



*Submission  
to the  
  
Australian Industrial Relations  
Commission:  
  
Working Hours Test Case*

**C2001/348, C2001/362, C2001/2248, C2001/2251 and  
C2001/2648, C2001/2256, C2001/2514 and C2001/2515,  
C2001/2516, C2001/2528, C2001/2757, C2001/3141,  
C2001/3356, and C2001/3441**

2 November 2001

## INTRODUCTION

1. On the 14th May 2001, the Australian Council of Trade Unions (the ACTU) lodged an application with the Australian Industrial Relations Commission (the AIRC) to vary a number of awards by inserting a “*Reasonable Hours of Work*” clause.<sup>1</sup>
2. The ACTU application (the “Working Hours Test Case”) seeks to vary these awards by removing the current provisions relating to “Reasonable Overtime” and by inserting a “Reasonable Hours of Work” clause. This clause seeks to facilitate the identification of “unreasonable” hours of work, regulate the use of “reasonable overtime” and to prescribe provisions for “extreme” hours of work.
3. At a hearing in relation to the matter held on the 20th June 2001, the Australian Catholic Commission for Employment Relations (the ACCER) formally intervened in the matter. This was granted by the AIRC.
4. The ACTU states that it is concerned about the potential impact of extended working hours on individual employees, their families and friends and the community as a whole. It claims that working extended hours may not only affect the mental and physical health of the person undertaking the work,<sup>2</sup> but may also have an effect on the family and personal relationships of the individual employee and on the wider community, as employees have less time to participate in family and community activities.
5. The ACCER considers the application made by the ACTU to be important in initiating public discussion about the working of extended hours of work. However, the ACCER suggests that the regulation of working hours, or of what is considered to be “unreasonable” working hours, will not, in itself, prevent the incidence of extended working hours. Rather, the proposed ACTU clause is at risk of making “extreme” hours of work no more than a cost burden for employers and an increase in the level of reward for employees who work those hours.
6. The ACCER questions the practical effect of the proposed clause. Awards are not necessarily uniform in their determination of what constitutes ordinary working hours. Further, some industries may have established working and rest arrangements that compensate employees for additional or extended hours worked. Therefore, it may be misleading to focus solely on the hours of work provision in an award without a thorough examination of the other provisions and benefits that employees may receive as a balance to what appear to be irregular or excessive work patterns.

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<sup>1</sup> Please refer to Appendix One for the full text of the ACTU “Reasonable Hours” clause.

<sup>2</sup> Bent S, “The Psychological Effects of Extended Working Hours,” in Heiler K (ed) *The 12 Hour Workday: Emerging Issues*, (1998) Working Paper No. 51, ACIRRT.

## CATHOLIC SOCIAL TEACHING

7. Catholic Social Teaching is a set of principles and teachings based on Christian values, which aim to bring about a good and fair society for the benefit of all. In this sense:

*“the Church offers her social teaching as an indispensable and ideal orientation, a teaching which...recognises the positive value of the market and of enterprise, but which at the same time points out that these needs to be orientated towards the common good.”<sup>3</sup>*

8. Official texts establishing Catholic Social Teaching include papal documents (known as encyclical letters), documents of the Second Vatican Council (held between 1962 and 1965) and the statements of local and regional conferences of Catholic Bishops.
9. In this regard, some of the principles espoused by Catholic Social Teaching, and most directly relevant to an Australian industrial relations context, are found in the paper titled *Industrial Relations - The Guiding Principles* (the Guiding Principles). This was published by the Bishops’ Committee for Industrial Affairs, a Committee of the Australian Catholic Bishops’ Conference, in 1993.<sup>4</sup>
10. Catholic Social Teaching promotes the right of a person to work. Work is considered to be one of the fundamental ways in which a person seeks personal fulfilment, dignity and makes their contribution to the common good.<sup>5</sup>
11. Catholic Social Teaching also promotes the right of a worker to rest. In particular, the employment relationship should take into account the right to rest as a means of respecting the dignity of the individual person:

*“Respect for human dignity requires that working conditions, including the length of shifts and the length of a week’s work, be such as to protect the health and well being of workers and to recognise their obligations to their family and the wider community.”<sup>6</sup>*

12. Catholic Social Teaching also proclaims that hours of work should not be such as to mentally or physically exhaust workers. Pope Leo XXII stated in *Rerum Novarum* that:

*“with respect to daily work....care ought to be taken not to extend it beyond the hours that human strength warrant. The length of rest intervals ought to be decided on the basis of the varying nature of the*

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<sup>3</sup> Pope John Paul II, *Centesimus Annus: On the Hundredth Anniversary of ‘Rerum Novarum’*, (St Paul Publications: Homebush) 1991, para. 43.

<sup>4</sup> Please refer to Appendix Two for the full text of Bishops’ Committee for Industrial Affairs, *Industrial Relations - The Guiding Principles* (August 1993).

<sup>5</sup> Pope John Paul II, *Laborem Exercens: On Human Work*, (St Paul Publications: Homebush) 1981, para. 1.

