

# 10. MAKE UP TIME

## Summary of core contentions

- Make up time is a simple, effective and highly useful practice that can significantly assist employees in balancing work and family responsibilities.
- Make up time provides a paid solution to short-term work and family leave requests where able to be agreed with employers. It is superior to unpaid approaches.
- ACCI seeks endorsement of a revised, improved version of the of the make-up time clause that was endorsed in the POFL decision.
- There are serious issues regarding the lack of access to make-up time by agreement in many federal awards.

## ACCI/NFF Proposed Clause

[10.1] The clause sought by ACCI/NFF departs from the existing test case provision in key ways. It is ACCI/NFF's contention that these alterations will significantly improve the access and utility of make up time arrangements.

[10.2] ACCI/NFF seeks a clause which:

- a. Removes a role for majority facilitation in relation to make up time requests or the establishment of a system of make up time.
- b. Clarifies that time can be 'made up' at any time mutually agreed.
- c. Specifically ties to make up time to work and family purposes.

## Proposed Variation

[10.3] ACCI/NFF seeks endorsement of the following make up time clause:

### Make Up Time

- a) To assist employees in balancing their work and family responsibilities, an employee may elect, with the consent of the employer, to work 'make up time', under which the employee takes time off during ordinary hours and works those at a later time, at the rate which would have been applicable to the hours taken off.

- b) There is no requirement that "make up time" be worked within ordinary hours of work under this award, nor within an employee's ordinary or usual hours of work.

[10.4] It is not intended that the clause would apply in those awards which already contain suitable make up time clauses of general application. However it would provide the award parties with an opportunity to revisit undesirable components of existing make up time clauses, or, where there are no existing make up time clauses, to introduce such a clause on a limited work and family basis.

### **How this would work**

[10.5] Make-up time provides leave for a wide variety of short notice, occasional and less than full day leave purposes.

[10.6] An employee requests leave, e.g. for an afternoon, and agreement is reached on when that leave will be 'made up' The ACCI/NFF model is highly flexible about how and when this occurs, thus giving employers and employees maximum capacity to reach agreed arrangements for the making up of time. For example, an employee may take three hours leave on a single day and work that time back as an hour's additional work over three days the following week.

[10.7] Make up time is a paid leave solution. It does not disturb an employee's weekly pay or deprive them of income.

[10.8] It can be utilised on very short notice and for a wide variety of purposes, including caring for children on occasions where care is not available, or where an employee wishes to care for a sick child but not avail themselves of personal leave, and for other family purposes, such as attending school events or simply spending additional leisure time with family members (e.g. by taking off Friday afternoon to have a long weekend).

### **Supporting a common sense approach**

[10.9] Make up time is the kind of easy, common sense interaction that occurs in many workplaces frequently. It is easy to understand. People are familiar with it. In fact, many employees and employers probably use make up time frequently without realising it, and without reference to awards applying in the workplace.

[10.10] However, for employers and employees reliant on federal awards, award support for make up time arrangements remains scant. This is in spite of a Full Bench decision which endorsed a make-up time model.

### Majority Facilitation

[10.11] The form of the clause endorsed by the POFL decision provided for a nominally facilitative provision on make up time which in reality is nothing more than an administrative process. For example, the *Motels, Accommodation and Resorts Award 1998* contains the following make up time clause:

#### **23.11 Make-up time**

**23.11.1** Make-up time means an arrangement under which an employee takes time off during his or her ordinary hours of work and makes up that time later.

**23.11.2** The employer and a majority of employees in a workplace may agree to introduce make-up time subject to the following conditions:

**23.11.2(a)** If an employer intends to introduce make-up time and the Union has members at the particular workplace then the employer must inform the Union of its intention and provide the Union with an opportunity to participate in negotiations relating to make-up time.

**23.11.2(b)** After the employer and a majority of employees have agreed to introduce make-up time an employee may elect, with the consent of his or her employer, to work make-up time.

**23.11.2(c)** Make-up time arrangements must comply with the conditions set out in clauses 13.2.2, 23.7, 24, 26, and 27.

**23.11.2(d)** The employer must record make-up time arrangements in the time and wages records kept pursuant to Division 1 of Part 9A of the Workplace Relations Regulations.

**23.11.2(e)** Any disputes in relation to the practical application of this clause may be dealt with in accordance with 11 - Procedure to avoid industrial disputation, or by the establishment of a Board of Reference under s.133 of the Act.

[10.12] The problem with this of course is that this is not a make up time clause at all. It is a clause which provides scope for discussion and negotiation towards a make up time – it actually provides employees and employers with no scope to enter agreed make up arrangements. It falls one step short and provides no additional work and family balance capacities to employees and employers in workplaces.

[10.13] This is a clause which prescribes an administrative process – it does not deliver any meaningful make up time capacities in individual workplaces. Too many award make up time provisions operate in this manner.

[10.14] ACCI believes that it is now time to move beyond such majority administrative arrangements and provide for make up directly time by a process of individual employee request and employer consideration.

[10.15] Simpler, and more effective approaches have already emerged in some awards, e.g. the *Child Care (Long Day Care) WA Award 2003*:

**10.3** An employee may elect, with the consent of his/her employer, to work make up time under which the employee takes time off during ordinary hours and works these hours at a later time. This clause will only be used at the initiation of the employee.

[10.16] This clause is quite obviously clearer, simpler and more likely to be utilised by employers and employees at the workplace level. It is an actual make up time clause which allows for the working of make up time – rather than a mere recitation of a prescribed administrative procedure for negotiations.

[10.17] It is difficult to see how employees in the WA day care industry are mature and capable of operating a make up time provision directly and their colleagues in motels for example are not.

[10.18] Grounds for removing the majority facilitation approach include:

- a. The utility of make up time to employees seeking to balance their work and family lives with their employers has already been recognised.
- b. The system has evolved and employers and employees are more comfortable and educated on bargaining approaches to workplace relations.
- c. The bureaucratic and complex approach in some awards is not good enough. It does not deliver make up time capacities – and it is time it did.
- d. The existing requirements for introducing a system of make-up time may appear daunting to employers and employees, particularly smaller employees, and those who are not practitioners.
- e. There is no legitimate role for the majority to veto the work and family balance preferences of individual employees.

## Bargaining

[10.19] Consistent with our comments on time off in lieu of overtime, make up time and hours flexibility provisions of this kind are common with enterprise agreements, thus demonstrating that make up time is mainstream provision supported by employers and employees to help achieve work and family balance.

## Benefits of renewed full bench endorsement

[10.20] For the reasons cited above, it is appropriate that the Full Bench grants ACCI's claim and endorses an improved and simplified make up time provision.

[10.21] However there is a further reason for renewed Full Bench endorsement, and that is the extremely patchy take up of make up time provisions across the award system.

[10.22] Examining the 73 applicable awards in Wagenet's "Most Requested Awards":

- a. 19 out of 73 contained a make up time clause.
- b. Of those 19, 8 contained the clause in the 'majority facilitation' form
- c. Only 11 contained the clause in a simplified form allowing easy individual access to make up time.

[10.23] This suggests:

- a. That most award reliant employees do not have access to agree make up time arrangements with their employers.
- b. That a simple and effective provision which has widespread acceptance is still not commonly available.
- c. That the efficacy of make up time in improving employees' capacities to better balance work with family responsibilities is, at least insofar as the award system is concerned, relatively untested.

[10.24] A new Full Bench endorsement will provide parties with an opportunity to revisit and improve award provisions and will reinforce the pivotal role of make up time in a work and family context.