need to ensure that awards are suited to the efficient performance of work according to the needs of particular industries and enterprises, while employees interests are also properly taken into account@ (s.88A(c)).

Section 90 - which requires the Commission to take into account the public interest, and, for that purpose, to have regard to the objects of the Act, the state of the national economy and the likely effects on the national economy of any award or order that the Commission is considering, or is proposing to make, with special reference to likely effects on the level of employment and on inflation.

Section 90AA(2) - which requires the Commission to ensure, so far as it can, that the system of awards provides for, among other things, relevant wages and conditions of employment. This obligation applies in respect of both minimum and paid rates awards.

Section 93A - which requires the Commission to take into account the principles embodied in the Family Responsibilities Convention in particular those relating to:

- preventing discrimination against workers who have family responsibilities; or
- helping workers to reconcile their employment and family responsibilities.

Section 170KAA - in the absence of an application being made before 1 March 1994 for a test case to establish entitlements for employees to leave of absence to provide care or support for a member of the employees immediate family who is ill, the Commission is required to conduct a hearing to determine the circumstances in which such leave should be granted and the extent of such an entitlement to give effect to the Family Responsibilities Convention and the Workers with Family Responsibilities Recommendation.

4 - ILO CONVENTION 156

In March 1990 the Commonwealth Government ratified the International Labour Organisation (ILO) Convention 156, Workers with Family Responsibilities. The associated ILO Recommendation 165, Workers with Family Responsibilities, is not binding on Australia, but is intended to operate as a set of guidelines to explain and expand upon ILO Convention 156. The convention and recommendations are included as Schedules 12 and 13 respectively of the Act and set out at Attachment B.

Article 3.1 of ILO Convention 156 calls for the needs of workers with family responsibilities to be recognised as a specific aim of national policy and that complying Governments:

". . . 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.@

ILO Recommendation 165, provides, at paragraphs 23(1) and (2), that it should be possible for a worker with family responsibilities to obtain leave of absence in the case of illness of a worker@s dependent child or another member

of the workers immediate family who needs that worker@s care or support.

The ratification of ILO Convention 156 has also underpinned a number of the legislative changes introduced into the Act by the 1993 Reform Act.

The objects of the Act include helping to prevent and eliminate discrimination on a range of bases including family responsibilities.

Section 93A of the Act requires the Commission to take account of the principles embodied in the Convention particularly those relating to the prevention of discrimination against workers who have family responsibilities and helping workers to reconcile their work and family responsibilities.

Division 6 of Part VIA provides a role for the Commission in relation to leave to care for immediate family members. The minimum entitlement for unpaid parental leave as provided for in Division 5 of Part VIA of the Act is based on the Convention. Further the Commission is required to refuse to certify an agreement [s.170MD(5)] or approve an enterprise flexibility agreement [s.170ND(10)] if it thinks that a provision of the agreement discriminates against an employee because of, or for reasons including family responsibilities. Further, employers cannot use family responsibilities as a valid reason to dismiss an employee [s.170DF(1)(f)].

A number of parties referred to the international experience with respect to the provision of leave for family or similar purposes. It is apparent that a number of countries have adopted different methods of addressing the needs of workers with family responsibilities. It appears to us that no single solution which has been arrived at in another country is necessarily applicable in Australia. For this reason, although we have considered the international evidence, we have adopted a solution which is suited to Australia's particular circumstances.

A number of commentators have noted that ILO Convention 156 advocates a shared responsibility between Governments, employers and the community to provide support so that workers with family responsibilities and their workplaces can function effectively. [Wolcott (1991)]

It has also been suggested that the Convention is underpinned by the concept that both men and women are responsible for raising children just as they are both responsible for earning income. [Russell et al. (1994)]

5 - OVERVIEW OF SUBMISSIONS

The parties expressed a range of views in relation to the ACTU's claim. We set out in Attachment C a summary of the submissions of the parties in relation to the claim and other issues before us. We make reference to aspects of these submissions during the course of this decision but we note here that we have considered all of the submissions in reaching our conclusions. A brief summary of the views expressed is set out below.

Australian Council of Trade Unions (ACTU)

In supporting the claims, the position of the ACTU can be summarised as follows:

1. There is a need for the Commission to establish a minimum entitlement of five days paid leave as a matter of right for all employees, except those engaged as casuals. Such an entitlement would recognise the changing needs of the Australian community and, at the same time, ensure that Australian practice complied with international standards.

2. It is important that family leave is additional to other leave entitlements and not, in part or in whole, in lieu of other entitlements.
3. Provided that a basic minimum right is established as part of the award safety net, the ACTU is not opposed to the use of enterprise agreements to add to the base entitlement, utilising flexible arrangements suitable to the parties involved.
4. The minimum definition of @family@ would be as for award bereavement leave provisions - i.e. spouse or de facto, parents and step-parents, siblings, children, step-children, parents-in-law and grandparents.
5. Although the employers argue that the present arrangements are satisfactory and no change is necessary the ACTU is opposed to discretionary arrangements (the @grace and favour@ approach) which, at best, can involve inconsistent treatment as between individual employees and, at worst, can be deliberately discriminatory. Likewise the employer proposal of greater part-time work accessibility should be considered on its own merits rather than as a partial solution to this issue.

Commonwealth Government

The Commonwealth Government supported the principle of paid special family leave but on the basis that delivery of such paid leave should at the present time be through enterprise bargaining (certified agreements or enterprise flexibility agreements).

The other key elements of the Commonwealth@s position were that:

1. Greater flexibility should be introduced into the award system, particularly as to those provisions which relate to working time arrangements and leave entitlements, in order to accommodate the needs of workers with family responsibilities;
2. The definition of @dependent child@ and @immediate family@ contained in the Sex Discrimination Act 1984 (SDA) should be used to interpret the scope of coverage of award entitlements; and
3. There be a review of the operation of all of the above arrangements by the Commission in the second half of 1995.

The Commonwealth submitted that its support for paid special family leave was due to the changes in Australian society in the labour force - particularly the significant increase in labour force participation of women, the emerging desire by men for the opportunity to act as primary care-givers, and the ageing of the population.

The Commonwealth also argued that there are both costs and potential benefits associated with paid leave, and enterprise bargaining allows for these factors to be taken into account in the negotiation of arrangements to apply at the workplace.

Australian Confederation of Commerce and Industry (ACCI)

The ACCI opposed the claims and its position was that it:

1. Supports the reconciliation of work and family responsibilities as being "part of good management practice".
2. Opposes the creation of a general paid leave entitlement primarily on the grounds that:
 - (a) such an approach would be inconsistent with, and discourage, the national movement towards enterprise based arrangements in lieu of centralised prescription; and
 - (b) the cost of the ACTU proposal, would be damaging to the national economy, thereby inhibiting employment growth and in that way contrary to the interests of Australian families.
3. Submits that the informal arrangements agreed at the workplace between employers and their employees are providing a mechanism which best meets the needs of both parties, but would also support the adoption of more formal workplace arrangements, either in registered agreements or otherwise.
4. Proposes that awards should be varied so as to provide a more flexible range of options which would be available to management and employees in meeting employees' need for family leave e.g. use of make-up time at ordinary rates, flexible working hours, greater part-time work availability etc.
5. Argues that the definition of 'family' is a matter for Parliament - not the Commission - but it must be 'in the first degree' and consistent with accepted practice e.g. Social Security Act 1991, not the Sex Discrimination Act 1984.

Metal Trades Industry Association of Australia (MTIA)

The MTIA opposed the application and its submissions can be summarised as follows:

1. Although the means of effectively combining work and family life is a matter which may be addressed as a legitimate part of the contract of employment, there should be no general award provision prescribing a particular approach to family care arrangements.
2. Should the Commission decide to make a general award provision it should be in a form that:
 - (a) Does not result in a general increase in the cost of employment for Australian employers relative to their international competitors.
 - (b) Provides a minimum safety net to underpin direct bargaining at the enterprise level rather than be a detailed prescription. (Matters such as the quantum, conditions and procedures for granting family leave should be determined at the enterprise level in light of the needs of both the employer and employees).

3. There are other more effective means by which to address family care needs without imposing increased cost upon employers. The Commission should have regard to these options in reviewing awards to maximise flexibility in structuring hours of work and leave arrangements.
4. The employment security of an employee who is obliged to take leave for the purpose of family care is already protected under s.170DF of the Act. On the other hand, the terms of the applications @would, if granted, invite widespread abuse@.
5. There is evidence of a wide range of employment practices which already address family leave needs. This evidence is available both in MTIA survey findings and in examples of innovative policies included in certified agreements.

Other Employers

Other employer submissions were made by the Business Council of Australia (BCA), The Australian Chamber of Manufactures (ACM) and the National Farmers Federation (NFF) - all of which opposed the applications. The opposition of the BCA was based on the unsuitability of a uniform prescription to meet diverse needs and that an increase in labour costs would have adverse employment consequences. The BCA acknowledged the need for a proper balance between work and family responsibilities but saw the appropriate solution as lying with enterprise negotiations and greater flexibility in award provisions covering working hours, amalgamation of various forms of leave etc.

The ACM also opposed the claims primarily on the grounds of additional cost and the uniform prescriptive approach as opposed to (the preferred) enterprise - agreed arrangements. The ACM cited the informal substitution of other leave entitlements and use of "make-up" time to cover family absences and advocated the "freeing-up of award restrictions on part-time and casual work" as other means of addressing the need for family leave. Finally the ACM disputed that there was anything in @international instruments@ which should persuade, let alone oblige, the Commission to grant either paid or unpaid family leave by way of general award prescription.

The NFF's opposition to the applications was based on similar grounds as those put forward by the other employer organisations - the cost of the ACTU proposal as opposed to the mutual advantages of enterprise agreements. However, in submitting that there would be increased costs under the ACTU proposal, the NFF drew particular attention to the present financial difficulties of the rural sector and asserted that the replacement of absent employees can pose greater difficulties for farmers than for other employers.

State, Northern Territory and Australian Capital Territory Governments

None of the above parties supported the applications in their present form although all acknowledged that current community circumstances were such that the issue of family leave should be addressed in some way.

The degree of acknowledgment, however, varied between the States and Territories. Queensland, New South Wales and the Australian Capital Territory (ACT) believed the right of five days unpaid leave should form part of award safety net provisions and that any claims for paid leave or additional leave should be handled by way of enterprise bargaining.

Victoria, Western Australia, South Australia, Tasmania and Northern Territory believed award prescription of this leave is inappropriate but that enterprise negotiations are the appropriate means to respond to employees' needs but with no, or minimal, cost to employers.

All States and Territories expressed the view that greater flexibility in accessing existing leave entitlements provided an avenue to address the problem (via enterprise bargaining) with little or no additional cost to employers. Most governments also raised the issue of greater access to part-time work and more flexible working hours as other areas to be considered.

Queensland proposed that there should be a review of how any new arrangements are working twelve months after the Commission's decision.

The ACT addressed the issue of how the entitlement should be defined and it submitted that the right to leave under this heading should be "to care for and support a person living in a close domestic relationship with them (the employees), or a relative depending on their care".

Other Interested Organisations and Persons

A number of other organisations or persons with an interest in this issue put submissions to the Commission either during proceedings or in written form. They often reflected the arguments advanced either by the ACTU or the major employer bodies and to the extent that duplication occurred it is unnecessary to refer again to that material.

The Human Rights and Equal Opportunity Commission (HREOC) strongly supported the inclusion of paid family leave as an award safety net provision and proposed that it be extended to casual workers in defined circumstances. It further submitted that special family leave should not be limited to the need to attend sick family members and that the definition of "family" should recognise the diversity of family structures.

The Australian Family Association (AFA) submitted that the definition of "family" should not be defined to include, or alternatively should be defined to exclude, homosexual relationships.

The Women's Electoral Lobby (WEL) "vigorously" supported the ACTU's position based on changing community needs and attitudes and, in particular, the need to appropriately reconcile the needs of the family and the workplace.

The Australian Catholic Commission for Industrial Relations (ACCIR) emphasised the Catholic Church's view that the family constitutes the basis of society. In recognising that work and family can no longer be viewed as mutually exclusive, Catholic Church employers urged that employees' sick leave entitlement be set at no less than twelve days per annum and that it include a special component of four days to cover family leave. They opposed the use of annual or long service leave for family leave purposes.

The Women's Action Alliance (Australia) Inc. (WAA) supported the application on the basis that alternative caring arrangements for sick children are unsatisfactory and that providing parents with an opportunity to care for their sick children was "a most basic right".

The Carers Association of Australia Inc. (CAA) argued that employees should be entitled to paid leave of absence where a person "with whom they have a primary caring relationship" becomes ill. The CAA did not quantify the amount of paid leave it sought but it did indicate that "in a substantial proportion of instances" carers would be friends, same sex partners and (sometimes) neighbours.

The National Pay Equity Coalition supported the application and argued that enterprise bargaining was not a suitable vehicle for dealing with the issue, that family leave should cover other caring needs as well as illness, and that the ACTU's definition of "family" should be broadened.

The Australian Council of Gay and Lesbian Rights and the Australian Federation of Aids Organisations made joint submissions. The primary focus of their submissions was to argue that the Commission had a responsibility to specify that special family leave was to be available irrespective of sexual preference. The organisations supported the ACTU's submissions, albeit that they submitted that the Commission had an obligation to define "family" on a much broader basis.

The NSW Aboriginal Women's Legal Resources Inc. drew attention to the fact that many aboriginal people live in extended family situations, and expressed concern that limiting any right to family leave to "immediate family" would not cater for the established arrangements within their community. Accordingly the Commission was asked to bear in mind this diversity of child-care arrangements in formulating its decision in relation to the applications before it.

Senator Cheryl Kernot put submissions to the Commission in her role as Leader of the Australian Democrats. Senator Kernot argued that there is a need for a minimum entitlement to be set by the Commission, that five days paid leave is the upper limit of a reasonable entitlement, and that "the additional financial costs are not high" particularly when offset by increased productivity and a range of other factors. Senator Kernot placed some emphasis on her Party's preference for the term "carers leave", in lieu of family leave, as her Party believed the Commission should consider granting eligibility to a worker who has the primary caring relationship with the person who falls ill.