<sup>6</sup> Bishops’ Committee for Industrial Affairs, *Industrial Relations - The Guiding Principles*, (August 1993) page 2.

*work, of the circumstances of time and place, and of the physical condition of the workers themselves.”<sup>7</sup>*

13. In this regard, an employee’s right to rest not only correlates to the length of a working week, but also to the length of a working day.
14. Therefore, the right to rest and the employment relationship are intricately connected. On one hand, Catholic Social Teaching promotes work as being one of the fundamental ways in which people may earn a living and obtain personal and social fulfilment. On the other hand, the physical and mental exertion required by work is acknowledged, leading to the right of employees to rest - away from the workplace.
15. Catholic Social Teaching also recognises the right of business to earn a profit. Indeed, *Centesimus Annus* states:

*“the Church acknowledges the legitimate role of profit as an indication that a business is functioning well. When a firm makes a profit, it means that productive factors have been properly employed and corresponding human needs have been duly satisfied.”<sup>8</sup>*

16. However, economic considerations - either by the employer for greater production or by the employee for increased wages - cannot be used as an excuse for removing the right to rest of the individual:

*“Economic considerations whether by the employer for increased production or by the employee for increased wages, cannot set aside the need to provide for adequate rest.”<sup>9</sup>*

17. Furthermore, Pope John Paul II has written that:

*“if the whole structure and organisation of an economic system is such as to compromise human dignity, to lessen a man’s sense of responsibility or rob him of opportunity for exercising personal initiative, then such a system.....is altogether unjust - no matter how much wealth it produces, or how justly and equitably such wealth is distributed.”<sup>10</sup>*

18. Catholic Social Teaching, therefore, places primacy on the dignity of the person, even though it recognises economic considerations and imperatives. In this sense, there needs to be a balance between the legitimate requirements of the workplace and the employee’s personal, family and community needs and obligations.
19. Given these principles, employers are challenged to provide employees with fair and just working conditions, including their hours of work. These matters are considered

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<sup>7</sup> Pope Leo XIII, *Rerum Novarum* 1891, paragraph 59.

<sup>8</sup> Pope John Paul II *Centesimus Annus; On the Hundredth Anniversary of ‘Rerum Novarum’* (St Paul Publications: Homebush, 1991) para. 35.

<sup>9</sup> 1993, page 2.

<sup>10</sup> Pope John Paul XXIII *Mater et Magistra: Christianity and Social Progress*, para. 83

to be the primary responsibility of the employer. However, the *State* – in other words, *government* – has a responsibility to ensure that this duty is met.

## LEGISLATIVE FRAMEWORK

20. The Principal objective of the *Workplace Relations Act* 1996 (Cth) [the Act] is “to provide a framework for cooperative workplace relations which promotes the economic prosperity and welfare of the people of Australia.”<sup>11</sup>
21. The methods by which this Principal objective is to be achieved, include:
  - (b) *ensuring that the primary responsibility for determining matters affecting the relationship between employers and employees rests with employer and employees at the workplace or enterprise level; and*
  - (d) *providing the means.....to ensure the maintenance of an effective award safety net of fair and enforceable minimum wages and conditions of employment; and*
  - (i) *assisting employees to balance their work and family responsibilities effectively through the development of mutually beneficial work practices with employers; and*
  - (k) *assisting in giving effect to Australia’s international obligations in relation to labour standards.*<sup>12</sup>
22. The AIRC has been charged with the responsibility of maintaining the award safety net. Section 88B(2) of the Act establishes that the AIRC in performing its functions must:
 

*“ensure that a safety net of fair minimum wages and conditions of employment is established and maintained, having regard to the following...*

  - (a) *the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community.*”<sup>13</sup>
23. Furthermore, the Act limits the making of an award to the “allowable matters”, as prescribed in section 89A. Allowable award provisions include provisions pertaining to “ordinary time hours of work and the times within which they are performed, rest breaks, notice periods and variations to working hours” and “loadings for working overtime or for casual or shift work.”<sup>14</sup>
24. It has been questioned by some parties as to whether the provisions of the ACTU’s proposed clause directly or incidentally relates to “ordinary time hours of work and the times within which they are performed, rest breaks, notice periods and variations to working hours” or “loadings for working overtime or for casual or shift work.”

<sup>11</sup> *Workplace Relations Act* 1996 (Cth) section 3.

<sup>12</sup> *Workplace Relations Act* 1996 (Cth) section 3.

<sup>13</sup> *Workplace Relations Act* 1996 (Cth) section 88B

<sup>14</sup> *Workplace Relations Act* 1996 (Cth) section 89A(2)

However, the ACCER does not seek to make a submission on whether the claim falls within the allowable award provisions of the Act.

