

SUBMISSION COVER SHEET



**A response from the
Independent Education Union of Australia**

***Supporting Working Parents:
Pregnancy and Return to Work
National Review***

January 2014

Organisation: INDEPENDENT EDUCATION UNION OF AUSTRALIA

Principal contact: CHRISTINE COOPER
Position: Assistant Federal Secretary

Telephone: 07 3839 7020
Facsimile: 07 3839 7021
Mobile: 0419 787 324

Email address: ccooper@qieu.asn.au

Street address: Unit 10, 40 Brisbane Avenue
Suburb/City: Barton ACT 2600

Postal address: PO Box 177
Suburb/City: Deakin West ACT 2600

Introduction

The Independent Education Union of Australia welcomes the opportunity to contribute to the *“Supporting Working Parents: Pregnancy and Return to Work National Review”*.

The IEU is the federally registered union representing over 75,000 education professionals (teachers and other education staff) in the non-government education sector, over 70% of whom are women. The IEU is responsible for negotiating awards and agreements which include the provision of entitlements such as parental leave, family leave, carers’ leave and maternity leave. These entitlements are central to a worker’s capacity to balance their work and family commitments.

In preparing this submission, the IEU has drawn upon the experiences of many members who have contacted our Union with concerns in relation to pregnancy and work. The submission is also informed by the process and outcomes of negotiations with Non-Government school employers in relation to the inclusion of paid parental leave and flexible work provisions into Enterprise Agreements.

Non-Government Education Sector

The Non-Government Education sector is diverse. There are approximately 2,730 Non-Government schools across the country employing over 100,000 teachers and support staff. The sector also comprises early childhood centres, pre-schools, long day care centres, English Language colleges and private training providers.

There are over 800 employing authorities in the Non-Government education sector including those schools which form part of the Catholic, Anglican and Lutheran systems and also over 780 separate independent school authorities. The largest of these is the Catholic Church which employs over 70% of staff in the sector.

The size and diversity of the sector impacts on the industrial context and this is reflected in the variety of salary and working conditions negotiated into awards and collective agreements across schools and systems in all States and Territories.

In addition to the minimum terms and conditions set out in the National Employment Standards (NES) and Federal Government provision of Paid Parental Leave, our Union has had many successes in negotiating provisions which support working parents.

While coverage, conditions and provisions vary, the majority of Enterprise Agreements provide for:

- 14 weeks paid maternity leave;
- 2 weeks paid paternity leave;
- Provisions for parental leave;
- ‘Keeping in Touch’ arrangements;
- Job Share/Part-time provisions;
- Consultation processes for the implementation of Flexible Work Arrangements; and
- Breast feeding provisions.

Despite legislative and Enterprise Agreement provisions, IEU members struggle to access flexible arrangements such as part-time or job share. This is problematic as flexible arrangements enable women and their partners to manage parenting commitments while remaining in the workforce.

Those who hold leadership positions in the Non Government schools more often have difficulty in accessing flexible work arrangements than classroom teachers. This restriction not only affects a member's ability to balance work and family commitments but also becomes a barrier for career advancement and results in loss of income. In such cases IEU members will resign from their leadership position, either taking a position at a lesser classification or leave the school entirely.

However, there also exist many examples of good practice where employers and employees are able to negotiate through the issues to achieve satisfactory arrangements. These examples of good practice demonstrate, to all employing authorities, that flexible work place practices are achievable.

Section One

Situation in Non-Government Education Sector: IEU Members' Experiences

The following outlines the various difficulties reported by IEU members in accessing parental leave and flexible work arrangements.

(i) Requests For Flexible Working Arrangements Denied Without Adequate Explanations

IEU members on parental leave, particularly female employees returning to work after a period of absence on maternity leave, commonly experience refusal of requests for flexible work arrangements. These requests (typically for part-time work or job-share) are frequently refused without explanation of the reasons for the refusal.