Defining eligibility in this way, Senator Kernot argued, would be non-discriminatory in that it would accommodate the family structures of Aboriginal and Torres Strait Islander people as well as ethnic communities. Furthermore it would cover the caring needs of same sex partners for each other and for their partner's children.

6 - SUMMARY OF THE EVIDENCE

6.1 - The Changing Nature of the Australian Workforce

The changing demographics of Australian society make balancing work and family responsibilities an issue of increasing importance.

The role of women in the workforce has changed dramatically over time. In 1947 women constituted less than 25 per cent of the labour force. By June 1993 42 per cent of the labour force were women.

Chart 1: Composition of the Labour Force by Gender

This chart is contained in the pamphlet version of this decision or may be inspected on file C No. 20277 of 1994.

The female labour force participation rate (defined as the female labour force expressed as a percentage of the female civilian population aged 15 and over) has also increased dramatically over time from 43.7 per cent in 1978 to 52.3 per cent at present and is projected to rise to 57 per cent by the year 2011.

Chart 2: Female Labour Force Participation Rates
1978 to 2011

This chart is contained in the pamphlet version of this decision or may be inspected on file C No. 20277 of 1994.

Another area of significant change has been the increasing proportion of married women in the labour force. The proportion of employed married women has increased from 17 per cent in 1954 to 53 per cent in 1990. Nearly 59 per cent of employed married women have dependent children. It is important to note that some 62 per cent of employed married men also have dependent children.

Chart 3: Women With Dependant Children
Influx into the Labour Force: 1981 to 1994

This chart is contained in the pamphlet version of this decision or may be inspected on file C No. 20277 of 1994.

The number of single parent households has increased markedly in Australia over recent decades largely as a result of rising divorce rates. For every five marriages registered in 1991 there were 2 divorces [ABS Cat No. 4420.0]. Single parent families constituted almost 15 per cent of all families with dependent children in 1990 compared with 9 per cent in 1974. Of those households with children under 15 years of age, 47 per cent of single mothers and 69 per cent of single fathers were in the labour force [VandenHeuvel (1993) at p.8].

Exhibit Commonwealth 1 tendered during the proceedings in this case provides a useful compilation of the recent surveys conducted by the Australian Bureau of Statistics (the ABS) regarding compositional change in the labour force. Some of the key points from this exhibit are:

. In 1993, the annual average labour force comprised 8,692,000
persons
[ABS Cat. No. 6203.0, December 1993 at p.4];

. In 1993, women comprised almost 42 per cent of the labour force
and
the female labour force participation rate was 51.7 per cent [ABS
Cat. No. 4102.0 at p.100];

. Between 1966 and 1992, the labour force participation rate of
married
women increased from 29 per cent to 53 per cent, while the
participation rate for unmarried women remained relatively stable,
fluctuating about 50 per cent [ABS Cat. No. 4113.0 at p.118].

. In 1993, 24 per cent of all workers were part-time (an increase from 12 per cent in 1973 and 17 per cent in 1983):

- 75 per cent of part-time workers were women (90 per cent of the increase in the labour force participation rate of women between 1973 and 1993 is due to an increase in the participation in the part-time labour market);
- the incidence of part-time work was highest among married women at 47 per cent compared to 35 per cent for unmarried women;
- the incidence of part-time work among men was 10 per cent. [ABS Cat. No. 4102.0 at p.103]

. In January 1993, the labour force comprised:

- 2,591,100 (31 per cent) workers who were a husband or wife or sole parent with children aged 0-14 years present;
- 2,969,300 (36 per cent) workers who were a husband or wife with dependents present or a sole parent with children aged 0-14 years present. [ABS Cat. No. 6203.0 January 1994, p.32]

. In June 1993, there were 4,638,100 families:

- 85 per cent were married-couple families (of which 51 per cent had dependents present)

. in June 1993, 51 per cent of married-couple families had both partners in the labour force

- of the married-couple families with dependents present, 58 per cent had both partners in the labour force.

- 9 per cent were one-parent families

. in 45 per cent of one-parent families, the parent was employed.

[ABS Cat. No. 6224.0 at p.1]

As a consequence of the trends noted above a majority of couples with dependent children do not conform to the "traditional" model of the male wage earner and the female in a full-time caring role in the home.

Accompanying these demographic shifts have been changes in attitudes to gender roles. A number of studies have noted that increasing numbers of women regard both employment and parenthood as important aspects of their life [Glezer (1991)] and that there has been an increasing recognition of the need for men to share more of the family and household responsibilities [Edgar (1992)]. There is a growing acceptance of a women@s right to be employed and for her to be committed to her job. [VandenHeuvel (1993)]

6.2 - Employee Perspectives

A number of studies of employees in a variety of work settings have concluded that attempting to balance work and family life under contemporary conditions appears to produce inevitable stress and conflict. [Pleck (1985); Galinsky, Hughes & Shinn (1986) and Wolcott (1991)]

These studies generally report that about one-third to one-half of employees experience conflict between work and family roles. Three Australian surveys are illustrative of the range of views expressed by employees on this issue. Russell et al. (1994) found that only 33.9 per cent of persons surveyed stated that their family life and job/career had not been affected by each other.

TABLE 1

Conflicts between Family Life and Work for Women and Men

	Women %	Men %	Total %
I have compromised childbearing and family life for my job/career	10.4		20.0 15.2
I have compromised my job/career for my family life	39.8	15.3	27.6
My family life and job/career have not been affected by each other	26.9		41.1 33.9
None of the above statements apply to me	22.9	23.6	23.3

[Russell et al. (1994) at p.11]

Two-thirds of workers with children report tension between work and family. While women noted this tension more than men about 30 per cent of men acknowledged some conflict. Men with working partners were more acutely aware of the conflict between work and family.

The report by VandenHeuvel (1993) found that more than half (58 per cent) of employees agreed with the statement @On the whole, managing work and family responsibilities is easy for me to do@. The level of perceived difficulty in managing the dual responsibilities varied by a number of criteria. Fewer women (55 per cent) than men (67 per cent) thought that managing the two roles was easy and parents with young children were the least likely to express this view.

The ABS survey "Australian Families - Selected Findings from the Survey of Families in Australia" [ABS Cat No. 4418.0] reported the following results:

- . 29 per cent of employed parents (37.3 per cent of females, 23.8 per cent of males) with 0-11 year old children in the household reported difficulty managing work and caring for children;
- . employed parents who worked between 16 and 34 hours reported the most difficulty (for females the percentage reporting difficulty rose with the number of hours worked);
- . a higher proportion of employed females than males stated they had difficulty balancing work and child-care.

Difficulties in balancing work and family commitments may be one reason why some women with children prefer part-time work. An ABS survey, @Alternative Working Arrangements 1986@, indicated that, overall, 12 per cent of women working full-time compared with 5 per cent of men preferred to work fewer hours. One-third of women compared with 11 per cent of men who were looking for work declared a preference for part-time work. Nearly two-thirds of people who wished to work fewer hours were in the child-bearing age range of 25-45. [Wolcott (1991)]

The problems associated with reconciling work and family responsibilities are not limited to employees with dependent children.

Russell et al. (1994) also found that one parent in seven who is employed has major responsibility for family members who are not children, suggesting that elder care is a significant issue which needs more attention. The problem of elder care is likely to increase in the years ahead with the continued ageing of the population.

The tension between work and family responsibilities manifests itself in a number of ways.

One-quarter of the employees in the sample in the Russell study reported that family demands regularly affected their productivity through absenteeism, lateness and their ability to perform their job. [Russell et al. (1994) at p.32]

Some 58 per cent of the respondents in the VandenHeuvel study took some time off work over a twelve month period to care for a child or other family member, with males and females equally likely to do so [VandenHeuvel (1993) at pp. 55-56]. The evidence suggests that usually a few days were taken.

A recently completed Australian study found that employees with children under two years of age lost two days per year on average, while employees with older preschoolers lost four days. [Ferson, Fisher & French (1992) cited in VandenHeuval (1993) at p.33]

The VandenHeuval study concluded that 46 per cent of working parents had taken some time off work in the previous year to care for a sick child. The median length of time taken was two days. The mean number of days taken by mothers and fathers was different: mothers took a mean of 3.8 days and fathers took a mean of 2.5 days. [VandenHeuval (1993) at pp. 36-37]

When time taken off work to care for children during school holidays is excluded, the amounts of time off for family reasons changes dramatically. The most significant change is that the percentage of men and women who took more than 15 days off decreased considerably.

The table below summarises the number of working days lost due to family responsibilities.

TABLE 2

Number of Days Off Work for Family Reasons Other
Than School Holidays Care - By Sex

Number of days	Females (n = 1896)		Males (n = 746)	
	%		%	
none		45		44
0.1 to 3	27		29	
3.1 to 6	13		12	
6.1 to 15		11		11
15.1 plus		5		4

[VandenHeuvel (1993) at p.56]

In relation to the changes which are needed in order to better balance work and family responsibilities, studies of working families most commonly mention more time or flexible work schedules and additional leave as desirable.

Several studies in the United States have found that employees most frequently expressed a desire for greater flexibility in the scheduling of work as a means of assisting them to balance work and family roles. [Friedman (1991); Galinsky (1986) at pp. 109-145 and Googins (1991)]

These findings were broadly confirmed by the VandenHeuvel study. When asked: "What changes, if any, would you like to see at your job that would make combining work and family easier to do?", 41 per cent of respondents suggested at least one change; others either did not know how things could be changed, said that things were fine the way they were, or that it was not the employer@s responsibility to deal with making work and family roles easy to combine.

The responses of those who nominated a change are set out in the table below:

TABLE 3

Changes Employees Want at Their Workplace to Facilitate Combining
Work and Family Roles (n = 1080)

	%	
Child-care: Total		44
Child-care facilities		40
Child-care for specific occasions		5
Assist with child-care costs		3
Organisation of work: Total		35
Flexible working hours	15	
Change or eliminate shifts		8
Part-time work or job-sharing		6
Shorter working hours		6
Other organisational changes		5

[continued . . .]

Leave Policies: Total	17
Family leave	13
Other leave	5
Information, attitude change, workload: Total	24
Attitude of employers	12
Improved communication	3
Reduce workload or stress	2
Other	9

Note: Respondents were allowed to suggest more than one change; thus percentages total more than 100 per cent.

[VandenHeuvel (1993) at p.107]

After child-care the most frequently mentioned change involved the reorganisation of respondents' work. Of those who suggested change, 35 per cent felt that some adjustment to their work arrangements would help them cope with their work and family responsibilities. A significant number (15 per cent) expressed a need for more flexibility.

Seventeen per cent of those who suggested change sought revisions of existing leave or access to paid leave that would allow them time off for family matters. Specifically, 13 per cent noted the need for some sort of family or special leave, with women and public sector workers being more likely than men and private sector workers to do so. Many said they just wanted to have some 'hassle-free, guilt-free' leave that could be used to take care of family responsibilities. A number of other surveys have reported that employees felt guilty when they used their sick leave to look after a sick family member without disclosing the reasons to their employer. [VandenHeuvel (1993) at pp. 77-78; Van Eyk (1992) at p.19]

In this regard some expressed the view that sick leave should be legitimately available to care for sick family members.

Others sought changes in the current system of allocating annual leave and wanted the option to take it a day at a time when they needed the time off work for family reasons.

These findings are consistent with the results in the Russell study where employees were asked to rate the importance of benefits measured on a five point scale where 1 = not important at all and 5 = extremely important. The table below sets out the mean of the five point scale and the percentage who rated each benefit very or extremely important.

TABLE 4

Gender Differences in Ratings of Importance of Benefits

			Women Mean %	Very/ext. Important %	Men Mean %	Very/ext. Important %
4.3	81.8	Job security			4.4	85.4
		Superannuation		4.3	82.3	4.4
	85.0	Medical benefits		4.1	76.4	3.9
	71.0	Staff training		3.9	65.3	3.9
	72.0	Flexible hours		4.3	84.0	3.6
	56.4	Car			3.7	56.9
	3.9	68.8 Paid special family leave			4.1	76.0
3.3	46.8	Democ work practices		3.8	62.5	3.5
	53.8	Profit sharing		3.5	52.1	3.9
	66.2	Personal development		3.3	43.4	3.4
	50.0	Health/safety		3.4	50.3	3.3
	45.9	Time to attend courses		3.3	45.8	3.3
	42.4	Parental leave: paid		3.6	59.0	2.9
	39.2	Childcare: subsid, wk-based			3.6	60.4
2.8	30.3	Staff discounts		3.1	34.4	3.0
	30.9	Vacation care		3.5	55.6	2.5
	23.2	Counselling			2.6	18.1
2.4	16.6	Recreation facilities		2.4	13.2	2.5
	14.0	Family/childrear courses			2.5	19.4
2.3	16.0	Dual career courses		2.4	17.4	2.2
	14.0					

[Russell et al. (1994) at p.24]

Exhibit Commonwealth 1 contained the following information derived from recent ABS surveys in relation to employees with responsibility for the care of children:

. In 1993, the majority of people with dependent children were in the labour force:

- 94 per cent of fathers and 60 per cent of mothers in two-parent families;

[ABS - 78 per cent of males and 52 per cent of female sole parents.
Cat. No. 6224.0]

. In 1992, of the 2,293,500 employed persons with 0-11 year old usual resident children:

- 29 per cent of employed parents (37.3 per cent of females, 23.8 per cent of males) with 0-11 year old children in the household reported difficulty managing work and caring for children;

the
- employed parents who worked between 16 and 34 hours reported
most difficulty (for females, the percentage reporting difficulty
rose with the number of hours worked);
had
- a higher proportion of employed females than males stated they
difficulty balancing work and child-care. [ABS Cat. No. 4418.0]

In relation to child-care arrangements Exhibit Commonwealth 1 contained the following information:

- . 49 per cent of all children under 12 years of age are involved in some type of formal and/or informal child-care arrangement;
 - 19 per cent of all children under 12 years of age in 1993 used formal care (the most commonly used type being preschool).
- . Some 56 per cent of children who had both parents employed full-time used informal care and 26 per cent used formal care. [ABS Cat. No. 4402.0 at p.1]
- . For children who were members of families where both parents work or the sole parent works and who attended formal care and/or school (1,112,300 - 36 per cent of all children under 12 years of age):
 - 658,400 (59 per cent) were absent from school/child-care due to illness in the last six months;
 - 83.9 per cent of children absent missed up to one week from child-care/school in the previous six months.
- . In 43 per cent of the total two-parent/one-parent working families with children who were sick 473,200 either the father or the mother took time off work.
- . The most common leave provisions used to care for sick children included (noting that many families used multiple arrangements):
 - unpaid leave (33 per cent);
 - sick leave (30 per cent);
 - flex leave or RDOs (19.8 per cent);
 - family/special leave (12.3 per cent);
 - no formal leave (12.3 per cent);
 - recreation leave (8.5 per cent).
- . If parents did not take time off work, the most common other kind of arrangements that were made to care for a sick child (noting that many families use multiple arrangements) were:

- having the child cared for by a relative (53.8 per cent);
- working at home (21 per cent);
- having the child cared for by another person (16.4 per cent);
- taking the child to work (10.7 per cent).