25. The ACCER has consistently argued that there is a requirement for a comprehensive safety net of minimum wages and conditions of employment as a means of protecting the rights and entitlements of all employees, but especially the vulnerable, industrially weak, minority groups and disadvantaged.
26. Indeed, this need for the protection of employees was recognised by the AIRC in the *Award Simplification Decision*.<sup>15</sup> In that decision, employers proposed the relaxation of the limitation on the working of broken shifts to a 12 hour spread and the requirement for a 10 hour break between shifts. In rejecting these proposals, the AIRC indicated that it was concerned that “*unfair demands might be made on employees.*”<sup>16</sup>
27. As noted above in the Principal objective, assisting employees in balancing work and family responsibilities is also a primary objective of the Act. In this respect the Act specifies that:  
  

*“in performing its functions, the Commission [the AIRC] must take account of the principles embodied in the Family Responsibilities Convention...”*<sup>17</sup>
28. In particular, the Family Responsibilities Convention (the Convention) specifies that the provisions of the Convention may be applied by laws or arbitration awards.<sup>18</sup> Further, the Convention states that people with family responsibilities should be able to engage in employment and exercise their right to do so without conflict between their employment and family responsibilities.<sup>19</sup>
29. Clearly, working hours and the family responsibilities of an employee may be in a state of tension at certain times or in given circumstances.
30. The number of hours worked by an employee may also have occupational health and safety implications for employees and employers and for other employees. An employee who is fatigued from working long hours may be a direct or indirect catalyst for an unsafe work situation.
31. However, occupational health and safety legislation does not appear to directly regulate working hours or define what may be considered to be “unsafe” working hours.

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<sup>15</sup> M Print P7500, December 1997, page 20.

<sup>16</sup> AIRC, *Award Simplification Decision*, M Print P7500, December 1997, page 20.

<sup>17</sup> *Workplace Relations Act 1996* (Cth) s. 93A

<sup>18</sup> *Workers with Family Responsibilities Convention* 1981, article 10.1

<sup>19</sup> *Workers with Family Responsibilities Convention* 1981, article 3.1

## THE ACTU REASONABLE HOURS CLAIM

32. The ACTU application seeks to vary the following federal awards:
- Space Tracking Industry Award 1998;
  - Railways Professional Officers' Award 1974;
  - Insurance Industry Award 1998;
  - Horse Training Industry Award 1998;
  - Tenix Defence Systems Pty Ltd (Draughting, Technical and Supervisory Employees) Award 2000;
  - Australian Post General Conditions of Employment Award 1999;
  - National Electrical, Electronic and Communications Contract Industry Award 1998;
  - Coal Mining Industry (Production and Engineering) Consolidated Award 1997;
  - Teachers' (Victorian Government Schools) Conditions of Employment Award 2001;
  - Medical Officers (Northern Territory Public Sector) Award 1994;
  - Airline Operations - Flight Attendants' Long Haul - QANTAS Airways Limited - Award 2000;
  - Australian Public Service Award 2000; and
  - Retail and Wholesale Industry - Shop Employees - ACT- Award 2000.
33. The stated aim of this test case claim is "to establish a standard within these awards that an employer may not require an employee to work unreasonable hours of work."<sup>20</sup>
34. The following sections of the submission consider the ACTU claim.

### ***Reasonable Hours of Work proposal***

35. The ACTU proposes to replace the current "Reasonable Overtime" sub-clause of the specified awards and replace it with the proposed "*Reasonable Hours of Work*" sub-clauses ("Reasonable Hours of Work", "Reasonable Overtime" and "Paid Breaks after Extreme Working Hours").

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<sup>20</sup> Marles R, Transcript of Proceedings, C No. 2001/348, 362, 2248, 2251, 2256, 2514, 2515, 2516, 2528, 2648, 2757, 3141, 3356, 3441, 20th June 2001.



36. The ACCER observes that each of the current awards specified in the case contain differing provisions for working hours and overtime. This is understood to reflect the conditions and the particular requirements of the industry covered by each of these awards. As such, the provisions relating to working hours and overtime vary between the awards. An overview of the different provisions relating to working hours contained in the specified awards is contained in Appendix Three.
37. Where awards do not contain “Overtime” clauses the ACTU proposes the inclusion of the “Reasonable Hours” clause.

***Reasonable Hours of Work (clause 1)***

38. The “Reasonable Hours of Work” clause proposed by the ACTU states that “*an employer must not require an employee to work unreasonable hours of work.*” This introduces into awards a general provision for the working hours of employees.
39. The ACCER agrees that employees should not be required to work “unreasonable” hours of work by employers. Indeed, Catholic Social Teaching requires working hours to take into account the health and well being of the person undertaking the work. This should be considered in relation to the amount of work undertaken and in relation to such arrangements as the length of shifts.
40. However, the proposed clause provides for a general prohibition on working “unreasonable” overtime. Certain groupings of employees may be required to work “unreasonable” overtime at specific moments; for example, in relation to an issue of public safety, emergency or major failure of plant and equipment or an accident at the workplace. In this regard, the proposed clause appears to be inflexible in taking such exceptional circumstances into consideration.

The ACCER would therefore suggest that the proposed clause, if it is to be implemented as a test case standard, be amended to take such situations into account.

