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Women's Electoral Lobby

**Submission to the
Standing Committee on Family and Human Services
Inquiry into Balancing Work and Family**

22 April 2005

Introduction and key recommendations

The Women's Electoral Lobby notes the decision of the House of Representatives' Family and Human Services Committee to inquire into and report on **how the Australian Government can better help** families balance their work and family responsibilities. The Committee is particularly interested in:

1. the financial, career and social disincentives to starting families;
2. making it easier for parents who so wish to return to the paid workforce; and
3. the impact of taxation and other matters on families in the choices they make in balancing work and family life.

WEL would therefore like to preface our submission with some specific and immediately implementable recommendations:

1. Increase both the supply of child care to meet current demand and introduce new forms of funding that control fees as conditions of public funding. Centre based care fees have increased by about 30% over the past three years and will rise again as promised rebates are introduced (see below for detail)
2. Remove the discrimination in family payments that advantages primary income earner families over those with similar incomes but a more equitable distribution of incomes on the same gross earnings.
3. Fund employer education campaigns that emphasise the value of permanent work for part time workers and those needing work flexibility.
4. Ensure that any changes to industrial relations do not further disadvantage but enhances the bargaining capacities of those with caring responsibilities.
5. Provide additional funding for pay rises that ensure that care services can offer both decent wages and quality care to reassure users.

Our reasons for making these recommendations are detailed in our submission below.

WEL notes that there is extensive research available to the Committee that documents the particular significance these issues have for women and for gender equity. These issues have been the focus of extensive public debate at both federal and State/Territory level in recent years. There is currently a HREOC inquiry on *Men, Women, Work and Family: Balancing the Equation* and WEL seeks assurance that the Committee will not duplicate the work of that enquiry but will collaborate in developing solutions.

The continuing endemic discrimination against pregnant women in the workplace, and against those with caring responsibilities, is a disincentive to having children. It is certainly a penalty experienced by many women and helps explain their under-representation in senior positions. A new report by the UK Equal Opportunity Commission confirms that mothers often have to

compromise their employment and parenting choices because of difficulties in obtaining workplace flexibility. In particular, acceptance of part-time work often means accepting lower pay and working below their skill-level. The wage and pension penalty lasts for years. The report '*Part-time is no crime – so why the penalty?*' highlights the damaging consequences, for both women and the economy of the failure, to integrate flexible work patterns into the mainstream economy (see www.eoc.org.uk/cseng/policyandcampaigns/flexibleworkingindex.asp).

Many Australian parents are faced with financial and other family and social difficulties when attempting to return to the paid workforce. In Australia, only 43 per cent of women with two or more children are in the workforce, compared with 82 per cent in Sweden and 62 per cent in the UK. This illustrates a need for enhanced family-friendly policies and workplace arrangements.

WEL notes that the AIRC's decision in the *Work and Family Provisions Test Case (Matter C2003/4198)* is pending and that the outcome of this case is potentially significant for working parents and parents seeking to return to work who have limited options at present. WEL was given leave to intervene in that case and made two submissions that we formally invite the Committee to consider during its deliberations, as they are directly relevant to the second term of reference in particular. The submissions are attached and are also accessible online at [http://www.e-airc.gov.au/familyprovisions/stories/storyReader\\$12](http://www.e-airc.gov.au/familyprovisions/stories/storyReader$12)

In that submission, WEL emphasised and presented evidence to show that the spread of family-friendly workplace arrangements is very uneven. WEL reiterates here that there is scope for the federal Government to do much more to remedy this, including by:

- improving statutory minimum entitlements (including maternity, parental and carers leave), which remain low by international standards
- imposing obligations on employers to accommodate employees' family responsibilities (eg introducing a right to request flexible working, and a return to work part-time)
- introducing incentive schemes for employers to encourage and assist them to introduce flexible work options
- contributing to the cost of paid leave.

It is especially important to increase the quality of part-time work options so that women who choose to have children are not relegated to 'the mummy track' as a result. WEL supports the introduction of a national statutory right to return part-time after maternity or parental leave (to apply to mothers and fathers) to the same or similar job as one means of achieving this. WEL is currently involved in an AIRC Linkage research project on Parental Leave exploring issues such as how women and their families manage financially when they lose the woman's income because of the absence of paid maternity leave.