. 43.4 per cent of working families with children who are sick would prefer to use alternative care arrangements to their current arrangements and, of this group, (noting that many would like to use a combination of arrangements):

- 77 per cent would prefer to use paid family leave;
- 22 per cent would prefer to use a person from a sick care agency in their own home;

school

- 21.8 per cent would prefer to use sick care facilities by school or centre. [ABS Cat. No. 4402.0, unpublished material obtained from Childcare Survey]

The arrangements made by parents with permanent jobs for child-related issues were considered in the VandenHeuvel study. Parents were asked to report all of their arrangements and the results are set out in the table below. The first column shows the arrangements parents made to take time off for school holidays. Most (89 per cent) used some form of paid leave, usually annual leave (86 per cent). Eighteen per cent of parents took advantage of some flexibility in their workplace, most making up hours later or using rostered days to be with their children during some of the school holiday period. Only one in ten took unpaid leave.

A significant proportion of employees who had to take time off work to meet their family responsibilities used their sick leave to do so. Some 36 per cent of the employees in the VandenHeuval survey who took time off work to care for their family members used their sick leave to do so. [VandenHeuval (1993) at p.69] The use of sick leave for this purpose is consistent with the results of a number of other surveys. [Van Eyk (1992) at p.37] Flexible work arrangements such as working hours at a later time were also often used to care for sick family members where there was little advance notice of the need to take time off work. [VandenHeuval (1993) at p.69]

TABLE 5

Arrangements Used by Permanent Employees to Take Time Off Work for Dependent Children Living at Home

other reasons (n = 559)		During school	To care for	For
		holidays (n = 292)	sick children (n = 565)	(n =
		%		%
Paid leave: Total	89		59	31
Annual leave	86		14	12
Paid sick leave	4		37	17
Special leave	2		10	3
Other paid leave	4		3	1
Unpaid leave: Total	10		18	12
Leave without pay	7		12	9
Did not go to work	3		4	3
Unpaid sick leave	1		2	
Flexible work arrangements:				
Total	18	37	67	
Rostered day off	7		7	10
Made up the hours later			7	23 46
Time in lieu	2		2	1
Flexitime	2	2	3	
Worked from home	1		1	1
Other flexible work arr.			1	3 8

Note: Respondents were asked for all arrangements; thus percentages total more than 100 per cent.

[VandenHeuvel (1993) at p.64]

The third column in the Table shows arrangements used for reasons such as children's appointments, school events, and curriculum days. The most popular way to arrange time off work in this regard was the use of flexible work arrangements: two out of three parents arranged time off for these child-related reasons without taking any leave, usually by making up the hours later (46 per cent), others used rostered days off or made use of flexitime.

These findings are also confirmed by the results of the ACCI Family Leave Survey as set out in the table below:

TABLE 6

Number of Days in Which Each Form of Family Leave is Taken

	Form family leave now granted*	Percentage of total	No. of days of each form of leave
		%	
Annual	53.4	27.8	0.5
Sick leave	49.5	25.7	0.4
Other leave	10.7	5.6	0.1
Paid	21.1	11.0	0.2
Make-up	18.8	9.8	0.2
Unpaid	38.9	20.2	0.3
	192.4	100.0	1.7

*Total is greater than 100% because some firms use more than one form in which to grant family leave.

[Derived from the ACCI Family Leave Survey, Exhibit ACCI 1]

6.4 - Caring for the Disabled or Elderly Family Members

Relatives and other unpaid care-givers are the major sources of support for people with long term illness and severe disabilities.

Exhibit Commonwealth 1 contained the following information derived from recent ABS surveys in relation to caring for the long-term ill, disabled or elderly family members:

- 2.1 . The aged population (65 years and over) is expected to grow from million in 1993 to 5.5 million in 2041, increasing as a proportion of the total population from 12 per cent in 1993 to 22 per cent in 2041. By the year 2026 the number of aged persons will exceed the number of children. [ABS Cat. No. 4102.0 at p.28]
- of . In 1993, 18 per cent of the Australian population had a disability which 78.7 per cent (14.2 per cent of the total Australian population) had a handicap (limitation to perform certain tasks associated with daily living):
 - of - of those persons with a handicap, 419,900 persons (2.4 per cent the Australian population) always needed help from another person to perform one or more designated tasks and 301,100 persons (1.7 per cent) sometimes needed help to perform designated tasks;
 - disability and handicap are strongly related to age:
 - population . 2,762,900 persons or 15.7 per cent of the Australian were aged 60 years or more; of these 50.9 per cent had a

disability and 43.1 per cent were also classified as having a handicap.

with
 a handicap (4.2 per cent of the Australian population aged 15 years and over):

- 577,500 persons were principal carers, who cared for a person

152,300

- . 425,200 cared for a person in the same household and cared for a person who lived outside their household;
- . females provided the majority of care (64.4 per cent in same household). [ABS Cat. No. 4430.0 at pp. 1-11]

the

- . Of the 13.5 million persons aged 15 years or older:
 - 6 per cent had received care because of a disability, long-term illness or old age in the six months prior to the interview (almost 60 per cent of the persons identified as the main providers were family members);
 - 11 per cent had provided personal care/home help for at least one family member because of a long-term illness, disability or old age in the six months prior to the interview. Over two-thirds of the providers of care did not live with the person who had received their care. The bulk of the caring was carried out by those aged 25 to 54 years. [ABS Cat. No. 4418.0 at pp. 11-12]

one

- . The ABS Survey of Families 1992 found that 730,900 employed persons had provided personal care/home help to a long-term ill, disabled and elderly family member:

work

- 27 per cent of employed carers reported difficulty managing and caring for their long-term ill, disabled and elderly family members;
- employed females were more likely to have difficulty than their male counterparts (35 per cent and 21 per cent respectively). [ABS Cat. No. 4418.0 at p.21]

As noted by Friedman @more employees will have dependent elders in the twenty-first century than dependent children@ [Friedman (1991) at p.31]. As Matthews and Rosner observed: @Elder care issues, are, in one sense, unique among work-family conflict issues because sooner or later virtually every person is directly affected. Nearly all of us will experience the ageing of a parent or other relative@. [Matthews & Rosner (1988) at pp. 185-195]

The study by Russell et al. (1994) found that one parent in seven who is employed had major responsibility for family members who are not children, suggesting that elder care was a significant issue which needed more attention.

Estimates from the US studies suggest that work and family conflict due to elder care obligations is fairly common among employees. One study [Galinsky (1990)] found that one-fifth of employees said that they worried about an elderly dependent while on the job. [Galinsky (1990)] cited in VandenHeuval (1993)] Friedman reports that between 10 and 34 per cent of any given employee

group had some responsibility for an ageing parent while @major@ care giving was provided by about 8 per cent of workers. [Friedman (1991)] A Canadian study found that 16 per cent of employees provided care to an elderly or disabled family member, most often a parent [MacBride-King (1990) cited in VandenHeuvel (1993) at p.48]

In the VandenHeuvel (1993) study most respondents (94 per cent) had at least one living parent or parent-in-law and about one in seven (14 per cent) employees surveyed had taken time off work in the twelve months prior to the survey to provide help to, or care for, a parent. While women were slightly more likely than men to take time off work for a parent, the difference is not statistically significant.

Among those who took time off work to care for parents, a median of two days of work was missed.

The table below shows the time-off arrangements that employees used for family other than children. To cope with sick family members, the majority used some form of paid leave - 27 per cent used sick leave, 22 per cent used annual leave and 7 per cent used special leave. Flexible work arrangements were used by 41 per cent of employees. The most popular of the flexible work arrangements was making up lost work hours at a later time (25 per cent). Sixteen per cent took unpaid leave to deal with the medical issues of other family members.

To take family members to appointments, provide emotional support or help out in other ways during work hours, employees most often used flexible work arrangements, again most making up lost work time at a later date (30 per cent). Four out of ten employees used some type of paid leave, most often sick leave (19 per cent). Fifteen per cent took unpaid leave.

TABLE 7

Arrangements Used by Permanent Employees to Take Time Off
Work for Family Other
Than Children

	To care for sick family members (n = 472) %	For other reasons (n = 250) %
Paid leave: Total	54	41
Annual leave	22	14
Paid sick leave	27	19
Special leave	7	6
Other paid leave	3	5
Unpaid leave: Total	16	15
Leave without pay	11	10
Did not go to work	4	5
Unpaid sick leave	1	-
Flexible work arrangements:		
Total	41	51
Rostered day off	8	10
Made up the hours later	25	30
Time in lieu	3	4
Flexitime	2	2
Worked from home	1	-
Other flexible work arrangements	6	6

Note: Respondents were asked for all arrangements; thus percentages total more than 100 per cent.

[VandenHeuvel (1993)]

6.5 - Employer Perspectives

Most research on the overlap of work and family has concentrated on the effects of employment on the family with less attention having been paid to the ways in which family responsibilities impact on work. Some of the studies that have looked at this issue have found that unproductive time at work, absenteeism, arriving late or leaving early, reducing work hours and leaving the labour force are related to family issues. Concerns about child-care, sick children and other family dependents, marital and family problems can interfere with concentration at work and increase absenteeism, lateness, and leaving early. [Crouter (1984) at pp. 425-552; Fernandez (1986) cited in VandenHeuvel (1993). and ILO Report of the Committee of Experts: Workers with Family Responsibilities, at p.26]

When employees are preoccupied or absent because of family concerns, a "ripple" effect has been observed on co-workers' effectiveness and efficiency, especially in teams where work is dependent on each member's contribution. [Crouter (1984)]

There is evidence to suggest that work-family programs can improve a company's profitability. [ILO Linking Work-Family Issues to the Bottom Line]

Companies in Australia and overseas report a number of advantages and cost-benefits in providing family-friendly support services. Among the benefits cited by companies are improved retention of skilled women employees; reduced training and recruitment costs when workers return after maternity leave; decreased absenteeism; coming late and leaving early; improved employee morale and reduced stress. [Wolcott (1991)]

The Australian Institute of Family Studies Research (1991) indicates that many employers do provide family-friendly benefits but that they are usually available in an informal, discretionary way with the result that employees often did not know what they were entitled to, making the benefits more available to favoured employees than to others. [cited in Russell et al. (1994) at p.33; Cf: Equal Opportunity at Work - 112 Studies from Major Australian Companies by the Council for Equal Opportunity in Employment, Exhibit ACCI 1 at Tag 4]

In a survey of employer views on work and family responsibility a combination of annual leave, rostered days off, shift times, special leave and sick leave was thought to answer difficulties with family life that might arise. More than one-third of companies surveyed said they offered variations in standard working hours that would be beneficial to workers with family responsibilities. [Wolcott (1991)]

This is consistent with the conclusion reached in another study that employees who reported having the least flexibility in their jobs had the most difficulty in combining family and work responsibilities. [cited in VandenHeuvel (1993) at p.87]

During the course of the proceedings ACCI tended the results of a survey of employers which asked a number of questions in relation to the ways in which employers sought to assist employees in reconciling conflict between work and family responsibilities. A significant proportion of employer responses indicated that leave for family purposes was always or usually granted.

In the VandenHeuvel survey a significant percentage of respondents was satisfied with the way their employer handled work and family issues - about one-third said that their employer was very sympathetic and more than three-quarters said that their employer did enough. Yet many others were dissatisfied with their employer's assistance and attitude. One in five employees thought that their employer did not do enough and one in ten said that their employer was not sympathetic to workers' family responsibilities. Fifty-six per cent of employees thought that their employer was somewhat sympathetic to work and family issues.

Workplace size was found to be a significant variable in determining the level of employee satisfaction with the way their employer handled work and family issues as shown by the table below.

TABLE 8

Perceptions of Employer's Sympathy Level and Actions
Regarding Work and Family Issues - By Workplace Size

Number of employees	Per cent agreeing that employer is very sympathetic		Per cent saying employer does enough	
	No.	No.	No.	No.
less than 20	40	818	84	790
20 to 99	34	836	78	808
100 plus	26	902	69	878

[VandenHeuvel (1993) at p.96]

6.6 - Current Provisions in Awards and Agreements

At the request of the parties a common exhibit was prepared by the Australian Industrial Registry detailing relevant provisions within the 50 awards with the largest coverage of employees. The following conclusions can be drawn from the common exhibit and the submissions of the parties:

- . very few awards specifically provide for family leave;
- . most awards require annual leave to be taken in one or two periods.
Very few allow leave to be taken in single day units;
- . awards provide certain forms of contingent leave such as special leave and compassionate leave but the extent of these provisions varies across awards and the scope of this leave rarely extends to the care and support of sick family members; and
- . sick leave is generally restricted to personal illness and does not extend to provide an employee with leave to care for a sick family member.