41. In the 1999 submission to the Senate inquiry into the *Workplace Relations Legislation Amendment (More Job, Better Pay) Bill 1999*, the ACCER stated that:

*“the award system is required to maintain fair and just minimum conditions and standards at the workplace for all employees.”*<sup>21</sup>

42. Additionally, the submission stated that:

*“the primary focus of the award simplification process should be about the removal of ambiguity ...for the inclusion of relevant community and industrial test case standards...”*<sup>22</sup>

<sup>21</sup> ACCER Submission to the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee Inquiry into the *Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999* page 19.

43. Given this, the ACCER supports the inclusion into awards of “community or industrial” test case standards. But, it does not consider it to be appropriate or of practical effect to introduce test case standards that lead to ambiguity in the interpretation of the award provision.
44. The ACCER suggests that “unreasonable hours” is a subjective term that may vary, depending on the particular circumstances at hand. What is reasonable for one employer or employee may be considered to be “unreasonable” given a different set of circumstances. Indeed, the facilitative clause (clause 1) clearly indicates that this will be the case.

Given the diversity of working hours arrangements in each of the specified awards, their possible history, operational rationale and any countervailing rest mechanisms, there appears, however, to be a presumption that every award is regulated in terms of a prescribed 38 hour working week and that every workplace is based on a standard working week. The ACCER contends that the individual circumstances of each industry and workplace would need to be a primary consideration for the AIRC in deciding this matter as a test case (and for that of any other award).

45. The proposed ACTU “Reasonable Hours” clause requires an employer to take into consideration a range of different factors when determining what are “unreasonable” hours of work.
46. It is acknowledged that the list of factors may assist employers and employees to identify some of the issues to be taken into account when evaluating the extent of working hours. However, “reasonable hours” of work must include not only the needs of the employee but also the legitimate operational requirements of the organisation or business. This was recognised in *The Australasian Meat Industry Employees Union v Australian Meat Holdings*:

“The actual circumstances at the particular plant need to be measured in an effort to balance the wishes and the well being of the employee with the legitimate operational requirements of the Company.”<sup>23</sup>

47. Regulations which are intended to provide flexibility for only one party - the employee - to the employment agreement may lead to only begrudging acceptance, at best, from the other party - the employer.

Therefore, the ACCER would suggest that the proposed clause, if it is to be implemented as a test case standard, be amended to include the “operational requirements” of the business as a factor for consideration.

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<sup>22</sup> ACCER Submission to the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee Inquiry into the *Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999* page 20.

<sup>23</sup> AIRC, Print K7063, Maher DP, 18th March 1993.

48. Furthermore, the factors outlined in the ACTU's proposed clause may, in themselves, cause disagreements or disputes or discrimination. Taking into account an employee's family responsibilities and social and community involvement is important and is to be encouraged within workplaces. However, discrimination could arise if preconceived assumptions are made about employees with family responsibilities – for example, that they are not to be required to work overtime or outside of normal hours of work. This scenario could discriminate against those employees with family responsibilities by denying them access to opportunities to earn additional money and against those who do not have family responsibilities by requiring them to perform a disproportionate level of overtime.
49. Finally, as the proposed clause currently stands, it is unclear as to whether the factors specified in clause 1.2 are cumulative or stand-alone. That is, whether the application of one or several factors must only be applied to determine what are unreasonable hours, or whether they all must apply.
50. Related to this point, it is noted that it would not be realistic to expect employers to consider the totality of the factors listed, as they would not necessarily apply in every workplace. For example, "time off between shifts" and "the extent of night work" will only be applicable in specific situations and within certain workplaces. However, the operation of this aspect of the provision is unclear. Indeed, the ACTU Written Submission says that it is "a non-exhaustive list of factors to be taken into consideration in the determination of what constitutes unreasonable hours".<sup>24</sup>
51. The ACCER would suggest that clause 1.2 (g) "the remuneration received for excess hours worked" is not an appropriate factor in determining "unreasonable hours of work". It is an outcome or product of the recognition of the working of "excess hours", rather than an input into the identification of what would constitute such hours. In a sense, this might give legitimacy, unintentionally, to a bargain of money for the working of excess hours.

The ACCER would recommend that the operation of the list of factors to be considered be clarified by the AIRC if the proposed clause is to be inserted into awards as a test case standard.

### ***Reasonable Overtime (clause 2)***

52. The ACTU proposed provision relating to "Reasonable Overtime" may have the practical effect of dissuading employers from requesting employees - who are employed on part-time arrangements under the parental provisions of the particular award - to work overtime. In other words, this might have the effect of excluding these employees from any consideration for overtime.

<sup>24</sup> ACTU Written Submission to the AIRC Full Bench Working Hours Test Case, paragraph 54, page 36.

53. Furthermore, this blanket presumption may manifest discriminatory action against such employees.
54. Clause 2.2 specifies that an employee may refuse to work hours in excess of ordinary hours on a particular day for reasons that “may include, but are not limited to, the employee’s family responsibilities or the pre-arranged personal commitments of the employee.”
55. Such a clause may be confusing as it does not specify whether the “pre-arranged” personal commitment may be a once-only event or whether it is to be a *regular* commitment of the employee. It would appear to be unrealistic to expect an employer to consider and evaluate every employee’s pre-arranged personal commitments before requesting employees to undertake overtime.
56. Further, the ACCER is not certain that this is a matter that can be defined by regulation. The term “pre-arranged” personal commitments is potentially ambiguous in its scope and may in itself create uncertainty and confusion for both employers and employees.
57. Finally, the ACCER would question the enforceability of such a provision. What are “pre-arranged personal commitments”? How are they to be defined and evaluated? Will employees be required to prove that they have pre-arranged personal commitments?

