

6. EXTENDED ANNUAL LEAVE

Summary of Core Contentions

- ACCI / NFF's proposed approach will provide employers and employees with an additional option to address longer term and foreseeable work and family considerations in particular.
- It will also provide additional options to address ad hoc and exigency based work and family considerations for those employees who want to pursue this course.
- ACCI / NFF's proposed approach is simple, straightforward and direct. It will provide a clear and accessible additional avenue to accommodate work and family considerations at the workplace level.
- No loss of annual leave entitlement (or indeed any variation to annual entitlements) would be rendered by the proposed clause. Rather the proposed variations would create additional options in how annual leave may be used and accessed by employees.
- The additional flexibility proposed by ACCI/NFF will clearly operate:
 - Only on the initiation / election of the employee.
 - Only by agreement at all times.
 - Only for the purposes of assisting employees in balancing their work and family responsibilities.
- The ACCI / NFF approach will deliver the above benefits, and others to be expanded on in this case with minimal cost to business. It represents a proper balance of considerations under the *Workplace Relations Act 1996*.

ACCI/NFF Proposed Clause

[6.1] One of the key work and family considerations raised in the applications of various parties is enhancing employee capacities to access extended periods off work (that is, longer than the exigency based, single or multiple day ad-hoc proposals also being considered in this matter).

[6.2] It was on this basis that ACCI / NFF included a proposal for purchased leave in our original applications, and it is on this basis that ACCI/NFF understands various parties continue to press modified purchased leave propositions following conciliation.

[6.3] As a product of the conciliation process, ACCI/NFF now seeks that the following be added to award annual leave provisions:

Extended Annual Leave

To assist employees in balancing their work and family responsibilities, an employee may elect, with the consent of the employer, to take any part of their annual leave in the following manner: double the period of annual leave on half pay.

Relationship to purchased leave claims

[6.4] ACCI/NFF's extended annual leave clause is advanced:

- a. In place of ACCI's previously advanced model for purchased leave (which is no longer supported).
- b. As an alternative that should be preferred in place of attempting to regulate purchased leave in awards.

[6.5] ACCI/NFF will argue that this approach should be preferred to attempting to simultaneously allow and regulate purchased leave under the award system. This position will be advanced at the proper juncture in this case, it serves only to state at this point that the ACCI/NFF model should be preferred to all others.

What this is and is not

[6.6] As we have made clear throughout this submission, and as is made clear by the witness evidence appended to this submission:

- a. The proposed new capacity to for extended annual leave would only apply where an employer and employee agree, and where this was at the employee's election.
- b. At all times this would operate based on employee choice and employer agreement. There is no intention that this operate to in any way compel employees to use their annual leave in the proposed alternative manner, nor to force employees away from the established arrangements contained in awards if that is their choice (i.e. 4 weeks annual leave at ordinary time

rates).

- c. It is clear from the proposed new clause following conciliation that the proposed new capacity for agreement would operate only “to assist employees in balancing their work and family responsibilities”. The flexibilities advocated by ACCI/NFF are in no way proposed as generalised or at large departures from existing award approaches.
- d. This formulation of the ACCI/NFF clause as lodged is fundamental. Any approach which operates other than by employer agreement is not supported.¹

This would provide access to extended leave

[6.7] There are a wide variety of work and family purposes which access to some extended component of leave may assist some employees in meeting. This is of course not the sole consideration in the determination of any part of this matter, nor could it solely be determinative of any minimum outcomes in a system which is about a balance of considerations, and a balance of outcomes (as articulated throughout the *Workplace Relations Act 1996*).

[6.8] This said, access to extended leave beyond existing award levels (without additional payment) has as we understand it been variously characterised as being able to contribute to employees meeting a range of their familial commitments, including:

- a. Assisting employees in better addressing school holiday periods, and other extended periods in which childcare responsibilities lie with parents not external agencies / institutions.
- b. Providing mechanisms for parents to meet foreseeable and scheduled care requirements, which may be of a lesser period than a school holiday (which are some weeks long). This would include for example providing additional leave options to account for curriculum days on which schools are closed (of which parents have prior notice).

¹ This caveat applies to all ACCI /NFF proposals advanced on the basis of employee election and employer agreement.

- c. For some employees, providing an additional pool of paid leave to meet exigencies and emergencies without loss of payment (and without additional costs to their employers).