At present awards do not adequately cater for the needs of employees who have

the responsibility of caring for sick family members.

Awards contain a number of barriers which inhibit the capacity of employers and employees to agree to flexible working arrangements as a means of dealing with tensions between work and family responsibilities. These barriers include:

- . restrictions on the introduction and utilisation of part-time work;
and
- . restrictions on the number of separate periods in which annual leave may be taken. [Exhibit ACCI 1 at Tag 7]

A review of certified agreements shows that approximately 100 agreements explicitly provide for family leave in some form. This amounts to less than 5 per cent of all agreements certified. However there also appears to have been an increase in the incidence of such agreements in the past twelve months. [Exhibit Commonwealth 3] which suggests a growing awareness of the need to assist employees to balance their work and family responsibilities.

7 - DECISION

We have decided to introduce a package of measures designed to assist workers in reconciling their employment and family responsibilities. This package does not include the provision of five days special family leave in the form sought by the ACTU. We have concluded that the needs of workers with family responsibilities can best be met by the introduction of increased flexibility in a range of award provisions combined with the aggregation and extension of existing leave entitlements. In particular we have decided on a two stage implementation process as set out below.

In our view the decision we have taken in this matter represents an appropriate balance between the following objectives:

- . helping workers to reconcile their employment and family responsibilities consistent with the Commission's obligations under section 93A of the Act to take account of the principles embodied in the Family Responsibilities Convention;
- . promoting enterprise bargaining by maintaining an incentive to bargain;
- . introducing greater flexibility into the award system consistent with the Commission's statutory obligation to ensure that "awards are suited to the efficient performance of work according to the needs of particular industries and enterprises, while employees interests are also properly taken into account" [section 88A(c)];
- . the need to have regard to the economic impact of our decision pursuant to the Commission's obligations under section 90 of the Act.

The measures to be introduced as a consequence of this decision reflect the legislative intention that the award system needs to change in response to changed industrial needs. Such an approach is also consistent with the views expressed by the Commission in the September 1994 Safety Net Adjustments and Review decision. [Print L5300 at p.52]

Our decision to reject the ACTU's claim and to implement a package of measures

in two stages has had particular regard to the need to maintain an incentive for parties to engage in bargaining and to limit the economic impact of our decision.

Two stage approach

Stage 1

In the first stage we have decided to extend access to sick leave so that employees may use their sick leave entitlement to provide care or support for a member of the employee@s family who is ill and to introduce a range of facilitative provisions.

The extension of sick leave will be subject to the following conditions:

- . the production of satisfactory evidence of illness;
- . the employee must have responsibility for the care of the family member concerned;
- . the family member being either:
 - a member of the employee@s household; or
 - a member of the employee@s immediate family (as defined in the Sex Discrimination Act 1984).

We do not intend to deal with the definition of a "immediate family member" in any more detail at this stage.

The Commonwealth Government is currently reviewing the definition of "family responsibilities" in s.4A of the Sex Discrimination Act 1984. This was confirmed by correspondence from the Attorney-General to the ACTU [Exhibit ACTU 1 at Tag 6] which, among other things, states:

"You would have received last year a copy of the issues paper prepared by the Legislation Working Group of the ILO 156 Interdepartmental Committee. This paper was also considered at the last National Labour Consultative Council meeting. One of the issues raised for consideration in that paper is the appropriateness of the SDA definition of 'family responsibilities'. Paragraph 46 of the paper canvassed four options for defining 'family responsibilities' in addition to the existing definition in the SDA.

The responses to the issues paper are being considered by the Legislation Working Group. Consequently, I am not in a position to comment on whether the Government will be considering amending the definition of 'family responsibilities' in the SDA. In any event, were the Government to decide to amend the SDA definition, the amendments would not be effected until at least the first half of 1995. Until such time as the Government has considered the issue, the existing definition of @family responsibilities@ in the SDA represents the Government position. I would not be in favour of any definition of @family responsibilities@ being adopted which is narrower than that in the SDA."

In view of the foreshadowed review of the definition of 'family responsibilities' in the Sex Discrimination Act 1984 we do not believe it is appropriate to seek to finalise any definition of immediate family member at this stage. Consistent with the Commission@s obligations under s.3(g) of the Act it is intended that the extension of sick leave entitlements and the introduction of facilitative provisions in awards are implemented in a non-

discriminatory way. This matter will be the subject of further consideration in proceedings to be held in August 1995.

Our decision to extend access to sick leave has had regard to:

- . the existing practice of employers to allow access to sick leave to provide care and support for a member of the employees family who is ill; [ACCI Survey on Family Leave, supra, p.30]
- . the stated desire of employees to formalise existing practices and hence remove the guilt associated with using sick leave for an unauthorised purpose. [supra, p.24]

In addition to the extension of sick leave, facilitative provisions will be introduced to provide greater flexibility in relation to the taking of annual leave, hours of work and the provision of unpaid leave.

A "facilitative provision" is that part of an award clause which enables agreement at enterprise level to determine the manner in which that clause is applied at the enterprise. A facilitative provision normally provides that the standard approach in an award provision may be departed from by agreement between an individual employer and an employee or the majority of employees in the enterprise or part of the enterprise concerned. Where an award clause contains a facilitative provision it establishes both the standard award condition and the framework within which agreement can be reached as to how the particular clause should be applied in practice.

We have decided to introduce the following facilitative provisions:

- . Annual leave: to allow an employer and an employee in an enterprise or part of an enterprise to agree to allow up to one week@s annual leave to be taken in single days.
- . Hours of work: to allow an employer and an employee in an enterprise or part of an enterprise to agree to make provision for time off in lieu of overtime and the working of @make-up@ time whereby an employee may choose to perform additional work at ordinary time to make up for time lost.
- . Unpaid leave: to allow an employer and an employee in an enterprise or part of an enterprise to agree to provide unpaid leave to enable an employee to care for a family member who is ill.

The approach we have adopted is consistent with the submissions of ACCI that the award system at present inhibits the capacity of employers and employees to reconcile work and family responsibilities. ACCI submitted that awards should be amended in a number of respects, including to provide for more flexibility in the use of annual leave entitlements, to amend award provisions which prevent employers allowing employees to make-up time at ordinary time rates at a time agreed between them, to remove restrictions on part-time work, provide adequate flexibility in rostered days off, and to introduce fully flexible working hours.

We also note that the measures to be introduced will facilitate the introduction of greater flexibility at the workplace level and a number of the studies we have referred to reported that employees saw additional flexibility as the primary means of reconciling work and family responsibilities.

The measures introduced in Stage 1 are intended to take effect as soon as possible. In this regard the orders arising from our decision will be settled by Vice President Ross following a conference of the parties.

Stage 2

Stage 2 of our decision will be implemented at the conclusion of a further hearing to be held in August 1995. At that time it is proposed that existing award provisions with respect to sick leave and compassionate/bereavement leave will be aggregated and employees will be able to access the aggregated entitlement for the purpose of providing care or support for a member of the employee's family who is ill.

The aggregation of sick leave and compassionate/bereavement leave and its availability for family leave purposes will assist employees to reconcile their work and family responsibilities by providing greater access to existing paid leave entitlements for this purpose.

The aggregation of leave entitlements in the manner proposed will also assist in the simplification of awards.

We also intend to introduce additional facilitative provisions to provide greater flexibility with respect to the use of rostered days off and part-time work. The nature and extent of these provisions will be a matter for submissions to the August 1995 proceedings. In addition the parties will be able to raise the following matters for consideration by the Commission:

- . further means whereby awards can be made more flexible in order to assist workers in reconciling their work and family responsibilities;
- . whether the Commission should prescribe a general entitlement to unpaid family leave in addition to the aggregation of sick leave and compassionate/bereavement leave; and
- . the scope for individual enterprises to seek an exemption from the measures we propose on the basis of an agreed package which has been developed to suit the needs of the enterprise and the relevant employees.

In seeking to balance the objectives referred to earlier we have adopted an integrated approach consistent with the Commission's obligations under the Act. Given the phased implementation of the measures provided and the extent to which they currently operate in practice we have concluded that the economic impact of our decision will be minimal.

The measures we have decided to implement can be reviewed over time having regard to prevailing industrial, economic and social circumstances.

8 - CONCLUSION

As a consequence of the demographic trends referred to in our decision a majority of couples with dependent children no longer conform to the traditional model of the male wage earner and the female partner in a full time caring role in the home. The number of single parent families has also increased markedly over recent decades. Further as a consequence of the ageing of the population it has been predicted that more employees will have dependent elders in the twenty-first century than dependent children. Accompanying these

trends have been changes in attitudes to gender roles.

The potential for conflict between work and family responsibilities has profound implications for employees, employers and the community. There is a general recognition of the need to assist workers to reconcile their dual responsibilities.

The package of measures we have determined will assist in this task by introducing greater flexibility and extending access to existing paid leave entitlements.

The evidence suggests that the measures proposed currently operate in practice to a significant degree. The formalisation of these arrangements is consistent with our statutory obligation to ensure that awards are suited to the needs of enterprises and their employees.

The decision we have arrived at represents what is in our view an appropriate balance between the interests of employers and employees and the public interest generally.

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ABS Cat. No. 4420.0, Focus of Families Demographic and Family Format

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ATTACHMENT A

LIST OF EXHIBITS

- ACTU 1 Materials in Support (Volume 1)
1. Letters in Support
 2. ILO Report of Committee of Experts on Workers with Family Responsibilities
 3. Federal Government Strategies to Implement Convention 156
 4. The Family Book: Directory of National Programs and Services for Families, 1994
 5. The Heart of the Matter: Families at the Centre of Public Policy, National Council for the International Year of the Family
 6. Letter from Attorney General, Hon M Lavarch
 7. ACTU, Profile of Labour Force and Characteristics of Families
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 10. EPAC, Australia@s Ageing Society, Background Paper No. 37, Jan 1994
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 12. ACTU, International Provisions Reflecting ILO Convention No 156
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 23. Other Regulations on Sick Children in Care Centres
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29. Commercial Printing (1936) 36 CAR 738
30. Metal Trades Annual Leave (1945) 55 CAR 595

ACTU 2

- Materials in Support (Volume 2)
31. Woomera Construction Workers Award (1949) 65 CAR 424
 32. Vehicle Industry (1960) 130 CAR 711
 - 33.1 House of Representatives Standing Committee on Legal and Constitutional Affairs, Halfway to Equal: Report of Inquiry into Equal Opportunity & Equal Status for Women in Australia, 1992
 - 33.2 Government Response to Half Way to Equal, AGPS, 1992
 34. Family Leave Provisions in Industrial Agreements
 35. Work and Family No 6 June 1994, Hon Gary Johns
 36. Family Leave Provisions in Company Policies
 37. ACTU, Cost Estimates
 38. Equal Pay (1969) 127 CAR 1142
 39. Municipal Officers Queensland (1978) 203 CAR 584
 40. TCR (1984) 294 CAR 175, (1984) 295 CAR 673
 41. March 1987 National Wage Case Print G6800
 42. Outworkers (1987) Print G6996
 43. Consultative Committees (1990) Print J4555
 44. Maternity Leave (1979) 218 CAR 121/Adoption Leave (1985) Print F9852
 45. Parental Leave (1990) Print J3596

Joint Exhibit 1 ILO Conventions and Recommendations

1. List of Ratifications by Convention and by Country
2. Constitution of the International Labour Organisation and Standing Orders of the International Labour Conference
3. Convention No 156 - Convention concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities
4. Record of proceedings: International Labour Conference, Sixty-sixth Session, Geneva 1980
5. Record of proceedings: International Labour Conference, Sixty-seventh Session, Geneva 1981
6. Workers with Family Responsibilities - International Labour Conference, 80th Session, 1993
7. Workers with Family Responsibilities Convention, 1981 (No. 156) - Report by the Australian Government on the measures taken to give effect to the provisions of the convention for the period 1 July 1992 to 30 June 1993

Joint Exhibit 2 United Nations 1994 - International Year of the Family

Joint Exhibit 3 Award Survey Tables - Awards Examined

1. Australian Defence Industries (Paid Rates Employees) Award 1989, A0497
2. Australian Public Service, Senior Executive Administrative and Clerical Award 1984, A0272
3. Australian Universities Academic Staff (Conditions of Employment) Award 1988, A0467
4. Bank Officials@ (Federal) (1963) Award, B0001
5. Building, Construction Employees and Builders Labourers (Consolidated) Award 1982, B0067
6. Business Equipment Industry (Technical Service) Award 1978, B0018
7. Clerical and Salaried Staffs (Wool, Rural and Associated Industries) Award 1993, C0019
8. Clerks (Finance Companies) Consolidated Award 1985, C0091
9. Clothing Trades Award 1982, C0037
10. Community Services (Home Care of NSW) Field Staff Award 1992, C0191
11. Confectioners Award 1980, C0053
12. Electrical Contracting Industry Award 1992, E0068
13. Federal Meat Industry Award 1981, F0002
14. Food Preservers@ Interim Award 1986, F0015
15. Footwear-Manufacturing and Component-Industries Award 1979, F0063
16. Furnishing Trades Award 1981, F0029
17. General Conditions of Service Australian Government Employment Award 1985, G0049
18. Graphic Arts Award 1977, G0014
19. Hotels, Resorts and Hospitality Industry Award 1992, H0008
20. Insurance Officers (Clerical Indoor Staffs) Consolidated Award 1985, I0002
21. Liquor and Allied Industries, Hotels, Hostels, Clubs and Boarding Establishments, etc (ACT) Award 1977, L0021
22. Local Governing Authorities Officers (Victoria) Award 1984, L0051
23. Metal Industry Award 1984 - Part I, M0039
24. Motels, Accommodation and Resorts Award 1992, M0055
25. National Building and Construction Industry Award 1990, N0122
26. National Joinery and Building Trades Products Award 1993, N0183
27. National Warehousing and Distribution (NUW) Award 1993, N0173
28. Nurses (ANF - South Australia Public Sector) Award 1989, N0101
29. Overseas Airlines (Interim) Award 1993, O0054
30. Plumbing Industry (QLD and WA) Award 1979, P0090
31. Pulp and Paper Industry (Production) Award 1973, P0030
32. Railways Metal Trades Grades Award 1953, R0009
33. Retail and Wholesale Shop Employees (ACT) Award 1983, R0017
34. Rubber, Plastic and Cable Making Industry (Consolidated) Award 1983, R0007
35. Textile Industry Award 1981, T0007