WEL also reminds the Committee that Australia is still not in compliance with the CEDAW requirement for paid maternity leave, one of the most basic entitlements to support women combine work and family.

This government shows some considerable contradictions in its approach, offering policies that are often neither family friendly nor encourage both having children and participating in paid work. Although the rhetoric is there, the practical measures are not. In fact, they may actually discourage women's workforce participation.

Childcare

The costs of child care have risen substantially higher than inflation over the past three years and are likely to rise again, once the 30% rebate comes in. There has been an uncontrolled expansion of child care centre places, primarily in the commercial sector, which now provides about two-thirds of all places. This means there is no necessary relationship between supply and demand. Parents wishing to use child care services often face long waiting lists, high fees and no choice. The recent pay rise awarded to child-care workers is long overdue recognition of their skills and responsibilities but it is of vital importance that the cost is met by Government and not passed on to parents.

Child care funding must be reformed in ways which ensure that there will be some cap on fees charged. If the rebate, or pay-rises for child care workers, lead to increased fees for parents then the funding system is flawed. While child care is unaffordable to low income families, the workforce participation and employment opportunities of women in these families will be affected. With gap fees of \$15 to \$30 per day over maximum rebates being increasingly common, and the effect of high marginal tax rates and other costs of going to work, like fares, the return on part time work can leave families either worse off or barely better off. The time penalties then become acute as parents seek to balance competing demands.

WEL has advanced the following proposals to improve choice and flexibility for working parents (see <http://www.wel.org.au/election2004/news/childcre.shtml>)

- Capital support for community-based centres so parents can choose not-for-profit centres and to meet the unmet needs that create long waiting lists; Fee capping controls for centres as a condition of receiving subsidies, to ensure affordability and responsibility for commercial operators;
- Additional payments for child care providers servicing disadvantaged areas so they can afford to employ and retain four year trained teachers and other specialists to assess children and develop programs to give the children a head start;

- Higher pay rates for child care workers so their skills are valued and recognised (at present many child care assistants are paid less than car park assistants);
- Planning controls to ensure centres and services are equitably distributed;
- Increases in the supply of and subsidies for out-of-school care so more children can get access to and involve themselves in activities after school regardless of parental employment status;
- Reducing the confusion for parents arising from differences between state-funded preschools and holiday care and Federally-funded care services.

Family payments

The messages given by the family payments system are at best confusing. Overall, analysis shows that following the last budget the families most favoured by the family assistance and tax package are those with a "primary earner" (implicitly male) contributing 80 per cent of household income and a "secondary earner" (implicitly female) earning 20 per cent. Families with a more equal division of parenting and paid work are effectively penalised, and mothers are strongly discouraged from engaging in more than very limited part-time work, which is deeply frustrating to many.

The structure of family payments makes it difficult to move from unpaid to paid work, or to increase hours of paid work at certain income levels. The difficulties of dealing with a tax benefit that is income tested on only the recipients' income, another that is estimated on parental incomes and a separate payment for parenting that is tested again on a different level are very confusing. The net financial and ideological message is that the government prefers, and supports more generously the traditional male breadwinner model of family life.

Yet there are now pushes from the government to penalise low income mothers in receipt of parenting payments, both single and partnered. These will now be required to seek part time work once their youngest child is at school, and full time once they reach high school. This proposal suggests that the model of the ideal family outlined above and supported through the tax system does not apply for lower income families.

The assumption that all (low income) parents should work once their child reaches school ignores many aspects of combining paid and unpaid work. Firstly most recipients of parenting payments are sole parents, and many of these are already in paid work. Those who are not usually have reasons - like lack of affordable child care and the dearth of family friendly employers - that are not solved by Centrelink pressure. Caring for children after school and when they are sick or on holiday is also a major concern. Lack of transport and other geographic barriers also affect employment opportunities and returns for low income people needing affordable housing.

WEL considers that if parents are to be obliged by the government to work, employers should be obliged to provide family-friendly work arrangements, and the tax and benefit systems should be reformed to support individual workforce participation on a more gender-equitable basis.

The evidence suggests that sole parents and mothers of young children do take on paid work when it fits with other responsibilities.¹ The high levels of part time work indicate the tension between family care time and responsibilities and paid work, and the particular problems when sole parents have solo responsibility for children.

Therefore expecting full time work, once children reach high school may be quite unrealistic in many cases, and part time work in primary school will require very family friendly employers, particularly for sole parents.

