

# 1. INTRODUCTION

[1.1] As per the Commission's directions of 10 March 2004, these are the ACCI/NFF outline of contentions in response to those lodged by the ACTU on 30 April 2004 in relation to this matter.

[1.2] They provides ACCI/NFF's preliminary response to the matters raised by the ACTU in support of its claims to include in awards a set of additional regulations nominally linked to work and family.

[1.3] This outline is presented in five parts:

- a. Part A: Introductory and framework considerations
- b. Part B: Cost considerations
- c. Part C: Fundamental and cross claim considerations
- d. Part D: Contentions regarding specific ACTU claims
- e. Part E: Witnesses and non-ACTU responses

[1.4] In responding to each ACTU claim, ACCI/NFF has endeavoured not only to respond to the material presented by the ACTU, but also to consider:

- a. Fundamental framework and threshold considerations.
- b. Practical considerations arising from the form and expected operation of the provisions sought by the ACTU.
- c. Wider merit considerations raised by each ACTU claim.
- d. The evidence the ACTU cites in support of each of its claims.

[1.5] To a strong degree, our contentions take the form they take, and are the size they are, because of an attempt to make sense of and adequately assess ACTU contentions which are unclear, or difficult to respond to.

[1.6] In particular:

- a. A great many of the apparent contentions and precepts on which the ACCI purports to rely do not in reality in any way advance its claims.

- b. There is a failure of deductive logic in much of the ACTU material. The apparent contentions of the ACTU are not supported within the body of the paragraphs that follow.
- c. Properly examined, the research on which the ACTU relies does not in fact show what the ACTU claims. This is only apparent when the ACTU material (and the sources relied upon) is examined in detail.
- d. Many of the paragraphs have been presented as mere at large contention with no linkage or grounding in specific research or supporting materials.

[1.7] Fundamentally:

- a. The ACTU contentions and the supporting materials (whilst weighty) fundamentally do not actually advance the ACTU claims.
- b. Mere recitation of social trends or even social necessities does not compel a response from the employment regulation system, nor in particular the awarding of additional obligations upon employers.
- c. **The ACTU does not establish any nexus between the trends and developments it cites and the particular award provisions which it seeks in its claim.** This is possibly, the key, fundamental limitation of the contentions the ACTU has advanced.
- d. The ACTU also fails to in any way go the next step and to show how any of the material and contentions it relies upon in any way advance its claim over that of ACCI/NFF in this matter.
- e. The ACTU manifestly fails to prove that demonstrated and effective agreement / consensual based approaches should be abandoned in favour of the universal rights and obligations model it seeks.

[1.8] This outline, the witness statements and the supporting materials provide a detailed response to the confused and inconclusive material lodged by the ACTU to date. Properly assessed, the ACTU has done nothing to advance its claim above the alternative propositions under consideration in this matter. Each party has proposed a set of responses to what has been described in contentions and in public discourse as the ‘challenge of work and family’.

[1.9] This case properly involves an examination of:

- a. To what extent the issue of ‘work and family’ necessitates additional award remedies at the present time.
- b. If additional award regulation is considered necessary, what kinds of provisions are most appropriate way for addressing these issues.
- c. And, in framing those provisions, what considerations should be taken into account to ensure that they properly balance employer and employee interests, are consistent with the objects and other relevant provisions of the *Workplace Relations Act* 1996, and will operate effectively at the workplace level.

[1.10] The ACCI/NFF contentions seek to provide the Commission with guidance on what we perceive to be the relevant issues and considerations in relation to those three questions.