Case Study 1

A secondary teacher in a school had an interview with her Principal about her return to work following maternity leave. The Principal informed her that her request for a part-time teaching arrangement on her return from maternity leave was not granted. She was not informed of the reasons for the refusal nor informed of her right to request a further 12 months leave and thus did not pursue continued dialogue with her employer. The member resigned from the school.

(ii) No Avenue For Open Dialogue Or Appeal

The difficulties experienced by IEU members wanting to access flexible working arrangements is compounded by the fact there that there is no avenue to appeal an employer decision.

Case Study 2

A male primary music teacher, who also held special needs education and primary teaching qualifications, was working in an Independent School. He had been employed full time with a combination of music and classroom teaching. When his first child was born, he requested a year's parental leave for when his partner's period of leave concluded. This was granted.

Prior to returning, he applied for part-time work and wrote a detailed proposal to the Principal outlining some scenarios that would work. The School informed him that there were no part-time positions available; despite the fact that several positions for which he was qualified had been filled by newly recruited staff. The School was unwilling to discuss further options. The member resigned from the school.

(iii) Impractical Flexible Work Arrangements

In some cases, IEU members may be offered part-time arrangements which are impractical. Part-time arrangements that require the teacher to work one to two hours each day, for example, require parents to place their children in full-time care and therefore defeat the purpose of flexible work arrangements. Such arrangements are often offered by employers as a deterrent to part-time engagement.

Case Study 3

The IEU recently issued a dispute at the Fair Work Commission when a teacher's request for flexible working arrangements was not given proper consideration. The request (made at a large P-12 school) was initially refused on the basis that allowing part-time work would 'impact on the continuum of the students' learning' and that teachers must be present for all parts of the program throughout the year. The teacher had made her request well in advance of her proposed return to work.

The school's rejection of the teacher's request was challenged. As a result, part-time work was offered, comprising .44FTE over 8 days of a 10 day cycle, with different days of attendance each week.

For this offer to be taken up, the teacher would have been required to use full-time childcare, while earning less than half a full salary.

The offer was not one that could be accepted.

(iv) Negative Attitudes To Those With Parenting Responsibilities

Our members often report encounters with discriminatory attitudes and behaviour, which have a negative effect on their professional well-being.

For example, members who have informed their employer that they were pregnant have been denied teaching loads which appropriately reflected their experience and qualifications. In other cases, male teachers who have made requests for parental leave have been ridiculed by school management.

When such cases are brought to our Union's attention, they have been successfully challenged and negotiated. However, not all situations are reported as members are either not always aware of their rights or have concerns about challenging the employer and jeopardising the "good working relationship".

It is an unfortunate situation when IEU members feel that accessing flexible work arrangements or parental leave is due to favourable treatment from their employer and not because it is a workplace entitlement.

Case Study 4

A male subject co-ordinator at a systemic co-ed regional high school has more than ten years experience in this leadership role and twenty years teaching experience.

As his wife (a teacher at another school in the same system) was taking two terms maternity leave for the birth of their child, the co-ordinator approached his Principal to request two terms parental leave to be able to care for the child when his wife returned to work.

The Principal's unexpected reaction was "Are you serious about your career or not?"

Understandably, our member felt devalued by the comment which he also thought was insensitive about his wish to be involved in the care of his child.

Despite the negative reaction, our member pursued his application which was granted by the systemic diocesan employer and he took two terms leave to care for his young son. No detriment to his career has been reported!

Both the IEU and the employing authority have since undertaken some awareness raising in regard to flexible arrangements being open to both male and female staff.

Case Study 5

A teacher in a large co-educational secondary school provided advanced notice of request for maternity leave for the following school year.

Although not technically required (as per the Fair Work Act) to give her employer notice until ten weeks before commencing maternity leave, she decided to tell the Assistant Principal and Curriculum Co-ordinator of her plans, in deference to the school's need to consider staffing arrangements for the following year.

Her expectation was that she would commence maternity leave either at the end of term 1 or mid way during Term 2 and would submit the relevant documentation prior to the end of the 2013 school year, reconfirming (as per the Fair Work Act) no later than four weeks before taking leave. She was very surprised, therefore, when a colleague showed her a proposed 2014 timetable which indicated that she would no longer be teaching Year 11 and 12 classes and left her only with Years 7-10 classes and a 'learning support' role.

