

# INFORMATION FOR SUPERVISORS AND STAFF WITH FAMILY/CARER RESPONSIBILITIES

*The information is provided as a guide and does not replace legal advice on specific situations of family and carer responsibilities.*

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## 1. Equal Opportunity in Employment

The Australian National University has an express commitment to equality of opportunity as stated in the Equal Opportunity Policy. It is an expression of the abiding value the university places upon meeting the needs of our people and nurturing the talents of all our staff – one of the key values underpinning the university's belief that excellence comes from putting people first.

ANU promotes inclusive work environments that value the diversity of backgrounds and perspectives of the University community. This includes the opportunity to participate, without discrimination, in both work-related and other activities conducted within a work context, irrespective of a staff member's family/carer responsibilities. The university provides specific flexible workplace initiatives and policies designed to enable equal opportunity for staff members and to enhance their well being when combining their family/carer responsibilities and needs with workplace requirements.

ANU provides flexibility for staff in their work attendance to assist in staff's management of their family/carer responsibilities and work requirements. Currently ANU has enabled many staff to be employed in part-time positions for these reasons. As at 31<sup>st</sup> March 2007 18 percent of academic women were employed in fractional positions and 9 percent of academic men employed in fractional positions. There were even greater numbers of general staff employed in part-time positions with 33 percent of general staff women employed in fractional positions and 10 percent of general staff men employed in fractional positions.

## 2. Legislative and regulatory framework

### *ILO Convention*

Australia ratified the International Labor Organisation (ILO) Convention No. 156 - Workers with Family Responsibilities in 1990. Australia as a signatory to the Convention incorporated within the *Sex Discrimination Act 1984* the rights of workers with family responsibilities to engage in employment without being subject to discrimination, either direct or indirect.

### *Workchoices legislation*

The WorkChoices legislation includes consideration of family responsibilities in the principal object of the Workplace Relations Act to support family flexible working arrangements; specific requirements for carer's and parental leave; and the requirement to prevent discrimination in employment on the grounds specified in the anti-discrimination laws.

The ILO 156 is included within the *Workplace Relations Act* and provides in particular that termination of employment is unlawful in relation to family responsibilities and parental/maternity leave and that there is a minimum 12 month entitlement for unpaid parental leave (Refer to [Striking the Balance: Women, men, work and family Discussion Paper 2005 Human Rights and Equal Opportunity Commission p.89](#))

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*Discrimination legislation - Australian Capital Territory*

Section 7 of the [Discrimination Act 1991](#) – (ACT) lists one of the grounds of discrimination as being the attribute of the 'status as a parent or carer'. ((1)(e))

Section 8 states that a person 'discriminates against another person if -

the person treats or proposes to treat the other person unfavourably because the other person has an attribute of the 'status as a parent or carer'; or

(b) the person imposes or proposes to impose a condition or requirement that has, or is likely to have, the effect of disadvantaging people because they have an attribute of the 'status as a parent or carer'.

'(2) Subsection (1) (b) does not apply to a condition or requirement that is reasonable in the circumstances.

(3) In deciding whether a condition or requirement is reasonable in the circumstances, the matters to be taken into account include—

(a) the nature and extent of the resultant disadvantage; and

(b) the feasibility of overcoming or mitigating the disadvantage; and

(c) whether the disadvantage is disproportionate to the result sought by the person who imposes or proposes to impose the condition or requirement.'

*Discrimination legislation – Commonwealth*

Section 7A of the [Sex Discrimination Act 1984](#) (Cth) reads:

For the purposes of this Act, an employer discriminates against an employee on the ground of the employee's family responsibilities if:

(a) the employer treats the employee less favourably than the employer treats, or would treat, a person without family responsibilities in circumstances that are the same or not materially different; and

(b) the less favourable treatment is by reason of:

(i) the family responsibilities of the employee; or

(ii) a characteristic that appertains generally to persons with family responsibilities; or

(iii) a characteristic that is generally imputed to persons with family responsibilities.