[6.9] The key to the ACCI / NFF proposal is that it would provide more options for more employees and employers to address one form of work and family based request which is not otherwise provided for under the existing system, or under other changes canvassed in this matter. It will do so in a vastly superior and inherently more merited manner than other approaches, and should be preferred.

100% Pay Is Not Under Consideration

[6.10] No party proposes that there be access to additional multiple weeks of paid leave to meet work and family commitments (such as for example an additional 8 weeks school holiday leave at 100% of pay) – this would be utopian and unrealistic. It is not under consideration by any party.

[6.11] So therefore if the award system is to better meet some of the work and family considerations canvassed in these proceedings, including some additional scope to address school holidays etc, this will need to be met by either an unpaid or part payment / adjustment based approach.

[6.12] Unpaid solutions are already available to employers and employees in workplaces. Where for example an employee wishes to structure their employment to not work during school holiday and other periods, and this can be agreed with the employer, this is already freely accessible. (For this reason ACCI/ NFF has not pressed the initial application to specifically empower unpaid leave capacities in awards).

[6.13] Attention in this matter must therefore be focussed on approaches which offer scope to adjust existing entitlements to facilitate access to additional leave. Such part payment or adjustment based approaches (ACCI's extended annual leave proposal and the purchased leave proposals) are under active consideration in this matter.

These clauses are all about adjustment

[6.14] Both purchased leave provisions and the extended annual leave proposal are fundamentally about adjusting overall remuneration to deliver an additional period of leave. Pending receipt of the ACTU submissions, where the ACTU and ACCI/NFF proposals now appear to fundamentally diverge is in the period across which there may be an adjustment of pay to secure more leave.

[6.15] The ACCI/NFF proposal provides for a very instant and direct adjustment to pay to secure additional leave.

[6.16] Where an employee chooses to access additional leave, he or she makes a decision to do so at full or part payment. Where an employee, for example to bridge a school holiday period, wants to secure 10 days off whilst deducting only 5 days from his or her annual leave accrual – he or she does so in the knowledge that they will be paid one weeks pay during this period.

[6.17] ACCI cannot conceive how this would be disadvantageous to any employee compared to any alternative approach. Extended periods off work which might make a significant and noticeable adjustment to pay (such as for example an employee choosing and requesting a weeks unpaid leave in conjunction with a weeks annual leave) would clearly be foreseeable and able to be budgeted for. Were this not the case – the employee would not request the extended annual leave.

[6.18] ACCI/NFF will address the ACTU's purchased leave proposal in due course. However, at this stage ACCI can see no difference in budgeting and capacities to adjust incomes between the two proposals. The ACCI/NFF proposal also does nothing to alter the capacities of interested employees and employers to pursue a purchased leave arrangement which actually accords with their workplace, through bargaining.

The simple is better than the complex

[6.19] ACCI/NFF's approach is very simple and straightforward. It is thereby superior to the inherently complexity which is unavoidable in going down the path of attempting to codify in awards an inherently enterprise based procedure such as purchased leave.

[6.20] Under the ACCI/NFF clause, to the extent that an employee has an annual

leave entitlement, he or she will be able to at all times (by agreement) take two days for each day of annual leave, at half payment. For example:

- a. An employee accessing a single day of annual leave would have the options of:
 - i) One day off for the use of a single day's annual leave (the status quo approach).
 - ii) Two days absence for the use of a single day's annual leave.
 - iii) A single days absence for the deduction of only half a day from his/her accrued annual leave balance.²
- b. An employee accessing a week of annual leave would have the option of:
 - i) 5 days off for the use of 5 days annual leave (the status quo approach).
 - ii) 10 days absence for the use of 5 days accrued annual leave.
 - iii) 5 days absence for the deduction of only two and half days from his/her accrued annual leave balance.³
 - iv) Some other combination of full and half payment, and full and half time entitlement.
- c. An employee accessing 4 weeks of annual leave would have the option of:
 - i) 20 days off for the use of 20 days annual leave (the status quo approach).
 - ii) 40 days absence for the use of 20 days accrued annual leave.
 - iii) 20 days absence for the deduction of only 10 days from his/her accrued annual leave balance.
 - iv) Some other combination of full and half payment, and full and half time entitlement.

² To the extent that part day annual leave usage is possible under an award.

³ To the extent that part day annual leave usage is possible under an award.