There had been no consultation with the member regarding her teaching role for the next year and she felt devalued and discriminated against because of her pregnancy.

When she challenged this with the school leadership, she was told that they 'wanted her to have an easier year until she took her maternity leave' which she perceived as patronising.

Subsequent discussions have since occurred to ensure that the member has a teaching load appropriate to her level of skill and experience.

(v) Lack of Access To Leadership Positions

It is common practice for employers to deny flexible work arrangement for staff in leadership positions such as Subject Co-ordinator or Deputy Principals and Principals. Many are told that flexible arrangements are not possible for leadership positions and advised to relinquish their position of added responsibility upon their return to work. In some cases, such as the case study below, they have been advised to resign from the teaching completely.

This is of significant concern. Not only does denying access to flexible work arrangements increase stress for working families but it also prevents women from taking on leadership roles and contributing their expertise to the school. A loss of future income is also another significant impact of such actions.

Case Study 6

A member working in a non-systemic school had been offered a Leadership position for the following year. When the Principal learnt that she was pregnant and was seeking a return to work part-time, she was informed that she would no longer be employed in a leadership capacity. The complaint was settled at the conciliation stage of the Equal Opportunity Commission, but not in the member's favour.

Case Study 7

Three Assistant Principals in three schools were refused job-share positions and told they had to work full-time or resign their positions.

This is the summary of two of the cases. In the third case, the member extended her parental leave for a further 12 months.

The first member is currently working as AP in a job share role in a primary school and applied for an extension to the contract variation. This was refused and the member told that she must either return full-time in 2014, or resign her employment.

The second member is currently on maternity leave from her position as Assistant Principal. Her request to return part-time in 2014 has been refused and she has been told she must return full-time or resign her employment.

In both cases, the Fair Work Commission was notified of the dispute. The matter was settled with an offer of a part-time temporary position as classroom teacher for 2014, with Assistant Principal salary maintenance. Both members have also been granted the right to redeployment as full-time Assistant Principals in 2015, or ongoing, temporary part-time employment as teacher.

Section 2

Legislative mechanisms needed to address the challenges of accommodating the needs of employees

(i) Reasons for Refusal

The above case studies highlight the inadequacies of current legislations around accessing parental leave. While current legislation stipulates that an employer may only refuse a request “on reasonable business grounds”, Section 65 of the Fair Work Act only requires that any written response states whether the employer grants or refuses the request. There is no requirement for an employer to provide any reasons for the refusal.

The current legislation therefore places the onus on employees to seek out their employer’s reasons for refusal. In many cases the employee is neither informed nor empowered to enquire.

Despite the (non-exhaustive) list of factors listed in Section 65(5A) of the Act as to what might constitute reasonable business grounds, employers are often unwilling and/or unable to identify what reasonable business grounds exist for refusal of the specific change/arrangement being requested by that employee.

Some common reasons for refusing requests for flexible work arrangements provided by our members’ employers are that such arrangements:

- are too “difficult”;
- affect the “teaching and learning” of students;
- are disliked by parents.

However, when asked, employers are regularly unable to substantiate these assertions and/or unable to explain why or how those grounds mean that the arrangement requested by the employee cannot reasonably be accommodated.

The effect of this is that the requirement in section 65(5) (“the employer may refuse the request only on reasonable business grounds”) is of limited actual value in practice. Employers are effectively able to refuse a request for flexible work arrangements for any reason.

The IEU believes that this deficiency in legislation can be addressed by amending Section 65 Fair Work Act to require that any written response to a request for flexible work arrangements must also articulate in detail the particular reasons for any refusal.

(ii) Right of Appeal

The above difficulties are also compounded by the fact that the current legislation does not provide any mechanism to appeal or dispute an employer’s refusal of a request for flexible work arrangements under Section 65 Fair Work Act.