36. Timber Industry Award 1990, T0028

37. Transport Workers Award 1983, T0140
38. Transport Workers (Airlines) Award 1988, T0029
39. Transport Workers (Mixed Industries) Award 1984,
T0150
40. Vehicle Industry Award 1982, V0005
41. Vehicle Industry - Repair, Services and Retail
Award, V0019

Comparative Tables

1. Hours of Work: Full Time and Ordinary
2. Conditions of Employment: Part Timers, Shift
Workers and Casuals
3. Conditions of Employment: Traineeships and
Apprentices
4. Rostered Days Off
5. Leave: Annual/Recreation
6. Leave: Special/Family
7. Leave: Parental/Maternity/Adoption
8. Leave: Compassionate/Bereavement
9. Leave: Long Service
10. Leave: Sick
11. Leave: Other
12. Other Comments

Terminology Used In and Terms of Reference in Producing
Exhibit

ACTU 3 Information re Family Leave from Australian Defence
Industries

ACTU 4 Work and Family Issues - Guidelines for Enterprise
Bargaining

ACTU 5 Parental Leave - The Award Provision Explained

CWTH 1 Strategy for Implementing ILO Convention 156 across
Commonwealth policies and programs

CWTH 2 The Changing Structure of the Australian Labour
Force: Various ABS Data

CWTH 3 Federal Ratified Agreements Providing Family Leave -
Charts

CWTH 4 Corporate Work and Family 1993 Awards

CWTH 5 Workplace Guide to Work and Family

CWTH 6 Human Resource Management Guide, Employment
Conditions, Special Leave - Department of Industrial
Relations

CWTH 7 International Provisions on Leave for Family
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CWTH 8 Written Submission

ACCI 1 Materials in Support

1. "Working Together"
2. ACCI Policy Statement on Work and Family

3. (a) Questionnaire on Family Leave
- (b) Survey on Family Leave
- (c) Additional comments from Survey
4. (a) ACCI/BCA @Council for Equal Opportunity in
Employment@ Additional Material on Work and
Family
- (b) @Families at Work - Practical Examples from
140 Businesses@
5. International Labour Conference 80th Session 1993
Report V (i) @Part-time Work@ Extract
6. Parental Leave Test Case Orders
7. ACCI Analysis of Joint Award Survey
8. (a) Graphic Arts Award 1977 Clause 28 - Annual
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- (b) Extract from National Wage Case Decision,
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- (c) Decision - Transport Workers Award - Print
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- (d) Decision - Graphic Arts Award - Print J3604
- (e) Report to President - Graphic Arts Industry
9. Extract from ILO Committee of Experts Survey on
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10. Extracts from the Concise Oxford Dictionary and the
Macquarie Dictionary
11. Extract from the Victorian Administration and
Probate Act 1958
12. Definitions of @Family@ and Related Terms in
Commonwealth Legislation
13. Senate Hansard Debate on definition of @Family@ in
the Childcare Rebate Bill 1993
14. "A Matter of Give and Take - Small Business Views of
Work and Family"
15. US Family and Medical Leave Act of 1993
16. Estimated Cost of ACTU Claim
17. Brief Overview of Australian Economy

AD 1 Written Submission

HREOC 1 Submission and Exhibits

- A. Workers with Family Responsibilities:
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156 Interdepartmental Committee, September 1993
- B. Human Rights and Equal Opportunity Commission Act
Regulations 1989
- C. Convention on the Rights of the Child
- D. International Covenant on Civil and Political Rights
(Articles 2 & 26)
- E. Draft Declaration on the Rights of Indigenous
Peoples
- F. International Labour Organisation Convention No. 169
(Indigenous and Tribal Peoples), 1989
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(Workers with Family Responsibilities)

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1. Outline of Submissions
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Labour Conference, 80th Session, 1993

3. Letter dated 20 July 1994 from Australian Bureau of Statistics to Maurice Blackburn & Associates
4. National Action Plan, Australia
5. International Covenant on Civil and Political Rights, United Nations Human Rights Committee, Fiftieth Session, 1994
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9. The Courage of Our Convictions, HIV/AIDS, The National Strategy and the Laws of New South Wales, Report to Minister for Health, November 1993
10. The Social Security Booklet for HIV Positive People, Department of Social Security
11. Crown Casino Limited (Melbourne Casino Complex) Employees Agreement 1994
12. Invisible Families, Discrimination and the Legal Status of Gay Couples, Gardner J, Melbourne University, November 1992
13. Not A Day Goes By, Report on the GLAD Survey into discrimination and violence against lesbians and gay men in Victoria, February 1994

A 2 Various correspondence

AFA 1 Australian Family Association - Written Submission and Article

MTIA 1 Written Submission

MTIA 2

1. Australia's Manufacturing Exports by Regional Destination 1984 and 1993
2. Wooden M, The Cost of Time off Work in Australia, Asia Pacific Journal of Human Resources, Vol 30, No 3 Spring 1992
3. Cost of Increased Absence Due to Paid Family Leave
4. Incidence of Family Leave Among Australia@s Trading Partners
5. Report on MTIA Family Leave Survey by ACCIRT, August 1994
6. Family Leave Survey: Summary of Responses
7. Explaining and Managing Labour Absence in Australia, M Wooden and R Drago, June 1993
8. Examples of Enterprise Policies and Practices which Facilitate Co-ordination of Work and Family Life
9. Extracts from Logs of Claim relating to the Awards which are the subject of this case

NFF 1 Value of Lost Output

NFF 2 The Economic Record - Article

NFF 3 Farm Surveys Report

ACCIR 1 Written Submission and Supporting Materials

QLD 1 Written Submission

WA 1 Written Submission

SA 1 Written Submission

ACT 1 Outline of Submission

NSW 1 Materials in Support

A. Extract from @When Roles Overlap - Workers with Family Responsibilities@, A VandenHeuvel, AIFS

B. Flexible Work Practices, No 1: Family Leave; Women and Work Unit, DIRETFE 1993

C. @Workers with Family Responsibilities, Report of Research and Consultation, Prepared for the Women@s Employment and Training Task Force 1993@

D. Extract from @Paid Maternity Leave, A Discussion Paper on Paid Maternity Leave in Australia@, National Women@s Consultative Council, Australian Government Publishing Service, Canberra 1993

E. Extract from @World Labour Report 1994, Chapter 2, Promoting harmony between work and Family: The Role of Support Services and Flexible Working Arrangements@, International Labour Office, Geneva

F. Breakdown of the number @family-friendly/equity@ clauses contained in enterprise agreements registered pursuant to the NSW Industrial Relations Act 1991

G. Survey of major NSW Awards

H. Media Release 26/7/94 @NSW Support Five Days Unpaid Family Leave@

I. Model Clause

J. (I) Industrial Relations Act 1991, Chapter 2, Part 2, Division 4: Part-Time Work (Sections 70-83)

(II) Draft Model Clause: Part-Time Work Agreement

NSW 2 Extract from NZ Holidays Act 1989

NSW 3 Extract from Official Journal of European Communides

NSW 4 Summary of Submissions

WEL 1 Written Submission

NPEC 1 Written Submission

NT 1 Written Submission

ACCI 2 Index of ACCI Submissions

ACCI 3 Replies to Questions on Economic Submissions

ACCI 4	Comparison of Paid Family Leave with Unpaid Maternity Leave
MTIA 3	Written response to Question from Vice President Ross
ACTU 6	Article from Bangkok Post 19/8/94
ACTU 7	Statement by Review of Wage Fixing Principles Full Bench 16/8/94
ACTU 8	ABS Material concerning employment
ACTU 9	Written Submission in Reply
CWTH 9	Written Answers to Questions 25/8/94

ATTACHMENT B

ILO CONVENTION 156
AND
ILO RECOMMENDATION 165

SCHEDULE 12 OF THE INDUSTRIAL RELATIONS ACT 1988
CONVENTION CONCERNING EQUAL OPPORTUNITIES AND EQUAL TREATMENT FOR
MEN AND WOMEN WORKERS: WORKERS WITH
FAMILY RESPONSIBILITIES

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office and having met in its Sixty-seventh Session on 3 June 1981, and

Noting the Declaration of Philadelphia concerning the Aims and Purposes of the International Labour Organisation which recognises that @all human beings, irrespective of race, creed or sex, have the right to pursue their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity@, and

Noting the terms of the Declaration on Equality of Opportunity and Treatment for Women Workers and of the resolution concerning a plan of action with a view to promoting equality of opportunity and treatment for women workers, adopted by the International Labour Conference in 1975, and

Noting the provisions of international labour Conventions and Recommendations aimed at ensuring equality of opportunity and treatment for men and women workers, namely the Equal Remuneration Convention and Recommendation, 1951, the Discrimination (Employment and Occupation) Convention and Recommendation, 1958, and Part VIII of the Human Resources Development Recommendation, 1975, and

Recalling that the Discrimination (Employment and Occupation) Convention, 1958, does not expressly cover distinctions made on the basis of family responsibilities, and considering that supplementary standards are necessary in this respect, and

Noting the terms of the Employment (Women with Family Responsibilities) Recommendation, 1965, and considering the changes which have taken place since its adoption, and

Noting that instruments on equality of opportunity and treatment for men and women have also been adopted by the United Nations and other specialised agencies, and recalling, in particular, the fourteenth paragraph of the Preamble of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1979, to the effect that States Parties are "aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women", and

Recognising that the problems of workers with family responsibilities are aspects of wider issues regarding the family and society which should be taken into account in national policies, and

Recognising the need to create effective equality of opportunity and treatment as between men and women workers with family responsibilities and between such workers and other workers, and

Considering that many of the problems facing all workers are aggravated in the case of workers with family responsibilities and recognising the need to improve the conditions of the latter both by measures responding to their special needs and by measures designed to improve the conditions of workers in general, and

Having decided upon the adoption of certain proposals with regard to equal opportunities and equal treatment for men and women workers: workers with family responsibilities, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention, adopts this twenty-third day of June of the year one thousand nine hundred and eighty-one the following Convention, which may be cited as the Workers with Family Responsibilities Convention, 1981:

Article 1

1. This Convention applies to men and women workers with responsibilities in relation to their dependent children, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

2. The provisions of this Convention shall also be applied to men and women workers with responsibilities in relation to other members of their immediate family who clearly need their care or support, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

3. For the purposes of this Convention, the terms "dependent child" and "other member of the immediate family who clearly needs care or support" mean persons defined as such in each country by one of the means referred to in Article 9 of this Convention.

4. The workers covered by virtue of paragraphs 1 and 2 of this Article are hereinafter referred to as @workers with family responsibilities@.

Article 2

This Convention applies to all branches of economic activity and all categories of workers.

Article 3

1. 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.

2. For the purposes of paragraph 1 of this Article, the term "discrimination" means discrimination in employment and occupation as defined by Articles 1 and 5 of the Discrimination (Employment and Occupation) Convention, 1958.

Article 4

With a view to creating effective equality of opportunity and treatment for men and women workers, all measures compatible with national conditions and possibilities shall be taken -

- (a) to enable workers with family responsibilities to exercise their right to free choice of employment; and
- (b) to take account of their needs in terms and conditions of employment and in social security.

Article 5

All measures compatible with national conditions and possibilities shall further be taken -

- (a) to take account of the needs of workers with family responsibilities in community planning; and
- (b) to develop or promote community services, public or private, such as childcare and family services and facilities.

Article 6

The competent authorities and bodies in each country shall take appropriate measures to promote information and education which engender broader public understanding of the principle of equality of opportunity and treatment for men and women workers and of the problems of workers with family responsibilities, as well as a climate of opinion conducive to overcoming these problems.

Article 7

All measures compatible with national conditions and possibilities, including measures in the field of vocational guidance and training, shall be taken to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities.

Article 8

Family responsibilities shall not, as such, constitute a valid reason for termination of employment.

Article 9

The provisions of this Convention may be applied by laws or regulations, collective agreements, works rules, arbitration awards, court decisions or a combination of these methods, or in any other manner consistent with national practice which may be appropriate, account being taken of national conditions.

Article 10

1. The provisions of this Convention may be applied by stages if necessary, account being taken of national conditions: Provided that such measures of implementation as are taken shall apply in any case to all the workers covered by Article 1, paragraph 1.

2. Each Member which ratifies this Convention shall indicate in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation in what respect, if any, it intends to make use of the faculty given by paragraph 1 of this Article, and shall state in subsequent reports the extent to which effect has been given or is proposed to be given to the Convention in that respect.

Article 11

Employers' and workers' organisations shall have the right to participate, in a manner appropriate to national conditions and practice, in devising and applying measures designed to give effect to the provisions of this Convention.

Article 12

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 13

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 14

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 15

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 16

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 17

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the conference the question of its revision in whole or in part.

Article 18

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides -

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 14 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 19

The English and French versions of the text of this Convention are equally authoritative.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its Sixty-seventh Session which was held at Geneva and declared closed the twenty-fourth day of June 1981.

IN FAITH WHEREOF we have appended our signatures this twenty-fifth day of June 1981.