1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001

	%	43	40	41	41	43	42	42	42	44	47	46
One-parent families with children under 15, parent employed (of all one-parent families with children under 15)												

Source: Australian Social Trends 2002, Family National Summary Tables.

Between 1983 and 2003, the nature of the labour market changed considerably. The proportion of employment that is part-time increased from 17% in 1983 to 29% in 2003. Women are much more likely to work part-time than men (in 2003, 46% of employed women worked part-time compared to 15% of men).

The AIFS paper points out that for both lone and couple mothers, the rate of full-time employment increases as the level of educational attainment increases. Similarly, the rate of part-time employment for both lone and couple mothers is estimated to increase as the level of educational attainment increases. This raises questions about access to education and the very limited support that sole parents can access for retraining. While JET offers a broad range of supports, these are hard to access because of demand and limited resources. Part time students get little to offset the costs of study as their allowance is halved, while costs may be similar.

The AIFS paper also suggests that low rates of full-time work among lone mothers may be a problem in the labour market, not a problem within the job seekers, in that there are not the full time jobs available that match the skills and experiences of the women who the government wants to work full time.

¹ Gray, Matthew, Lixia Qu, Jennifer Renda, David de Vaus, Research Paper No. 33 Changes in the labour force status of lone and couple Australian mothers, 1983-2002 Australian Institute of Family Studies, June 2003

One indication is the extent to which lone mothers who are working part-time would prefer to be working full-time. The Household, Income and Labour Dynamics in Australia (HILDA) survey, the first wave of which was collected in 2001, found that of the lone mothers who are employed part-time, 19.7 per cent would prefer to be working full-time as compared to just 7.6 per cent of couple mothers.

While WEL believes that women may well be better off financially if they can take part in paid work, we believe that this engagement must not be coerced and must be supported by access to education/training, and affordable, accessible, quality child care services. We also claim that women who want to upgrade their qualifications are given very limited financial support, that support services for children with disabilities are particularly limited and similar services for adults needing care are even more sparse. While there are such serious deficiencies in available alternatives to women offering the bulk of unpaid care, demanding their wholesale move into paid work is insulting as well as absurd.

Conclusion

As indicated by the broad scope of this submission, WEL urges the Committee to take a comprehensive and integrated view of the policy frameworks to which the inquiry's terms of reference relate. Arguably, the (ill-defined) problems that the inquiry's terms of reference hint at have been created or exacerbated by disjointed and inconsistent policy development, in the context of Australia's changing social and economic context. In particular WEL believes a stronger and more explicit commitment to gender equity both in the family and in the labour market is essential to any effective policy interventions.

Industrial relations and welfare policies both express and shape the social and economic context in which they operate.² One way to interpret this relationship through time is to identify settlements or compacts, in which family formation and structure, workforce participation and regulatory and welfare settings interact in mutually reinforcing ways. Patterns of gender relations are fundamental to such settlements.

The 'post-war settlement' characterised (at least in ideal terms) by the full-time male breadwinner model of employment, the 'family wage', a gendered division of paid and unpaid labour and industrial protectionism has experienced significant changes in the last thirty years. These changes include the increasing proportion of women participating in the labour market, the decline of certain industry sectors such as manufacturing, the abandonment of the 'family wage' and increases in the proportion of casual and part time employment. While policy has responded to and facilitated

² Whitehouse, Gillian, 'From family wage to parental leave: The changing relationship between arbitration and the family', *Journal of Industrial Relations*, Vol. 64, No. 4, December 2004, 400-412.

some of these changes (especially by supporting the development of part time employment), other aspects of the old settlement remain incongruously entrenched by the policy framework. In particular, the notion of the 'unencumbered worker' remains largely dominant in Australian workplaces, relegating those 'encumbered' by care responsibilities to the 'mummy track', characterised by low paid, insecure, part-time work.