The ACCER would suggest that this clause be amended, if it is to be implemented as a test case standard, by inserting some degree of clarity about the frequency and nature of “pre-arranged personal commitments”.

### ***Paid Breaks after Extreme Working Hours (Clause 3)***

58. The ACTU proposes to include into the specified awards a provision requiring employers to provide two days paid leave after the working of “extreme” working hours. Clause 3.2 relating to “Paid Breaks after Extreme Working Hours” states:

*“An employee who has worked:*

- (a) an average of 60 hours per week over a four week period; or*
- (b) 26 days over a four week period; or*
- (c) an average of 54 hours per week over an eight week period; or*
- (d) 51 days over an eight week period; or*
- (e) an average of 48 hours per week over a twelve week period; or*
- (f) 74 days over a twelve-week period*

*shall be entitled to a break of 2 full days before working again and to be paid for those 2 days.”*

59. The ACTU considers the aforementioned patterns of working hours to be “extreme” working hours.
60. This clause introduces a new term into the claim - “extreme” working hours. It is unclear as to the differentiation, if any, between “extreme” working hours and “unreasonable” working hours. It is also unclear as to the evidentiary basis for the stated parameters of “extreme” working hours.
61. The clause also invites discussion about its relationship to any determination reached through the identification of “unreasonable” working hours. While clause 3.8 seems to state that there is a distinction between the two sets of working hours, it still warrants clarification of a number of questions:
  - Where does one definition of working hours begin and end and the next commence?
  - Is there a continuum of “reasonable, “unreasonable” and “extreme” working hours?
  - What if the parameters of “unreasonable” working hour determined in a workplace are at variance with those indicated as “extreme” working hours?
62. In principle, the ACCER supports provisions prohibiting or, at least, discouraging employees from working extreme working hours. Therefore, it is concerned about the unintended effect of provisions that, in essence, would provide employees with inducements through additional leave or monetary compensation for working extreme hours.
63. Furthermore, this provision will not necessarily stop or inhibit altogether the working of extreme hours of work, if that is the objective. Employers may continue to request employees to work extended hours despite the penalty provisions and employees may voluntarily work extreme hours, receive the financial benefit of overtime penalty rates, and then receive two days paid leave.
64. Finally, the clause proposed by the ACTU does not appear to take into consideration the length of shifts or the amount of work required on any one day.
65. A recent decision by Kaufman SDP, in considering whether a termination of employment was harsh, unjust or unreasonable, took into consideration the circumstances surrounding the termination, noting that the hours of work of the employee were “unconscionably long hours.” In this instance, the employee was found to have worked until late one night, continuing work on the following day

without taking the required ten-hour break between shifts. This was found to be a contributing factor in the incident that contributed to the employee's termination.<sup>25</sup>

66. In this context, it is difficult to conclude that a threshold number of hours would have stopped or inhibited the employee from working the extended hours. Indeed, the employee may not have worked "extreme" hours as proposed by the threshold limit in clause 3.
67. Further, the parameters of the clause do not appear to take into account workplaces where extended hours may be performed as a part of the ordinary hours of work but there may be the ability for employees to take rest at work in between working requirements or where blocks of paid time or significant periods of leave are available to provide adequate rest breaks for employees who are required to work in intensive work environments.

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<sup>25</sup> Aggenbach v TXU Networks Pty Ltd, Kaufman SDP. PR902343, (27 March 2001)

## CONCLUSION

In conclusion the ACCER makes the following points about the Test Case application currently before the AIRC:

- The ACCER is concerned about any requirement that is placed on employees to work unreasonable hours of work.
- The ACCER supports the right of an employee to rest. This right should be reflected by the breaks available to employees while at work and the breaks available to employees away from the workplace.
- The ACCER is concerned that the regulation of extended or “unreasonable” hours of work by the inclusion of the proposed test case standard into awards may not be an effective mechanism with which to change the culture and practices of the workplace.
- The ACCER is concerned with the practical effect of the ACTU’s proposed clause upon employers and employees. In this respect, the ACCER is also concerned about the subjectivity or ambiguity of parts of the clause.
- The proposed clause does not appear to take into account industries or workplaces that do not conform to the standard 38 hour per week pattern of working hours and that may have established countervailing rest provisions.