SCHEDULE 13 OF THE INDUSTRIAL RELATIONS ACT 1988

RECOMMENDATION NO. 165

RECOMMENDATION CONCERNING EQUAL OPPORTUNITIES AND EQUAL TREATMENT
FOR MEN AND WOMEN WORKERS: WORKERS WITH FAMILY RESPONSIBILITIES
The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office and having met in its Sixty-seventh Session on 3 June 1981, and

Noting the Declaration of Philadelphia concerning the Aims and Purposes of the International Labour Organisation which recognises that @all human beings, irrespective of race, creed or sex, have the right to pursue their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity@, and

Noting the terms of the Declaration on Equality of Opportunity and Treatment for Women Workers and of the resolution concerning a plan of action with a view to promoting equality of opportunity and treatment for women workers, adopted by the International Labour Conference in 1975, and

Noting the provisions of international labour Conventions and Recommendations aimed at ensuring equality of opportunity and treatment for men and women workers, namely the Equal Remuneration Convention and Recommendation, 1951, the Discrimination (Employment and Occupation) Convention and Recommendation, 1958, and Part VIII of the Human Resources Development Recommendation, 1975, and

Recalling that the Discrimination (Employment and Occupation) Convention, 1958, does not expressly cover distinctions made on the basis of family responsibilities, and considering that supplementary standards are necessary in this respect, and

Noting the terms of the Employment (Women with Family Responsibilities) Recommendation, 1965, and considering the changes which have taken place since its adoption, and

Noting that instruments on equality of opportunity and treatment for men and women have also been adopted by the United Nations and other specialised agencies, and recalling, in particular, the fourteenth paragraph of the Preamble of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1979, to the effect that States Parties are "aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women", and

Recognising that the problems of workers with family responsibilities are aspects of wider issues regarding the family and society which should be taken into account in national policies, and

Recognising the need to create effective equality of opportunity and treatment as between men and women workers with family responsibilities and between such workers and other workers, and

Considering that many of the problems facing all workers are aggravated in the case of workers with family responsibilities, and recognising the need to improve the conditions of the latter both by measures responding to their special needs and by measures designed to improve the conditions of workers in general, and

Having decided upon the adoption of certain proposals with regard to equal opportunities and equal treatment for men and women workers: workers with family responsibilities, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation,

adopts this twenty-third day of June of the year one thousand nine hundred and eighty-one the following Recommendation, which may be cited as the Workers with Family Responsibilities Recommendation, 1981:

I. Definition, Scope and Means of Implementation

1. (1) This Recommendation applies to men and women workers with responsibilities in relation to their dependent children, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

(2) The provisions of this Recommendation should also be applied to men and women workers with responsibilities in relation to other members of their immediate family who need their care or support, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

(3) For the purposes of this Recommendation, the terms "dependent child" and "other member of the immediate family who needs care or support" mean persons defined as such in each country by one of the means referred to in Paragraph 3 of this Recommendation.

(4) The workers covered by virtue of subparagraphs (1) and (2) of this Paragraph are hereinafter referred to as "workers with family responsibilities".

2. This Recommendation applies to all branches of economic activity and all categories of workers.

3. The provisions of this Recommendation may be applied by laws or regulations, collective agreements, works rules, arbitration awards, court decisions or a combination of these methods, or in any other manner consistent with national practice which may be appropriate, account being taken of national conditions.

4. The provisions of this Recommendation may be applied by stages if necessary, account being taken of national conditions: Provided that such measures of implementation as are taken should apply in any case to all the workers covered by Paragraph 1, subparagraph (1).

5. Employers' and workers' organisations should have the right to participate, in a manner appropriate to national conditions and practice, in devising and applying measures designed to give effect to the provisions of this Recommendation.

II. National Policy

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

7. Within the framework of a national policy to promote equality of opportunity and treatment for men and women workers, measures should be adopted and applied with a view to preventing direct or indirect discrimination on the basis of marital status or family responsibilities.

8. (1) For the purposes of Paragraphs 6 and 7 above, the term "discrimination" means discrimination in employment and occupation as defined by Articles 1 and 5 of the Discrimination (Employment and Occupation) Convention, 1958.

(2) During a transitional period special measures aimed at achieving effective equality between men and women workers should not be regarded as discriminatory.

9. With a view to creating effective equality of opportunity and treatment for men and women workers, all measures compatible with national conditions and possibilities should be taken -

- (a) to enable workers with family responsibilities to exercise their right to vocational training and to free choice of employment;
- (b) to take account of their needs in terms and conditions of employment and in social security; and
- (c) to develop or promote child care, family and other community services, public or private, responding to their needs.

10. The competent authorities and bodies in each country should take appropriate measures to promote information and education which engender broader public understanding of the principle of equality of opportunity and treatment for men and women workers and of the problems of workers with family responsibilities, as well as a climate of opinion conducive to overcoming these problems.

11. The competent authorities and bodies in each country should take appropriate measures -

- (a) to undertake or promote such research as may be necessary into the various aspects of the employment of workers with family responsibilities with a view to providing objective information on which sound policies and measures may be based; and
- (b) to promote such education as will encourage the sharing of family responsibilities between men and women and enable workers with family responsibilities better to meet their employment and family responsibilities.

III. Training and Employment

12. All measures compatible with national conditions and possibilities should be taken to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities.

13. In accordance with national policy and practice, vocational training facilities and, where possible, paid educational leave arrangements to use such facilities should be made available to workers with family responsibilities.

14. Such services as may be necessary to enable workers with family responsibilities to enter or re-enter employment should be available, within the framework of existing services for all workers or, in default thereof, along lines appropriate to national conditions; they should include, free of charge to the workers, vocational guidance, counselling, information and placement services which are staffed by suitably trained personnel and are able to respond adequately to the special needs of workers with family responsibilities.

15. Workers with family responsibilities should enjoy equality of opportunity and treatment with other workers in relation to preparation for employment, access to employment, advancement within employment and employment security.

16. Marital status, family situation or family responsibilities should not, as such, constitute valid reasons for refusal or termination of employment.

IV. Terms and Conditions of Employment

17. All measures compatible with national conditions and possibilities and with the legitimate interests of other workers should be taken to ensure that terms and conditions of employment are such as to enable workers with family responsibilities to reconcile their employment and family responsibilities.

18. Particular attention should be given to general measures for improving working conditions and the quality of working life, including measures aiming at -

(a) the progressive reduction of daily hours of work and the reduction of overtime, and

(b) more flexible arrangements as regards working schedules, rest periods and holidays,

account being taken of the stage of development and the particular needs of the country and of different sectors of activity.

19. Whenever practicable and appropriate, the special needs of workers, including those arising from family responsibilities, should be taken into account in shift-work arrangements and assignments to night work.

20. Family responsibilities and considerations such as the place of employment of the spouse and the possibilities of educating children should be taken into account when transferring workers from one locality to another.

21. (1) With a view to protecting part-time workers, temporary workers and homeworkers, many of whom have family responsibilities, the terms and conditions on which these types of employment are performed should be adequately regulated and supervised.

(2) The terms and conditions of employment, including social security coverage, of part-time workers and temporary workers should be, to the extent possible, equivalent to those of full-time and permanent workers respectively; in appropriate cases, their entitlement may be calculated on a pro rata basis.

(3) Part-time workers should be given the option to obtain or return to full-time employment when a vacancy exists and when the circumstances which determined assignment to part-time employment no longer exist.

22.(1) Either parent should have the possibility, within a period immediately following maternity leave, of obtaining leave of absence (parental leave), without relinquishing employment and with rights resulting from employment being safeguarded.

(2) The length of the period following maternity leave and the duration and conditions of the leave of absence referred to in subparagraph (1) of this Paragraph should be determined in each country by one of the means referred to in Paragraph 3 of this Recommendation.

(3) The leave of absence referred to in subparagraph (1) of this Paragraph may be introduced gradually.

23.(1) It should be possible for a worker, man or woman, with family responsibilities in relation to a dependent child to obtain leave of absence in the case of its illness.

(2) It should be possible for a worker with family responsibilities to obtain leave of absence in the case of the illness of another member of the worker's immediate family who needs that worker's care or support.

(3) The duration and conditions of the leave of absence referred to in subparagraphs (1) and (2) of this Paragraph should be determined in each country by one of the means referred to in Paragraph 3 of this Recommendation.

V. Child-Care and Family Services and Facilities

24. With a view to determining the scope and character of the child-care and family services and facilities needed to assist workers with family responsibilities to meet their employment and family responsibilities, the competent authorities should, in co-operation with the public and private organisations concerned, in particular employers' and workers' organisations, and within the scope of their resources for collecting information, take such measures as may be necessary and appropriate -

- (a) to collect and publish adequate statistics on the number of workers with family responsibilities engaged in or seeking employment and on the number and age of their children and of other dependants requiring care; and
- (b) to ascertain, through systematic surveys conducted more particularly in local communities, the needs and preferences for child-care and family services and facilities.

25. The competent authorities should, in co-operation with the public and private organisations concerned, take appropriate steps to ensure that child-care and family services and facilities meet the needs and preferences so revealed; to this end they should, taking account of national and local circumstances and possibilities, in particular -

- (a) encourage and facilitate the establishment, particularly in local communities, of plans for the systematic development of child-care and family services and facilities, and
- (b) themselves organise or encourage and facilitate the provision of adequate and appropriate child-care and family services and facilities, free of charge or at a reasonable charge in accordance with the workers' ability to pay, developed along flexible lines and meeting the needs of children of different ages, of other dependants requiring care and of workers with family responsibilities.

26. (1) Child-care and family services and facilities of all types should comply with standards laid down and supervised by the competent authorities.

(2) Such standards should prescribe in particular the equipment and hygienic and technical requirements of the services and facilities provided and the number and qualifications of the staff.

(3) The competent authorities should provide or help to ensure the provision of adequate training at various levels for the personnel needed to staff child-care and family services and facilities.

VI. Social Security

27. Social security benefits, tax relief, or other appropriate measures consistent with national policy should, when necessary, be available to workers with family responsibilities.

28. During the leave of absence referred to in Paragraphs 22 and 23, the workers concerned may, in conformity with national conditions and practice, and by one of the means referred to in Paragraph 3 of this Recommendation, be protected by social security.

29. A worker should not be excluded from social security coverage by reference to the occupational activity of his or her spouse and entitlement to benefits arising from that activity.

30.(1) The family responsibilities of a worker should be an element to be taken into account in determining whether employment offered is suitable in the sense that refusal of the offer may lead to loss or suspension of unemployment benefit.

(2) In particular, where the employment offered involves moving to another locality, the considerations to be taken into account should include the place of employment of the spouse and the possibilities of educating children.

31. In applying Paragraphs 27 to 30 of this Recommendation, a Member whose economy is insufficiently developed may take account of the national resources and social security arrangements available.

VII. Help in Exercise of Family Responsibilities

32. The competent authorities and bodies in each country should promote such public and private action as is possible to lighten the burden deriving from the family responsibilities of workers.

33. All measures compatible with national conditions and possibilities should be taken to develop home-help and home-care services which are adequately regulated and supervised and which can provide workers with family responsibilities, as necessary, with qualified assistance at a reasonable

charge in accordance with their ability to pay.

34. Since many measures designed to improve the conditions of workers in general can have a favourable impact on those of workers with family responsibilities, the competent authorities and bodies in each country should promote such public and private action as is possible to make the provision of services in the community, such as public transport, supply of water and energy in or near workers' housing and housing with labour-saving layout, responsive to the needs of workers.

VIII. Effect on Existing Recommendations

35. This Recommendation supersedes the Employment (Women with Family Responsibilities) Recommendation, 1965.

ATTACHMENT C

SUMMARY OF SUBMISSIONS

Glossary of Abbreviations

ACCI:	Australian Chamber of Commerce and Industry
ACCIR:	Australian Catholic Commission for Industrial Relations
ACLGR:	Australian Council for Lesbian and Gay Rights
ACM:	Australian Chamber of Manufactures
ACTU:	Australian Council of Trade Unions
AFA:	Australian Family Association
AFAO:	Australian Federation of Aids Organisations
BCA:	Business Council of Australia
CAA:	Carers Association of Australia
HREOC:	Human Rights and Equal Opportunity Commission
MTIA:	Metal Trades Industry Association of Australia
NFF:	National Farmers Federation
NPEC:	National Pay Equity Coalition
WAA:	Women's Action Alliance
WEL:	Women's Electoral Lobby

RIGHT TO LEAVE

EMPLOYEE ORGANISATIONS

ACTU:

- . The claim clearly seeks to establish an entitlement for family leave for all workers;
- . The claim is for an additional entitlement;
- . The recognition of a legitimate entitlement through the award system would meet concerns raised by the ILO Committee of Experts;
- . Seek a minimum entitlement available through award safety net system which can be supplemented by enterprise bargaining and enterprise agreements;
- . Without an explicit award entitlement there will be a continuation of a grace and favour approach and significant differences will continue to exist in relation to working arrangements and occupational status;
- . Would not support a discretionary leave provision;
- . Adoption of paid family leave as part of award safety net would be most effective way of increasing best practice;
- . Enabling legislation supports claim for clear and recognised award entitlement available to all workers;
- . Other elements of reconciling work and family, e.g. maternity and parental leave, are available as minimum leave entitlements through award safety net - not available simply on a discretionary basis and in some industries and not others;
- . The history of the Commission and our system of minimum award entitlements strongly supports the provision of special family leave through the award system;
- . A claim for a general award entitlement available to all workers is consistent with the maintenance of an effective framework for protecting conditions of employment through awards and with ensuring that labour standards meet our international obligations;

EMPLOYER ORGANISATIONS

ACCI:

- . The issue of family leave can be subsumed within the safety net of annual leave entitlements - may be limited scope for providing a limited right to short term annual leave for family purposes;
- . Limited scope for a right to the leave;
- . Totally oppose an approach of creating a new entitlement;
- . Creation of an entitlement or right would be open to some abuse.

MTIA:

- . There should be no general provision prescribing a particular approach to family leave. If the Commission decides to make a general award provision it should be in a form which provides a minimum safety net to underpin direct bargaining at enterprise level rather than a detailed prescription;
- . If the Commission decides to make an award provision it should be minimalist, not prescriptive and should not impose an entitlement in all circumstances - could be in broadest terms e.g. may be arrangements agreed at enterprise;
- . If the Commission makes an award which confers an entitlement then there should be strong facilitative provisions to vary out of arrangements.