As outlined in the discussion paper [Striking the Balance](#): 'Discrimination on the ground of family responsibilities under the *Sex Discrimination Act* occurs where an employer discriminates against an employee on the basis of family responsibilities by dismissing the employee. Family responsibilities are defined in the Act as the responsibility to care for or support a dependent child or immediate family member, being a spouse, adult child, parent, grandparent, grandchild or sibling of the employee or of a spouse of the employee. The definition of de facto spouse excludes a same sex partner.

The restriction of the family responsibilities provisions to dismissal from employment has not proved as significant as may first appear. This is because courts have interpreted dismissal to include constructive dismissals. A constructive dismissal occurs where the employer's actions give the employee no choice but to leave their employment.' [Striking the Balance: Women, men, work and family](#) Discussion Paper 2005 Human Rights and Equal Opportunity Commission p.83

[Enterprise Agreement](#)

[Clause 7](#) in the ANU Enterprise Agreement specifies the University's commitment to non-discrimination in employment conditions with every endeavour made to ensure that nothing in the operation of this Agreement is directly or indirectly discriminatory in its effect. [Clause 22](#) outlines two types of flexible working arrangements which 'allow staff members and the University to vary hours and patterns of work to meet the teaching, research and administrative priorities of the University and the staff members' personal commitments, taking into account the operational requirements of the work area'. Clause 7 in applying to other employment conditions enables further workplace flexibility for the prevention of discrimination.

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### 3. Who are ANU staff members with family/carer responsibilities?

Any ANU staff member may have family/carer responsibilities, now or in the future. Being a person with family/carer responsibilities is a normal part of the human experience, with staff members with family/carer responsibilities coming from all sections of our community: men and women; Indigenous and non-Indigenous; culturally diverse staff members; consumers and citizens.

Staff members with family/carer responsibilities are people who have a primary or sole responsibility to care for and/or support children or adults, including adults with disabilities.

A staff member's family/carer responsibilities refer to their:

- spouse and former spouse including de facto and same sex partners,;
- children, including adopted, foster, step children, and children of the staff member's spouse,
- parents and step-parents, including parent of the staff member's spouse;
- siblings and step-siblings;
- grandparents and step-grandparents;
- grandchildren and step-grandchildren; and
- a member of the their household

The ANU Personal Leave procedures provide a definition of [immediate family members](#).

The [Sex Discrimination Act](#) provides a definition of [immediate family member](#) to include:

'(a) a [spouse](#) of the employee; and

(b) an adult [child](#), parent, grandparent, grandchild or sibling of the employee or of a [spouse](#) of the employee.

*"spouse"* includes a former [spouse](#), a [de facto spouse](#) and a former [de facto spouse](#).'

### 4. Employment conditions for staff members with family/carer responsibilities

Staff members with family/carer responsibilities have the same rights as all other staff members. These include:

- starting pay and conditions;
- opportunities for promotion;
- opportunities for transfer;
- access to leave provisions;
- access to flexible work practices;
- access to staff development and training; and
- any other work benefits

ANU provides specific [carer's leave](#) for staff members to care for an immediate family member who is ill, injured, incapacitated, or to provide related care for a medical condition subject to a medical practitioner's certificate.

### 5. Types of workplace flexibility that can be considered

Some staff members may require specific workplace arrangements for a brief period of time. Other staff members will require special workplace arrangements as a permanent part of their work life. These arrangements may need to vary over time depending upon the changes in the family/carer responsibilities, the job requirements and availability of new technologies.

When considering requests for workplace arrangements for workplace flexibility these must be assessed in reference to the inherent requirements of the position, whether the requirements are reasonable and the impact of the decision on the workplace and staff member. Many types of workplace arrangements for staff members with family/carer responsibilities are contained within the enterprise agreement or University policies.