These changes suggest that a new partial settlement (a male full-time worker and female part-time worker model) may have been reached.³ However, the documented stress experienced by women workers in feeling they have to choose between "career" and "family", and the evidence of long-term inequalities and social costs (including women's frustrated aspirations to have children, pay inequity and inadequate retirement savings) show that the partial settlement is not fair or sustainable.⁴

In addition, there are contradictions in the current policy setting that create serious problems for many women and demonstrate the need for a consistent approach to workforce and family policy. Some of these contradictions have been mentioned above in relation to single mothers and family payments. One of the most serious failings of the current policy framework is that it simplistically divides women into categories ('stay-at-home mother' or 'career woman') when most women, and increasing numbers of men, will experience multiple transitions of labour force and care status throughout their lifetimes. In this context, Gunter Schmid's concept of 'transitional labour markets' has potential for the promotion of gender equitable industrial relations and social policies.⁵

The promotion of women's financial independence (whatever their family status) has broad, well-recognised social benefits, for example in preventing poverty among female-headed single parent families (recognising the real possibility of these developing from two-parent families) and preventing poverty in retirement. Yet, as documented in this submission, many policies function to make it harder for women to achieve financial independence. A policy setting consistent with this aim would target pay inequity and would involve removing barriers from the tax and payments systems, introducing workplace entitlements that support the 'encumbered worker', and encouraging a more gender-equitable sharing of unpaid labour.

On the basis of these broad considerations, WEL urges the Government to work towards a new settlement, based on gender equity and shared care/earning responsibilities, and which recognises the transitions that workers experience throughout their lives.

³ Junor, Anne, 'Permanent Part-Time Work: Rewriting the Family Wage Settlement?', *Journal of Interdisciplinary Gender Studies*, 5 (2) December 2000, pp. 94-113.

⁴ Pocock, Barbara (2003), *The Work/Life Collision: What work is doing to Australians and what to do about it*, Federation Press: Leichhardt.

⁵ Schmid, Günther, (1998), *Transitional labour markets: a new European employment strategy*, Discussion paper FS I 98-206, Social Science Research Centre Berlin, Available: <http://www.wz-berlin.de/default.en.asp>, [Accessed 5 September 2003].

WEL believes that the apparent tension between child well-being and gender equality can be resolved. It is possible to secure both ample parental time for children and strong labour market attachment among mothers. What is needed to achieve this are concerted and coherent national Government policies that support the following developments:

- Men/fathers shifting substantial time from paid work to caregiving;
- Workplace reforms that accommodate and do not penalise workers with family responsibilities; and
- Social welfare policies and programmes that facilitate and support transitions in and out of paid work, and the opportunities for combining paid work and care (including income support and childcare subsidies)⁶.

There is a wealth of research and policy debate for the Committee to consider but what is needed from the national government now is action and not further rhetoric.

⁶ The defining features of a dual earner/dual carer society are clearly set out and illustrated with examples from ten European countries, the US and Canada in Gornick, Janet C. and Meyers, Marcia K. (2003), *Families That Work: Policies for reconciling Parenthood and Employment*, Russell Sage Foundation Press.



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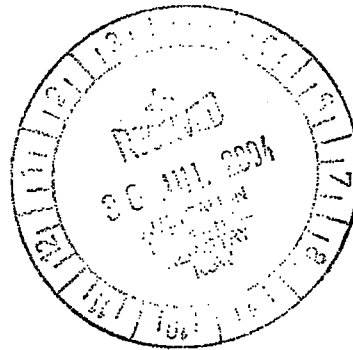
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Justice Giudice
President
Australian Industrial Relations Commission
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July 30, 2004



Dear Justice Giudice

Family Provisions Test Case: C2003/4198 and others

Thank you for granting the Women's Electoral Lobby leave to intervene in the Family Provisions Test Case.

Please find attached the first submission of the Women's Electoral Lobby, as agreed at the Directions Hearing on July 15, 2004.

This submission is being made available to the members of the Industrial Relations Commission Bench, parties to the case and interveners.

Yours sincerely

Sandy Killick
National Chairperson
0409 204 100



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**Australian Industrial Relations Commission
Family Provisions Test Case
Matter C2003/4198**

**First submission of the
Women's Electoral Lobby
July 2004**

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Part 1 INTRODUCTION

1. The Women's Electoral Lobby Australia Incorporated was granted leave to intervene in the Family Provisions Test Case on 15 July 2004. These contentions are submitted in accordance with the AIRC's Directions made on 15 July 2004

Women's Electoral Lobby

2. The Women's Electoral Lobby Australia (WEL) is a national, independent, non-party political organisation working to create a society where women's participation and potential are unrestricted and where women and men share equally in society's responsibilities and rewards. WEL is a voluntary organisation and does not receive funding from any government or political party. It relies on the activities, expertise and support of its members and collaborates with other non-government organisations on specific issues.