ACM:

- . Matters should be dealt with by agreement at the enterprise level;
- . An over arching award prescription is unnecessary and inappropriate in light of the objects of the Act to encourage bargaining at enterprise level.

BCA:

- . on The only way family-friendly arrangements should be introduced is an enterprise basis where they can be introduced in the context of the total package of an enterprise agreement and the productivity position of that enterprise;
- . An added form of paid leave is not the way to address needs for balancing family and work commitments;
- . Make family-friendly arrangements a normal part of the enterprise bargaining agenda - consistent with first object and whole thrust of the Act;
- . An across the board award entitlement would be a disincentive to enterprise bargaining about the issue.

NFF:

. The issue of family leave can best be dealt with at the enterprise.

ACCIR:

. The Commission has no option but to recommend that any determination in respect of this matter must be either through legislation or the award system;

. The Commission should recommend to the Minister that 4 days special family leave be included in current award sick leave provisions where the current entitlement is a minimum of 12 days per annum. Where the current provision is less than 12 days per annum the sick leave provisions of those awards should be increased to a minimum of 12 days.

COMMONWEALTH GOVERNMENT

. In principle support for an entitlement for paid leave but more appropriate for it to be dealt with at agency level - the framework of the Act emphasises that the direction should be by way of agency;

. A statement by the Commission which supported the principle of establishing a paid leave entitlement and which placed emphasis on developing such arrangements at the enterprise level would provide greater emphasis to developing trend;

. Should be access to paid leave for purpose of care for sick family members as a matter of principle - should be negotiated at workplace level and established through certified agreements and EFAs;

. Should the Commission decide to arbitrate a general award entitlement it should be in a facilitative form.

STATE GOVERNMENTS

NSW:

. 5 days family leave per annum should be granted as a minimum standard. There should be a guaranteed entitlement forming part of the award safety net;

. Establishing a minimum entitlement to unpaid leave will bring the issue of family leave forward for enterprise negotiations;

. Need for minimum guaranteed entitlement;

. Immediacy and pressing nature of need as demonstrated should justify creation of an entitlement.

VIC:

. Balance between family and work responsibilities is best achieved

through flexibilities inherent in enterprise agreements negotiated at the work place;

. Support the submission of those who have opposed the making of an award providing for family leave;

. Parties should be given every opportunity to introduce family-friendly policies via enterprise bargaining - this process can be reviewed after 12 to 18 months;

. The Commission should make an in-principle decision or statement that at an enterprise level employers and employees should agree on methods whereby family responsibilities can be discharged without unreasonably affecting productivity.

QLD:

. The Commission should recognise a right to special family leave;

. The use of facilitative clauses is strongly supported.

SA:

. Support in principle family leave provisions;

. Support submissions of ACCI, MTIA, other employer organisations and the Victorian and West Australian governments;

. Agree with the Commonwealth Government that family leave should be a matter for workplace bargaining;

. Award provisions should not include additional paid leave for family care.

WA:

. The issue of combining work and family life is best dealt with at the workplace level through enterprise/workplace bargaining;

. Principles of ILO Convention 156 may be implemented in a number of ways and our submission is that it is most appropriately dealt with as part of enterprise bargaining.

TAS:

. Support the concept of employees having access to mechanisms which allow them to balance work commitments with family responsibilities;

. Do not support the inclusion in awards of a new clause which would have the effect of granting an entitlement of up to 5 days paid leave;

. There is sufficient scope within various leave provisions currently in awards to form the basis of access to paid leave.

ACT:

- . Support the creation of a new leave entitlement of 5 days unpaid non-cumulative special family leave to be incorporated in the award safety net with payment for leave to be negotiated through bargaining at the enterprise;
- . Support creation of a right for employees to leave of absence from employment to care for and support persons living in a close domestic relationship or a relative depending on their care;
- . The entitlement should be inserted into the minimum award safety net in the same way as parental leave.

NT:

- . Sufficient scope within the various leave provisions currently contained in awards which form the basis for an employee to take leave to provide care and support for family members;
- . It is unnecessary to create an additional leave entitlement.

OTHERS

HREOC:

- . Family leave should be included as an award provision - otherwise there may be a discriminatory outcome;
- . Strong support for the inclusion of family leave provisions in the award safety net;
- . The claim should not be limited to need to attend sick family members.

SENATOR CHERYL KERNOT:

- . A universal entitlement to carers leave is needed;
- . If the Commission finds that the cost of the claim is unacceptably high it could shape its award to reduce the cost while still providing an adequate entitlement;
- . Carers leave clearly a safety net entitlement and support claims for minimum provision in awards;
- . Where an enterprise agreement provides an above award sick leave entitlement it may be appropriate for the above award component to also be available as carers leave. However this is a matter for enterprise negotiations.

ACLGR & AFAO:

- . Support ACTU submission that the leave should be included in an award safety net minimum rather than negotiation by way of certified

agreement or EFA;

- . Support ACTU's claim to include carers leave in an award;

- . Very important that support be provided in an award because carers basically own no bargaining position. Essential that it be included as part of an award and not be done through enterprise bargaining.

AFA:

- . Makes no submission on the merits of the claim.

WAA:

- . Supports the application.

WEL:

- . Supports proposal for special family leave;
- . Inserting paid special leave into awards is consistent with providing an equitable minimum framework under a system of enterprise bargaining;
- . WEL rejects the position that family leave should be negotiated through individual workplace agreements;
- . Granting of this claim would constitute an absolute minimum but would not prevent further enterprise bargaining on family leave provisions.

NPEC:

- . Supports claim for special family leave;
- . Award variation is the most appropriate vehicle for achieving the effect desired by the introduction of special family leave. The leave must form part of the award safety net;
- . Enterprise bargains are not a suitable vehicle for pursuing special family leave.

ENTITLEMENT TO LEAVE

EMPLOYEE ORGANISATIONS

ACTU:

- . The claim does not cover casual workers;
- . In determining an order arising from granting the claim the Commission will need to assure itself that outcome of proceedings will not result in discriminatory employment practices;
- . The ACTU is seeking a non-discriminatory outcome;
- . Minimum definition of family would be based on existing award bereavement leave provisions - scope of immediate family would constitute spouse or de facto, parents and step parents, siblings, children, step children, parents in law and grand parents;

. If the Commission rules against the claim definition of family
loses much of its force. The ACTU would support a two step process.

EMPLOYER ORGANISATIONS

ACCI:

. The term "family" is defined in legislation e.g. Social Security
Act.

ACCI would not support any proposal that the current definition be
changed through a test case in the Commission - for legislature to
determine - not appropriate for the Commission to attempt to alter
definitions of family which is a matter for Parliament;

. If an entitlement is created it is important to have a high degree
of certainty about who is entitled so it is workable in workplaces - not
enough to have highly inclusive approach;

. Definition should be broadly based on Social Security Act and
Childcare Rebate Act - family first degree; relationship of care and
control meaning cohabitation under one roof; if a child is involved
it should be dependent; marriage or de facto couples; persons of
opposite sex, marriage like relationship, persons over age of consent
and not involving a prohibited relationship;

. Do not agree that the scope of coverage of family should be
decided with guidance from Sex Discrimination Act.

MTIA:

. If the Commission refrains from making a general award
prescription then the definition of persons and/or grounds for taking leave will
be negotiated at the enterprise;

. However, if a general award provision is adopted, @immediate
family@ should be closely defined. Should be confined to spouse and dependent
children. May be appropriate to consider an age limit on dependent
children. Some expansion of notion of dependency to encompass
cohabitation ought also be appropriate;

. Same sex partners - question does not arise if definition limited
to dependent children, husband, wife. However there is a community
expectation regarding acceptance of de facto couples having the same
entitlements as married couples. Problem then arises in defining de
facto spouse. Recognise that the Commission cannot make an award
which discriminates on ground of sexual preference - don't concede
that failure to specify that award provisions applies irrespective of
sexual preference means it has overlooked its duty to prevent
discrimination on that ground;

. Prime concern is the sort of extended family type definition.

NFF:

. Support the submission of ACCI.

COMMONWEALTH GOVERNMENT

. The Commonwealth notes that a definition of dependent child and immediate family is contained with Sex Discrimination Act 1984. It is the Commonwealth's view that in considering the scope of coverage of family guidance should be taken from that Act.

to . The Commonwealth submits that in an industrial context the parties an enterprise agreement will be able to adopt the form of definition that best suits their requirements;

. If an award entitlement is made it should be facilitative, i.e. should not attempt to set down an exhaustive list of various relationships which should be considered as immediate family.

STATE GOVERNMENTS

NSW:

is . Family leave should be available to an employee where a dependent sick or requires emergency care. Dependent includes any person who is a member of the household or any person to whom the employee is related by blood, marriage, affinity or adoption who is wholly or mainly dependent on the employee for care or support in the case of sickness or emergency;

. Need to consider the relationship with the employee as well as the care and support role.

QLD:

and . Definition of immediate family should be that of dependent child immediate family as contained in the Sex Discrimination Act. If the Commission feels constrained to broaden the scope of coverage then any definition should include requirements such as the existence of a stable relationship which encompasses the role of primary care-giving or a traditional role of primary care-giving.

WA:

. Definition of family is a matter to be negotiated as part of enterprise bargaining. Parties would determine whether family leave was appropriate for specific persons. If dealt with through the award system then WA supports the arguments of ACCI.

ACT:

. Person living in close domestic relationship with or relative dependent on care by employee. Certainly see same sex relationships included as far as ACT is concerned.

OTHERS

HREOC:

- . Have concerns about the claim being restricted to permanent full time and part-time workers - suggest that the test applied to casual workers in the unfair dismissal provisions of the Industrial Relations Act should be applied here and this should be examined as an appropriate clause to be inserted in each award;
- . The definition of family should be that found in the Disability Discrimination Act plus, in relation to indigenous persons, a notion of the extended family;
- . The definition of family should recognise the diversity of family structures.

SENATOR CHERYL KERNOT:

- . It is the Australian Democrats view that eligibility should be granted to an employee who has a primary caring relationship with the sick person. Most common forms of primary caring relationships should be explicitly recognised in awards. These include child; parent; grandchild; grandparent; sibling; spouse and partner. Step and foster children and parents in law should be specifically recognised. Same sex partners should be specifically included as having the same entitlements as a de facto spouse;
- . Eligibility should be extended to workers with primary caring responsibilities for people not in these categories e.g. friendship and customary adoption ties in Aboriginal and Torres Strait Islander communities and extended families in ethnic communities;
- . There is no existing definition of family which the Commission is required to follow so the emphasis should be on the caring relationship, not the biological one.

ACLGR & AFAO:

- . Any leave entitlement arising from these proceedings should be extended to workers in same sex relations;
- . Because the Act envisages the conferring of a benefit it ought as a matter of statutory interpretation be interpreted beneficially rather than narrowly.

CAA:

- . Support Democrats position of making the leave carers leave rather than family leave and for the leave to extend to primary caring relationships;
- . Whilst in many cases carers will be a family member, in a substantial proportion of instances carers are friends, same sex partners and sometimes neighbours;

- . A carer is someone who provides care and support for a parent, partner, child or friend who has a disability, is frail, aged, suffers from dementia or a chronic illness.

AFA:

. Interest of AFA confined to definitions of "immediate family" etc.

-

Expressions such as "family" should not be defined to include, or alternatively be defined to exclude, homosexual relationships;

VIA . Jurisdiction of the Commission is limited by provisions of Part
of the Act.

NPEC:

. Definition of family in the ACTU claim is too narrow and
potentially discriminatory. Leave should encompass a wider family group than
"immediate family members".

REQUIREMENTS FOR ACCESS TO LEAVE

ACCI:

. If anything approaching the claim is adopted, the eligibility period should be not 30 days but some sort of process of accrual week by week;

. Proof of taking leave should not be left open-ended - should be related to the entitlement question and the employer should be able to request a statutory declaration as to entitlement.

MTIA:

. The qualifying period of 30 days set out in the claims is too short - 12 months would be more appropriate;

. Concerns over lack of ceiling where more than one family member is employed by the same employer - there should be a requirement similar to parental leave where the amount of leave available to one offsets the amount of leave available to another;

. Proof of illness should be to the satisfaction of employer - by way of doctor's certificate or statutory declaration.

STATE GOVERNMENTS

NSW:

. Employee should be required to give sufficient notice if absence is known in advance - otherwise notice as soon as practicable on day of absence;

. Should be available after 3 months continuous employment with the same employer.

QLD:

. Access to any paid leave should be on terms which are mutually acceptable.

OTHERS

SENATOR CHERYL KERNOT:

. Evidence may be required of relationship of workers to ill person and of whether an illness has arisen;

. It is important that the Commission strike a balance between the employer's right to establish eligibility and the right of employees and their families to privacy.

ACLGR & AFAO:

- . Apart from questions such as length of qualifying service and the currency of employment, leave should be equally available.

WHETHER LEAVE SHOULD BE PAID OR UNPAID

EMPLOYEE ORGANISATIONS

ACTU:

- . The claim is for paid leave of 5 days non cumulative;
- . An entitlement to unpaid leave would condemn many workers to loss of income - would reinforce the perception of women as marginal labour market participants, reinforce indirect discrimination in the labour market and do little to promote overall equality within the workplace.

EMPLOYER ORGANISATIONS

ACCI:

- . Leave, if granted should be unpaid;
- . There is nothing in the material before the Commission which should persuade it to grant paid rather than unpaid leave - nothing in Convention or Recommendation which requires leave to be paid;
- . Do not support the Commonwealth that there is need for a statement from the Commission supporting principles of establishing a paid leave entitlement - should be left to the enterprise level.

COMMONWEALTH GOVERNMENT

- . Commonwealth's in principle position is that the leave should be paid.