*If the Commission pleases.*



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**APPENDIX ONE:**  
**PROPOSED ACTU REASONABLE HOURS CLAUSE**

## **1. Reasonable Hours of Work**

*1.1 An employer must not require an employee to work unreasonable hours of work.*

*1.2 Without limiting the generality of paragraph (1.1), the following are to be considered in determining what are unreasonable hours of work:*

- (a) the total number of hours that exceed the ordinary, in or the case of part-time workers the agreed hours of work;*
- (b) the total number of hours worked on any particular day or shift;*
- (c) the total number of hours worked over an extended period;*
- (d) the number of hours worked without a break;*
- (e) the time off between shifts;*
- (f) the risk of fatigue;*
- (g) the remuneration received for excess hours worked;*
- (h) the rostering arrangements;*
- (i) the extent of night work;*
- (j) an employee's workload;*
- (k) work intensification resulting from understaffing, and the ability of workers to meet targets while working reasonable hours;*
- (l) the time required to achieve remuneration in accordance with performance based pay schemes;*
- (m) the exposure to occupational health and safety hazards;*
- (n) an employee's social and community life; or*
- (o) an employee's family responsibilities.*

## **2. Reasonable Overtime**

*2.1 Subject to this clause an employer may require an employee to work reasonable overtime at overtime rates - other than employees employed part-time in accordance with clause x (parental leave) of this award who cannot be required to work overtime against their wishes.*

*2.2 An employee may refuse to work hours in excess of ordinary hours on a particular day for reasons which may include, but not be limited to, the*

*employee's family responsibilities or the pre-arranged personal commitments of the employee.*

### **3. *Paid Breaks after Extreme Working Hours***

*3.1 The provisions of this sub-clause shall apply to each type of employment, each classification and skill based career path provided in this Award.*

*3.2 An employee who has worked:*

- (a) an average of 60 hours per week over a four week period; or*
- (b) 26 days over a four week period; or*
- (c) an average of 54 hours per week over an eight week period; or*
- (d) 51 days over an eight week period; or*
- (e) an average of 48 hours per week over a twelve week period; or*
- (f) 74 days over a twelve week period;*

*shall be entitled to a break of 2 full days before working again and to be paid for those 2 days.*

*3.3 An employee cannot accrue more than 2 days entitlement in accordance with paragraph 3.2 in relation to the same period of time.*

*3.4 The 2 days entitlement provided in paragraph 3.2 must be taken within seven days of the entitlement accruing.*

*3.5 The 2 days entitlement provided for in paragraph 3.2 must be taken contiguous with another non-working day which falls within the period set out in paragraph 3.4.*

*3.6 If an employee is not given the entitlement provided for in paragraph 3.2 within seven days of the entitlement having accrued, the employer must pay the employee an extra hourly or part thereof payment at the rate of 0.5 of the ordinary hourly rate from the end of the seven day period referred to above until the rest break is given.*

*3.7 The entitlement provided for in paragraph 3.2 is in addition to all other rest break and leave entitlements set out in this award.*

*3.8 No regard is to be had to sub-clause 3 in the application of sub-clause 1, in particular hours of work less than those described in paragraph 3.2 may be unreasonable.*

**APPENDIX TWO:**  
**INDUSTRIAL RELATIONS - THE GUIDING PRINCIPLES**

# ***INDUSTRIAL RELATIONS - THE GUIDING PRINCIPLES***

*The quality of the relationship between workers and those who employ them affects the welfare of individuals and families, the promotion of justice and harmony in the workplace and society at large, and the prosperity of the nation. As industrial relations arrangements in Australia continue to change, the Bishops Committee for Industrial Affairs (a committee of the Australian Catholic Bishops Conference) offers the following statement of principles taken from the Church's social teaching. The Bishops' Committee believe that these principles should form the basis of all arrangements which seek to promote and protect the employee/employer relationship.*

*Most Rev Noel D Daly, DD.  
Bishop of Sandhurst  
Chairman  
Bishops Committee for Industrial Affairs.*

## (1) INTRODUCTION

The debate in Australia concerning the reorganising of workplace agreements and the duties of employers and employees to one another, takes place in a period of economic uncertainty, high unemployment and of increasing economic and social pressure on family life.

The Church has examined the issues of work and the employment relationships over many years, beginning with the Encyclical of Pope Leo XIII in 1891 entitled "*Rerum Novarum*", through to the present day. Pope John Paul II has published two encyclicals on this subject, "*Laborem Exercens*" and "*Centesimus Annus*", the latter upon the 100th anniversary of Leo's Great Encyclical.

In the debate on public policy, correctly the province of the legislators, political parties, worker and employer organisations and the community, there is need to draw attention to fundamental principles of morality and social justice.

The Church expresses no preference as to one form of industrial relations structure or another; it does however hold firmly the right of citizens to work and the primacy of the dignity of each human person, which must be recognised in all laws, particularly in laws governing economic strategies and industrial relations.

The legal framework and the institutions which flow from it in order to regulate the employer/employee relationship have no validity unless they are constructed to serve the needs, rights and obligations of individuals.

Pope John Paul II, in his Encyclical on human work entitled "***Laborem Exercens***", pointed to several important rights of workers. In particular, he pointed out the right to work, the right to just wages, the right to form associations for the purpose of defending the vital interests of workers, the right to strike under certain circumstances, the right of women not to be discriminated against because they choose to form a family and the right to adequate rest.