3. The Women's Electoral Lobby has a longstanding and substantial interest in the measures available to enable employees to combine their family and caring responsibilities with their paid work. The adequacy of these provisions is critical to the achievement of equal employment opportunities between, and equal treatment of, men and women. This is recognised in the preamble and terms of ILO Convention 156 Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, the Convention for the Elimination of all Forms of Discrimination against Women (CEDAW), and provisions in domestic law including anti-discrimination laws at federal, State and Territory level, and in the objects of the Workplace Relations Act.

Set out below are extracts from relevant WEL policies, which underpin WEL's intervention. Further information about WEL is on the website www.wel.org

WEL Policy on Family Responsibilities and Industrial Relations

4. The Women's Electoral Lobby believes that workers must be able to engage in employment without discrimination because of their family

responsibilities and efforts must be made to minimize conflict between the two roles.

5. The Women's Electoral Lobby believes that until society in general and employers in particular recognise that most men are fathers and provide flexible working arrangements for men to fulfill these responsibilities, women will continue to bear an excessive responsibility in private life thus limiting their participation in public life.

6. The Women's Electoral Lobby supports the International Labour Organisation Convention No 156 *Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities*, and advocates for its implementation in full.

7. The Women's Electoral Lobby considers that an industrial relations system that promotes individual contracts and decentralised bargaining disadvantages most women workers. WEL therefore supports the strengthening and maintenance of the Award system.

8. The Women's Electoral Lobby acknowledges that equity in the workforce can only be achieved through the adoption of positive measures and actions by governments, employers, unions and industrial tribunals.

WEL's intervention in this case

9. The Women's Electoral Lobby welcomes the opportunity to intervene in this test-case on family provisions in awards, brought on by the ACTU, as it is of such potential significance to women. Workplace arrangements that enable women to maintain continuous employment when raising children are essential if women are to participate fully in paid employment, maximise their personal potential, their education and training and lifetime earnings, and avoid poverty in old age. Adequate family provisions in the workplace are essential for men too if they are to undertake a fair share of caring responsibilities and meet their own aspirations for work-family balance.

Need to accelerate spread of family friendly work provisions

10. The Women's Electoral Lobby is concerned about the limited and uneven availability of workplace measures that support employees in balancing work and family. While those in 'best practice' organisations may have access to a range of flexible measures, for many employees progress has stalled entirely over the last decade. A range of research indicates this, much of it referred to in the ACTU submissions, although in the absence of a recent AWIRS study or a dedicated national survey of employees and employers on work-family balance, we do not have an accurate and comprehensive picture¹. The data on the incidence of provisions in agreements from the Workplace Agreements Database (relied on by the Commonwealth) is no substitute for an assessment of their adequacy, utility or take-up.

11. A recent article in the Business Review Weekly pointed out that while ACCI has a national network of more than 350,000 businesses, the National Work and Family Awards of which it is a co-sponsor attracted only 74 entrants in 2003/4. One might conclude, suggested the author, that 'Australian companies have poor policies about work/life balance'.² This compares to over 300 nominations for the Community Business Partnership awards.

12. The federal Government noted in Australia's Background Report to the OECD Review of Family Friendly Policies that **'there is strong demand for increased support for working parents and more family friendly employment practices.'**³ This report has been provided to the Commission by ACCI.

13. A decade ago the final report of the National Council for the International Year of the Family (IYF) also found 'very strong support for a thorough community response to addressing the challenges of combining work and

¹ The Australian Workplace Industrial Relations Survey has not been conducted since 1995. See by contrast the UK Work-Life Balance Studies, conducted annually by the Department of Trade and Industry to measure progress since the Baseline Study in 2000.

² Ross, E, *Life work*, BRW May 6-12 2004, pp 76-79

³ Department of Family and Community services and Department of Employment and Workplace Relations *OECD Review of Family Friendly Policies: The Reconciliation of Work and Family Life, Australia's Background Report*, Commonwealth of Australia, 2002, p.25

family responsibilities⁴. The report emphasised **the importance of ensuring that adequate minimum standards and entitlements are available to all workers with family responsibilities either through award provisions or through legislative provisions⁵**.