While it is possible to achieve a negotiated dispute procedure relating to flexible work arrangements in an Enterprise Bargaining Agreement, this is only where employers agree to its inclusion. This is not a common situation.

There are no legislative requirements for the matter to be covered under a dispute settlement process in industrial instruments.

Thus under current legislation, employees have the right to request flexible work arrangements, but no actual right to access such arrangements. Employees do not have the right to discuss their employer's decision and develop alternative solutions.

Employees whose request is refused are left with the difficult choice between returning to full-time employment (in order to retain their job), or suffering significant financial hardship (by taking a further period of unpaid leave, if available, or resigning their job).

Appeal mechanisms are paramount in resolving the identified difficulties.

Recommendation:

(i) Provision of Reason

The IEU recommends that Section 65(5) of Fair Work Act be amended to place the onus on an employer to not refuse a request for flexible work arrangements unless they can demonstrate the reasonable business grounds for refusing that request, either through reference to section 65(5A) or some other relevant ground(s).

Recommendation:

(ii) Appeals Mechanism

The IEU recommends that a mechanism of appeal be incorporated into the legislation and/or Enterprise Agreements, to require that disputes regarding refusal of requests for flexible work arrangements are automatically covered by the mandatory dispute settlement procedures.

Section 3

Effective Strategies and Practices

Many IEU members have been successful in accessing flexible work arrangements. Such success is due to the Union negotiated part-time / job share policies and procedures, and facilitative clauses in Enterprise Agreements.

However, it is important to emphasise that good enterprise agreements are not sufficient in an environment where attitudes and behaviour toward working parents are negative. Greater effort is required to overturn attitudinal discrimination experienced by working parents.

Positive practices are delivered when an employer is committed to work / family balance, understand the value of flexible arrangements to the school and the community and are committed to retaining experience staff in their schools.

Case Study 8

One Employing Authority has the following commendable practices in place:

- * An inclusive Workplace Gender Equality Committee which meets once per term with CEO, school and IEU membership;
- * A “Flexible Work Arrangements” policy with provisions for support staff, teachers and those in leadership roles, including principals;
- * “Staying in Touch” seminars twice per year for staff planning or on parental leave;
- * A “Working Parents Toolkit” resource which is a guide to parental leave and returning to work.

Staff and parents are encouraged to attend good parenting workshops and educated about the value which is provided by flexible work arrangements to the child, school and the community.

As well, procedures for consultation, leave access and return to work options including job share are clearly identified. Staff are invited to remain in contact with the school activities whilst on leave, through voluntary “Staying in Touch” programs.

The Employing Authority actively consults and works with the IEU in finding solutions to any issues which may arise from the request for and the engagement of flexible working arrangements.

IEU can identify that supportive practices are vitally important in delivering a culture of work and life balance. Practices such as:

- Articulating the culture of acceptance around work / life balance through policy and ethos documents;
- Providing positive support to Principals in the implementing of work practices;
- Effective consultation processes for principals, employees and staff; including Gender Equality Committees;
- Clear communication processes for parents and staff around requirements and expectations;
- Accurate and informative guidelines and information for staff and school community;

- Opportunities for involvement in professional development activities whilst on parental leave;
- Adequate induction to part-time job share arrangements.

Recommendation:

The IEU recommends that employers are encouraged and supported through the development of workplace strategies /workplace plans that provide for flexible working arrangements which support working parents.

Section 4

Broader Social impact

While much needs to be done within the workplace to address discriminatory attitudes, there is also a need for a broader community/cross sectoral education programs which aim to overcome ignorance and promote the value of family leave and flexible work place arrangements have to community and workplaces.

Such a program should not simply highlight the legislative rights of working parents, but also the broader community value of accessing flexible working arrangements. Only through the normalisation of the part-time working roles of parents can we hope to achieve long-term positive changes.

Recommendation:

The IEU calls for industry specific education programs which not only highlight the legislative requirements of employers to implement flexible working arrangements but the value to employers and employees and society more broadly.

Recommendation:

The IEU calls for a Government Agency to spearhead a public awareness campaign on value to community of flexible working arrangements.