## **(2) THE NATURE OF WORK**

Work is a principal means by which human kind seek their personal fulfilment and make their contribution to the common good. Thus there is a natural priority of labour over capital. Simply expressed, work exists for the person, not the person for the work. It follows that human work cannot be treated as a resource or as a commodity to be traded in like any other commodity.

*"the danger of treating workers as special kind of merchandise or as an impersonal force needed for production (the expression 'workforce' is in fact in common use) always exists especially when the whole way of looking at the question of economics is marked by the premises of materialistic economism". (1)*

Every family has the right to sufficient income through work. Workers have the right to just minimum wages and to just and safe working conditions.

## **(3) THE RIGHT TO WORK**

Some one million Australians are seeking work. Their plight deserves the sympathy, understanding and corrective action of all those in a position to contribute to the solution to this great social problem. This includes employers and employees who can justly be called upon to make sacrifices so that others may find work. Governments and political parties have an onerous responsibility to give effect to this right to work by providing "***suitable employment for all who are capable of it***". (2)

The provision of more work opportunities does not, however, by itself justify reducing, below a just level, the wages of those already in jobs.

## **(4) THE RIGHT TO REST**

Economic considerations, whether by the employer for increased production or by the employee for increased wages, cannot set aside the need to provide for adequate rest. Adequate rest brings with it considerations of the reasonable time which may be worked in any one day or in any one week. Respect for human dignity requires that working conditions, including the length of shifts and the length of a week's work, be such as to protect the health and well being of workers and to recognise their obligations to their family and the wider community.

The establishment of one day each week (Sunday/Sabbath) when individuals can not only rest from their labours but turn their minds to other aspects of their human development and that of their families, is an important requirement of respect for human dignity and the establishment of humane working conditions.

## (5) FREEDOM OF ASSOCIATION

In Australia, employers and employees have organised themselves into associations over many years. This is a proper and legitimate exercise of the right of freedom of association. It is a fundamental freedom of a just society. Trade unions and employer organisations have a right to exist and to represent those who are their members in a collective way.

Setting out the rights of workers, Pope Paul II adds:

*"all these rights, together with the need for workers themselves to secure them, give rise to yet another right: the right of association, that is to form associations for the purposes of defending the vital interests of those employed in the various professions. These associations are called labour or trade unions. The vital interests of the workers are to a certain extent common for all of them; at the same time however each type of work, each profession, has its own specific character which should find a particular reflection in these organisation" (3)*

Compulsion, either to join organisations or not to join them, is breach of the right of individuals to choose whether and how they will exercise their right of freedom of association.

The organisations themselves must act in the interests of their members and subject to law. It is a misuse of the power of organisations for them to be used for purposes other than those for which they were created, and for which members freely joined them.

## (6) THE RIGHT TO WITHDRAW ONE'S LABOUR

The right to strike or to withdraw one's labour is a basic right of every worker. This right to strike, or to conduct work stoppages, is recognised by Catholic Social Teaching as legitimate in proper conditions and within just limits.

In this connection workers should be assured the right to strike without being subjected to personal sanctions in the criminal jurisdiction for taking part in a strike.

Equally, individual workers should be able to make a decision about whether to withdraw their labour free from coercion and intimidation.

Workers have the right to refuse any activity to which they morally object and to refuse to carry out duties which they genuinely believe to be dangerous to their health or to the safety of themselves, other workers and the community.

In the case of industrial disputes, the right to strike must only be used as a last resort and in proportion to the issue. It is an *"extreme means"* (4).

That is to say that the right to strike may only be exercised when all other reasonable avenues for the resolution of the dispute have been exhausted and where the consequences of the withdrawal of labour are in proportion to the justice of the claim.

The use of strikes or lockouts for political purposes extraneous to the employment relationship is not legitimate.



## (7) ESSENTIAL SERVICES

It is proper for legislators to make special arrangements for the common good of society - *"if necessary by legislation"* (5) - for the provision to the community of essential services, and to guard against the withdrawal of labour if it would result in the denial of these essential services to the community. In these circumstances, where there is a restraint on the basic right to withdraw one's labour, there is a parallel obligation to ensure that grievances are dealt with speedily and justly by the direct employer and by the indirect employer, so as to obviate wherever possible the exercise of the right to strike. In regulating this area of work governments should be wary of too broad a definition of what is an essential service or making employment within what is an essential service a sufficient definition. Not all employees engaged in authorities and enterprises providing essential services are themselves essential to the provision of the service.

## (8) THE INFLUENCE OF BODIES EXTERNAL TO THE DIRECT EMPLOYMENT RELATIONSHIP

A direct employer of labour must exercise morality and social justice in dealings with employees; equally employees must carry out their duties to him fairly and justly. this is best explained by the popular saying 'a fair day's work for a fair day's pay'.

Employees and employers should be able to choose freely to be represented in their dealings one with the other by employer organisations or trade unions or other representatives of their choice.

Apart from governments, significant influence on the employment relationship can come from courts, tribunals and other institutions which shape the legal framework and

the manner in which the employer/employee relationship is regulated. They must also act justly and must recognise freedom of association.