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*Flexible work practices currently practiced at ANU include:*

- Options for [part-time work](#), refer to application for [Hours Pattern, Application to change](#);
- [flexitime](#) which is an arrangement whereby a staff member may, with the approval of his or her supervisor, start and/or finish work at flexible times normally within the span of hours;
- [non-prescribed flexible working arrangements](#) which are worked outside the span of hours, that may not attract overtime or shiftwork penalties;
- Flexibility in the taking of paid and [unpaid leave](#)
- Flexibility in roster arrangements or break times, refer to application for [Hours Pattern, Application to change](#);
- Working from home
- [Time release upon return to work](#) for the birth mother of the child
- Adequate notice to a staff member if there is a request to vary hours or location of work
- Working fewer hours each day, or working hours over fewer days refer to application for [Hours Pattern, Application to change](#)

*Leave provisions include:*

- a) [parental leave](#)
- b) [carer's leave](#)
- c) [leave without pay](#)
- d) Additional annual leave [purchased](#)
- e) [leave at half pay](#)
- f) [annual leave](#)
- g) [Bereavement leave](#)
- h) [Other compassionate or appropriate grounds](#)

*Facilities*

Access to specific facilities include:

- For breastfeeding and breast milk extraction at work - refer to [Breastfeeding policy](#)
- Parent rooms - refer to [Breastfeeding policy](#)
- Child care on campus – refer to Equity Resources – Carers

Suggestions as to appropriate workplace arrangements with respect to the job can be sought from the staff member, the supervisor, Human Resources staff and any relevant specialists.

## **6. What must be considered in the decision-making process?**

Supervisors in making a decision on whether to approve or not the workplace arrangements should consider the following circumstances:

- the benefit that the staff member with family/carer responsibilities and the workplace generally (including other workers and clients/customers) will get from the arrangement if approved;
- how it will affect the staff member with family/carer responsibilities, the person who is needing care for or support, and other workers, clients and customers if the arrangement is not provided;
- the effect of the staff member's responsibilities as a carer;
- the financial circumstances of ANU and the cost to ANU of approving workplace arrangements; and
- the staff member's family/carer responsibilities.

## **7. Supervisor's role and responsibilities**

A supervisor has the responsibility to:

- respond sensitively and reasonably when a staff member with family/carer responsibilities makes a request for changes in workplace arrangements;
- respect the staff member with their knowledge of their family/carer responsibilities and maintain the confidentiality of the staff member's family/carer responsibilities;
- not make assumptions about a staff member's family/carer responsibilities;

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- consider the inherent requirements of the position and the organisation's requirements when assessing the request, refer [Point 6](#);
- provide the necessary resources and work conditions for the arrangements if agreed;
- provide a written record of the decision and reasons; and
- review at least annually the arrangements with the staff member, or where organisational requirements change.

Advice may be obtained from Human Resources or at [equity@anu.edu.au](mailto:equity@anu.edu.au)

## 8. Staff member's role and responsibilities

**A staff member has the responsibility to:**

- Make a specific request to their supervisor if they require varied workplace arrangements for family/carer responsibilities;
- Provide details on the type of workplace arrangements requested, the reasons for the request, and the duration required, if known. If possible, explain how the work outcome can be continued to be achieved.
- Provide the supervisor with adequate time to assess the feasibility of the workplace arrangements in relation to the position's role and responsibilities.
- Inform the supervisor if the family/carer responsibilities change, to enable review of the workplace arrangements with the supervisor. Otherwise with the supervisor can review the specific workplace arrangements annually or where workplace requirements change.
- A staff member may submit a grievance through the ANU Grievance resolution procedures if they consider the decision is unlawful discrimination or seek advice from agencies listed in the ANU policy on Prevention of discrimination, harassment and bullying.

Advice may be obtained from Human Resources.

## 9. Caveat

This information is provided as guidance and must be read in conjunction with the relevant external legislative requirements and ANU policies and procedures. Each request for changed workplace arrangements must focus upon a staff member's family/carer responsibilities and the inherent requirements of the staff member's position.

Generalisations and assumptions about a staff member's family/carer responsibilities must be avoided. Assessment of requests for changed workplace arrangements in relation to the inherent requirements of the position must be referenced to the relevant Federal and Territory legislation on family/carer responsibilities and University policy. Advice can be sought when there are issues pertaining to workplace arrangements, the reasonableness of the request and decision and the inherent requirements of the position.

### Privacy

The privacy requirements is the standard required for sensitive personal information, referred to in the [ANU Privacy Policy](#)