STATE GOVERNMENTS

NSW:

- . Family leave should be unpaid - we see the provision of unpaid leave as being the most appropriate minimum entitlement;
- . The Commission should follow the lead of the Parental Leave Bench and note that there is a significant cost attached to unpaid family leave and the Commission should adopt unpaid leave in a form which minimises cost;
- . Availability of paid leave for family purposes should be primarily left to individual parties to an agreement or to the state to finance;
- . Paid leave provisions should not be inserted into awards either by consent or arbitration.

VIC:

- . Do not support the position of the Commonwealth that there be paid

leave within the enterprise bargaining structure;

- . If additional family leave is to be awarded contrary to both our primary and secondary positions it ought to be unpaid leave.

QLD:

- . Paid special family leave should be accessed by enterprise bargaining;
- . Unpaid leave may be accessed through use of a facilitative clause without financial cost to the employee by agreement with the employer.

SA:

- . Any additional paid leave should only be considered if it is agreed between the parties in a registered enterprise agreement.

TAS:

- . If the Commission deems family leave provisions should be included as a discrete award entitlement then we strongly submit it should be unpaid.

ACT:

- . An unpaid leave entitlement in the award safety net would create a floor on which enterprise bargaining may take place;
- . Support submissions which would see payment for leave or income maintenance during period of absence as delivered through special paid leave benefits or greater flexibility of existing paid leave provisions;
- . There should be no inhibitions on workers using paid leave credits or make up pay arrangements etc. to cover family leave that would otherwise be unpaid.

OTHERS

HREOC

- . Paid leave is necessary otherwise there will be an unequal outcome for women workers.

SENATOR CHERYL KERNOT:

- . Unpaid leave is an added penalty for disadvantaged groups in the workplace particularly women and the lower paid;
- . Unpaid leave would be unfair and ineffective. On the evidence, the claim for 5 days paid leave is at the upper end of a reasonable minimum entitlement.

CAA:

- . Employees should be entitled to paid leave of absence when the person with whom they have a primary caring relationship becomes ill.

WAA:

. If the Commission believes that the costs involved in providing
paid family leave across the board to all workers would be prohibitive, we
would recommend consideration be given to providing paid leave at
least to those on minimum awards to whom unpaid leave is hardly a
viable choice.

WEL:

- . Paid family leave is every bit as important to the functioning of
efficient and harmonious enterprises as paid sick leave;
- . Also see comments concerning "Right to Leave" above.

FACILITATING PART-TIME WORK

EMPLOYEE ORGANISATIONS

ACTU:

. Part-time work often increases the level of difficulty in
balancing work and family;

- . This claim should be clearly separated from any counter claim by
employers to free-up part-time work - that should be done by
separate proceedings or through the s.150A exercise.

ACCI:

- . Restrictions on part-time and casual work should be removed;
- . Considerable scope for part-time work to be placed on agenda again
- suggest that the Commission make a statement that issues of this
sort be addressed during s.150A reviews;
- . There may be scope to amend awards to include part-time award
provisions where they don't exist or remove restrictions where they
are a barrier.

MTIA:

- . Support increased flexibility in, inter alia, part-time work
provisions.

ACM:

- . Would not object to an approach which would, in effect, remove
existing award inhibitions or restrictions on undertaking part-time,
casual work.

STATE GOVERNMENTS

NSW:

- . The Commission should consider introducing complementary flexibilities such as access to part-time work under awards;
- . It is open to the Commission to find that restrictions in awards on part-time work and availability of part-time work affect workers with family responsibilities - the Commission as a policy decision should also accept that those restrictions have no place in awards and should provide a framework to allow these provisions to be overridden and ultimately removed;
- . The Commission should introduce the model clause on part-time work tendered by NSW.

SA:

- . The SA Government sees the extension of part-time work being used as carers leave.

WA:

- . Would support more flexible part-time provisions.

OTHERS

SENATOR CHERYL KERNOT:

- . Part-time work is not a solution because illness does not just occur outside part-time hours and because women are clustered in part-time professions.

FACILITATING ACCESS TO EXISTING ENTITLEMENTS

EMPLOYEE ORGANISATIONS

ACTU:

- . Freeing up annual leave in order to cater for sick children is not an adequate response - no flexibility in relation to annual leave - additional flexibilities over and above the award entitlement may be negotiated through enterprise bargaining;
- . The ACTU does not believe that building @so-called flexibility@ into existing leave arrangements in awards is an adequate way of meeting needs to reconcile work and family - need to develop specific provisions which recognise the legitimacy of family care related absences;
- . To dilute the sick leave entitlement by making it available for other reasons would be to effectively reduce the benefit of the

entitlement;

- . While flexible utilisation of sick leave entitlements would legitimise current ad hoc arrangements, it will do little to improve the balance of work and family responsibilities;

- . For annual leave to be used as a mechanism to address family care needs would be contrary to its well established intent - ditto for bereavement or compassionate leave;
- . Existing award entitlements should not be diluted through their application for other purposes;
- . The ACTU has taken a very comprehensive view of what constitutes family-friendly policies - not saying that it should only be one method - should be a comprehensive package of arrangements at the workplace;
- . There is a great deal of opportunity to negotiate additional flexibilities through enterprise bargaining - such negotiations should be underpinned by a general minimum entitlement.

EMPLOYER ORGANISATIONS

ACCI:

- . Structural impediments in awards should be removed;
- . The use of annual leave could be made less restrictive;
- . There is scope for provisions concerning RDOs to be reviewed -
also make-up time;
- . Many aspects of award provisions are highly inflexible e.g. part-
time work, annual leave, RDOs, time off by arrangement, make-up time.
Scope for a Commission statement that these issues be addressed during award reviews;
- . No objection to agreement at enterprise level about use of sick
leave for family purposes - but should not be used as a national prescription through a test case;
- . Ditto for compassionate or bereavement leave;
- . The actual needs of Australian workplaces are for award
impediments to use of annual leave and other work places areas of agreement to be removed - task is to identify award provisions which prevent or inhibit agreements reconciling work and family responsibilities;
- . Agree with and endorse the Commonwealth's statement that
provisions in awards are not as family-friendly as they could be together with its reference to packaging and freeing up of access to other leave entitlements.

MTIA:

- . One of the greatest advantages of enterprise based arrangements is they needn't be limited to family illness;
- . A more comprehensive and cost effective way of facilitating

coordination of work and family life would be to address family leave needs through greater flexibility in the provision of leave and structuring of working hours arrangements;

. MTIA strongly supports increased flexibility in areas of annual leave and sick leave through streamlining of awards which reduces the level of award prescription and increases facilitative provisions to allow for greater flexibility by agreement in enterprise;

. Support for employees with family responsibilities is best developed by the effective review of awards via s.150A to remove unnecessary restrictions, ensure all awards couched in facilitative terms and ensure inclusion of an enterprise flexibility clause which allows agreement on arrangements for family leave;

. The process may be assisted by the adoption of a principle to guide parties involved in reviewing each award;

. In the case of the Metal Industry Award - could expand facilitative provisions relating to annual leave, sick leave, part-time work, overtime, flexible hours arrangements.

ACM:

. Would not object to an approach which would in effect remove existing award inhibitions on granting of annual leave and working at a later stage of an equivalent period at ordinary time rates to make up for time lost in taking family leave. Would not object to more flexibility in taking RDOs;

. Would include sick leave as one area that could be freed up to take account of family leave considerations;

. Accessing these arrangements should be by agreement at the enterprise including by the employee concerned.

BCA:

. Commission should state as a @principle@ that awards are to be varied to allow existing paid leave entitlements such as annual leave, sick leave and compassionate leave etc. to be more readily accessed and more flexibly taken. Likewise, that flexibility can be allowed in taking of RDOs and the option to be allowed for taking time off in lieu of payment for overtime;

. Solutions may include greater flexibility of working times, amalgamation of various forms of leave, making that leave available more flexibly to meet different circumstances etc.

NFF:

. If the matter is to be dealt with within the award system, then awards have more than enough room for improvement in order to enable flexibility to cater for workers with family responsibilities - support submissions of ACCI.

ACCIR:

. Strongly oppose utilisation of long service leave or annual leave
for this purpose;

. For position re sick leave refer comments on @Right to Leave@
above.

COMMONWEALTH GOVERNMENT

. Currently there are impediments in awards that can work against
work and family considerations - introduction of greater flexibility in
awards particularly the provisions which relate to working time
arrangements and certain leave entitlements would help;

. The role for the Commission in flexibility of award provisions is
for the Bench to convene conferences of parties to assist parties in
examining what flexibility is appropriate specifically relating to
issue of family leave;

. The Commonwealth does not support the inclusion of an entitlement
within the safety net at this point - apparent greater flexibility in
award provisions would be of advantage;

. In looking at measures associated with existing leave entitlements
- nature and intent need to be considered. Another area of flexibility
is working time arrangements where the introduction of facilitative
provisions could lead to more arrangements such as flexitime and
averaging of hours worked, banking of overtime and greater
flexibility in use of RDOs;

. The introduction of greater flexibility in award system is of
particular importance but needs a coordinated approach - Commission
should provide guidance and establish process;

. May be certain leave measures which could be developed around
packaging and freeing-up of access to special, compassionate and
other contingent leave arrangements.

STATE GOVERNMENTS

NSW:

. Commission should act cautiously in adopting a proposal which
would alter existing rules of annual and sick leave;

. Have concerns about the process of substituting annual or sick
leave;

. If the Commission sanctions arrangements of substitution it should
place some limits so there are minimum entitlements for annual and
sick leave available for employees;

. Current barriers to flexible work practice, particularly
restrictions
on part-time work, should be removed from awards.

VIC:

. If entitlements are introduced via the award system it should be
by
freeing-up of restrictions relating to leave provisions already in
awards including annual leave, sick leave, bereavement leave, etc.

QLD:

- . Available to parties to enterprise bargain for paid family leave through adoption and utilization of existing leave arrangements;
- . The use of a facilitative clause is strongly supported. It is envisaged that its operation could be through such methods as the banking of ordinary time and/or overtime using annual leave or sick leave entitlements, making-up time taken off for family responsibilities at a later date.

SA:

- . Support the more flexible use of recreation leave along with sick leave being used as carers leave.

WA:

with . If the Commission is of the view that the matter should be dealt through the award system then there should be more flexibility in award provisions. Support ACCI;

flexible . Suggested flexibilities in awards - make annual leave more by allowing a prescribed amount to be taken in 1 day periods;

- . More flexibility in use of RDOs;

- . Introduce more flexible working hours;

annual . Examples of flexibilities could include: More flexible use of leave, more flexible working hours and more flexible part-time provisions;

making . In respect of small business - informal arrangements such as time up at different times, taking a day@s annual leave or some other form of flexible working hours may be more appropriate;

TAS:

up . Innovative use of working time arrangements together with freeing of existing award leave entitlements should allow parties to negotiate to agree at workplace or enterprise level on how family leave can be accommodated.

ACT:

- . Details of more flexible approaches to working time and paid absences should be worked out in enterprise bargaining and enterprise flexibility agreements;

- . Also refer to comments re "Paid/Unpaid Leave" above.

NT:

. Options include access to employees existing sick leave entitlements through enterprise bargaining agreements.

OTHERS

SENATOR CHERYL KERNOT:

- . Inappropriate for workers to use their own sick leave;
- . Annual leave not designed for use for family illness;
- . Flexible working hours should be an adjunct to carers leave but not a substitute for it;
- . The Commission may consider certain trade-offs for cost of paid leave e.g. some paid sick leave to be used as carers leave or incorporate carers leave into other family related leave such as bereavement leave;

NPEC:

- . 5 days special family leave should be additional to other leave entitlements and not be absorbable under any circumstances.

Appearances:

E. Rubin with J. George for the Australian, Liquor, Hospitality and Miscellaneous Workers Union and the Finance Sector Union of Australia, and with J. Collins for the Shop Distributive and Allied Employees Association and also for the Australian Council of Trade Unions (intervening).

R. Hamilton with M. Quirk for the Victorian Employers' Chamber of Commerce and Industry (and its respondent members), with M. Alves for The Retail Traders' Association of New South Wales and the Confederation of A.C.T. Industry, with J. Burge for the Insurance Employers Industrial Association (and its respondent members), and for the Australian Chamber of Commerce and Industry (intervening) and the Australian Wool Selling Brokers Employers Federation (intervening).

B. Watchorn for The Australian Chamber of Manufactures.

P. Murphy with R. Boland and S. Field for the Metal Trades Industry Association of Australia (MTIA) (intervening), MTIA's National Construction Council (intervening), the Engineering Employers Association, South Australia (intervening) and the Air Conditioning and Mechanical Contractors Association of Australia Limited (intervening).

V. Winley for the Business Council of Australia (intervening).

J. Wlazlowski with P. Gair for the Australian Catholic Commission for Industrial Relations (intervening).

Senator C. Kernot (intervening).

M.J. Fisher with R. Skeffington for the National Farmers Federation (intervening).

K. Heaney with P. Drever and R. Bush for the Minister for Industrial Relations on behalf of the Commonwealth (intervening).

I. Douglas Q.C. with L. Kaufman of Counsel for Her Majesty the Queen in Right of the State of Victoria (intervening).

D. Jones with K. Boland for Her Majesty the Queen in Right of the State of New South Wales (intervening).

J. McCabe for Her Majesty the Queen in Right of the State of Tasmania (intervening).

C. Guerin with J. Johnston for Her Majesty the Queen in Right of the State of Queensland (intervening).

L. Field for Her Majesty the Queen in Right of the State of Western Australia (intervening).

D. Melvin for Her Majesty the Queen in Right of the State of South Australia (intervening).

J. Woodrow for the Government of the Australian Capital Territory (intervening).

Commissioner S. Walpole for the Human Rights and Equal Opportunity Commission (intervening).

C. Andrades with S. Wilde for The Australian Council for Lesbian and Gay Rights, and with A. Keenan for the Australian Federation of AIDS Organisations (intervening).

J. Santamaria of Counsel for the Australian Family Association (intervening).

P. Smit for the Women@s Action Alliance (intervening).

A.M. Mioche for Carers Association of Australia Incorporated (intervening).