It would be wrong if, for example, employer organisations and unions were permitted to exist but were rendered ineffective and prevented from pursuing their just and rightful interests by the nature of the laws regulating their activities.

In this sense, these bodies are morally obliged to ensure that the bargaining position of all parties is as equal as possible. No party should hold unreasonable sway over another. If this does happen, as it sometimes has in the past, employment contracts of all kinds can be corrupted by actual or implied coercion. Governments, who fund organisations to carry out important social work, also need to refrain from using the funding process to dictate employment contracts that are unfavourable to either the employee or the employer. It is a well established principle in the teachings of the Church, and indeed in the community generally, that contracts entered into under duress have no validity.

*"there is always underlying such agreements an element of natural justice and one greater and more ancient than the free consent of contracting parties, namely, that the wage shall not be less than enough to support a worker who is thrifty and upright. If compelled by necessity or moved by fear of a worse evil a worker accepts a harder condition which, although against his will he must accept because the employer or contract imposed it, he certainly submits to force against which justice cries out in protest"* (6).

These authorities and institutions (sometimes termed "The System") have an obligation to protect the community in general and the weak in particular. Where there are disputes between employers and employees, there should be mechanisms for reaching just solutions which protect the rights of both employers and employees. The 'public interest', as it is known in Australia, is a valid consideration for these bodies.

In his visit to Australia in 1986, Pope John Paul II said *"Australia has a long and proud tradition of settling industrial disputes and promoting co-operation by its almost unique system of arbitration and conciliation. Over the years this system has helped to defend the rights of workers and promote their well being, while at the same time taking into account the needs and the future of the whole community"*. (7) Whatever changes need to be made to the mechanics of the conciliation and arbitration system, it should be ensured that these principles are preserved.

## **(9) WORKPLACE REFORM**

In Australia, the focus is shifting from industry-wide and craft based awards to Enterprise Bargaining. There appears to be a consensus that workplace or Enterprise Bargaining provides better opportunities for growth and development in Australia and thus the creation of more jobs accompanied by greater work satisfaction and fulfilment.

It is not for the Church to opt for one system over another. Under any system, close co-operation and mutual trust between employers and employees are to be encouraged. Such co-operation and trust can only be built on a foundation of respect for human dignity and just dealings one with the other.

In circumstances of exploitation and coercion, the indirect employer, that is governments, tribunals and courts, must provide opportunities for the just settlement of disputes, and may think it wise to set down a code of minimum standards of wages and conditions based on respect for the dignity of each human person engaged in the workplace and cognisant of the needs of the worker and his or her dependants.

There is a particular need to protect the well being of those in the working community whose educational qualifications and level of skills place them in a vulnerable position. Care should be taken to ensure that they receive appropriate protection, and are given, so far as it is possible, opportunities to improve their prospects, and *"realise their humanity more fully in every respect"* (8) through access to education and training during their working life.

Legislators must be cautious in the use of political and legal power not to deprive legitimate institutions, including trade unions and employer organisations, of the role that is proper to them in the protection of the rights of their members and the role they play in contributing to the common good.

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|-----|--------------------------------|
| (1) | <i>"Laborem Exercens"</i>      |
| (2) | Ibid                           |
| (3) | Ibid                           |
| (4) | Ibid                           |
| (5) | Ibid                           |
| (6) | <i>"Rerum Novarum"</i>         |
| (7) | Papal Visit to Australia, 1986 |
| (8) | <i>"Laborem Exercens"</i>      |

**AUGUST 1993**

**APPENDIX THREE:**

**SUMMARY OF WORKING HOURS PROVISIONS IN AWARDS  
SPECIFIED**

<b>Award</b>	<b>Ordinary Hours</b>	<b>Number of Hours in a Shift or day</b>	<b>Number of hours worked without a break</b>
Space Tracking	Avg 38 hours per week		Not > 5 hrs before meal break
Railways Professional Officers	Not > avg. 76 in fortnight		
Insurance Industry	38 hrs per week		Not > 5 hrs before meal break
Horse Training	40 hrs per week		
Tenix Defense Systems			
Australian Post	Not > 36.75 per week	Ordinary hours on duty = 6 to 10	Not > 5 hrs worked before meal break
National Electric, Electronic and Communications	38 hrs per 7 days	8 hrs	10 min rest break between commencing and meal break
Coal Mining Industry	Avg. 35 hrs per week	Not > 10 hrs.	Not > 5 hrs before crib break
Teachers	76 hours per fortnight. Primary - 22.5 hours per week face to face teaching Secondary - 18.66 hours per week face to face teaching.	In attendance for 7 hrs each day.	
Australian Public Service	Not > 36.75 hrs per week or not > 38 hrs per week	7 hrs 21 mins for 36.75 hr week or 7 hrs 36 mins for 38 hour week	Not > 5 hrs before meal break
Retail and Wholesale Industry	Not > 38 hrs per week	Max. number 11 hrs	> 4 hours = rest pause of 10 mins if convenient