[6.21] The ACCI proposal thereby offers scope to access up to an additional 4 weeks annual leave in any year where this is agreed between employer and employee. For employees with some existing carried forward annual leave entitlement – there may be access to more than 8 weeks leave in any year.

[6.22] In doing so it will deliver more work and family options for more employees and employers.

[6.23] A key example of where this approach can make a direct contribution to assisting some employees in balancing work and family is in relation to school holidays.

The ACCI / NFF approach is easy to enter, exit and change

[6.24] One of the key contrasts between the ACCI/NFF approach and a purchased leave arrangement is that the ACCI /NFF model is much easier to move in and out of. A purchased leave arrangement is predicated on a longer term adjustment to the fundamental working year and remuneration level (for example a 48/52 arrangement). This is not embarked on lightly, nor agreed to lightly by employers. It is a major adjustment to employment, which is difficult to administer, evaluate and calculate. There is also the issue of adjusting these arrangements where employees and employers change their minds.

[6.25] In contrast, the ACCI / NFF clause only comes into play at the point annual leave is accessed on each occasion. Where an employee does not wish to maintain this approach, they need not request it the next time they propose leave: No major adjustment to payroll or reconciliation is required. No taxation implications for employees are raised, and no adjustment need be made for any excessive or unmanageable leave accrual.

The Act requires such a straightforward approach

[6.26] The ACCI/NFF approach is straightforward and simple to comprehend, administer and apply. As we will develop throughout the case, it stands in direct contrast to other approaches including purchased leave (and completely avoids much of the complication inherent in purchased leave).

[6.27] Such a simple approach directly reflects the statutory schema of the *Workplace Relations Act 1996*. In particular:

- a. A simple and straightforward award safety net best ensures that the primary responsibility for determining matters affecting the relationship between employers and employees rests with the employer and employees at the workplace or enterprise level⁴.
- b. The ACCI/NFF clause would directly contribute to the aims of the system and of awards. It can only operate by determination between employers and employees at the enterprise level on each occasion that the employee exercises his or her right to annual leave.
- c. The simple and straightforward approach proposed would provide an additional means for the implementation of one of the key conditions of employment to be determined to a greater extent by agreement between employers and employees at the workplace level.⁵
- d. The approach would in no way detract from the award schema of minimum standards – annual leave would remain in place unaltered and in the absence of an employee election, extending annual leave will not come into consideration. Neither the enforceability of the annual leave safety net, nor the extent to which it supports and facilitates bargaining would not be altered.

[6.28] The ACCI proposal also directly accords with the provisions of the Act which articulate how awards are to operate, and their form. The proposed clause is in a short, direct facilitative form – it does not for example include matters of detail and process that are more appropriately dealt with at the enterprise level⁶. The proposed provision is also in very plain English, and is simple to understand in form and content⁷.

[6.29] Most importantly of course, the ACCI/NFF proposal would contribute to the work and family aims of the *Workplace Relations Act 1996*, including:

- a. The objects of the Act, which provide that the system, including the award system, should assist *“employees to balance their work and family responsibilities effectively through the development of mutually beneficial work*

⁴ *Workplace Relations Act 1996*, s.3(b)

⁵ *Workplace Relations Act 1996*, s.3(d)

⁶ *Workplace Relations Act 1996*, s.143(1B).

⁷ *Workplace Relations Act 1996*, s.143(1C).

*practices with employers*⁸. The key to the operation of the proposed new provision is agreement between employers and employees at the workplace level regarding the operation of existing leave accruals.

- b. Providing additional options to help more employees to balance their work and family responsibilities in more scenarios in more workplaces (s.93A).

Annual leave is clearly allowable

[6.30] The ACCI/NFF proposal is clearly an allowable matter under the *Workplace Relations Act 1996*, as it concerns the application and operation of annual leave entitlements.

Delivering flexibility with minimal additional cost

[6.31] Another clear benefit of the ACCI/NFF approach is that this will provide additional avenues for employees to manage work and family whilst minimising additional costs to employers.

[6.32] Just as not all employees will prioritise or on balance seek access to extended time off, not all employers will be in a position to agree to employee requests under this new provision. Some employers will not be able as a matter of operational demand, efficiency, productivity, skills retention etc to agree to employees absenting themselves from the workplace for more than the existing leave periods under awards.

⁸ *Workplace Relations Act 1996*, s.3(i)