14. This year (2004) is the tenth anniversary of the IYF, as well as the twentieth anniversary of the Sex Discrimination Act, and it is time to accelerate the pace of change. A number of submissions in this case refer to the recent reforms in the UK. When the UK Secretary of State for Trade and Industry (Patricia Hewitt) announced the changes to the Employment Act that would give employees the right to request flexible working arrangements, she said the reforms **"would accelerate sluggish progress towards a better balance between work and family life. A change which would have taken 20 years without government intervention will be brought forward by a generation."** (*The Guardian*, November 20 2001, p.11)

15. Commenting on the fact that around the world women still bear the brunt of balancing work and family, a recent ILO report *Time for Equality at Work* notes that there is **'a growing consensus on the need for a more balanced division of responsibility between the state, enterprises, communities, families and individuals.'**⁶ WEL believes that this Test Case is an opportunity to rebalance the equation in Australia and deliver improved outcomes for women.

PART 2 WEL'S POSITION ON THE APPLICATIONS

16. WEL broadly supports the ACTU claims, with the main caveat being that WEL would advocate more extensive **paid** family-related leave provisions than are currently advanced, as they are more equitable in their take-up (men are more likely to use them) and impact (on women's employment).

⁴ Final report by the National Council for the International Year of the Family, *Creating the Links: Families and Social Responsibility*, AGPS, 2004, p.170

⁵ *ibid*, see Chapter 5, especially pp.180-183

⁶ ILO Director General's Report, *Time for Equality at Work*, Global report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 2003

Importance of Award Minimum Conditions for women

17. WEL notes that any adjustment to the safety net provisions in awards has particular significance for women, who comprise over 60% of award-dependent workers. Women, in other words, are more likely than men to rely on provisions in awards for their wages and conditions, and less likely to obtain any benefits from workplace agreements. Women whose capacity to bargain is constrained by their social and labour market circumstances are especially dependent on award and statutory entitlements. Nearly double the proportion of women (26%) compared to men (15%) have their conditions determined by awards only⁷. There is also continuing evidence of inequitable outcomes of agreement making and the importance of safety net increases for women⁸. Many non-English speaking background immigrant and refugee women, who are unfamiliar with Australian systems, perhaps unconfident in English, and who have an urgent need to financially support household members in Australia and overseas, have extensive responsibilities for family care but are not in a position to negotiate above award benefits from their employers. Women's dependence on award provisions for setting their pay and conditions makes it vital that these provisions are adequate.

Workplace bargaining does not guarantee equitable outcomes

18. WEL is also concerned that the 'no disadvantage test' in the Workplace Relations Act has not provided effective protection of family provisions, which are vulnerable to being traded off in pay bargaining. The fact that family provisions are of importance to different groups at different stages in the life-cycle, as well as the fact they may be of more immediate value to women than men, can make them easy prey to short-term 'majoritarian' pressures. The longer term interests of employees, their families and the wider community warrant stronger protection.

19. The Women's Electoral Lobby notes that the Federal Government expresses "a strong view that agreement-making at the enterprise and

⁷ ABS, Employee Earnings and Hours Survey, May 2002, Cat no 6306, 2003, p.43).

⁸ Whitehouse G & Frino B, 'Women, Wages and Industrial Agreements', *Australian Journal of Labour Economics*, Vol No 4, December 2003, pp 579-594

workplace level is particularly suited to tailoring working conditions and arrangements in ways that assist employees to balance work and family, freed from the one-size-fits-all constraints of award prescription” (para 2.2, Contentions, 14 May 2004).

20. Of course the way work and family arrangements are **utilised** will depend on the particular needs of individual employees and the nature of the employer's business needs, but this does not obviate the need for a framework of adequate entitlements. WEL does not accept that provisions in Awards of the sort proposed will constitute 'one-size-fits-all constraints', as the Commonwealth and ACCI allege. Rather, they will provide a fairer basis for making tailored arrangements within reasonable and defined limits, will better meet the needs of disadvantaged workers, and establish a more solid foundation on which enhanced workplace arrangements can build.

21. WEL notes that there is broad agreement on the benefits of workplace flexibility. The real point of contention is the capacity of employees, particularly women, to have their say in the forms that flexibility can take. For workplace conditions to be family-friendly, it is fairly self-evident that they must be responsive to the family needs of the employees. It is this dimension that is critical to the ACTU's proposals and that WEL strongly supports.

Building principles of non-discrimination into awards

22. In the absence of clear and adequate workplace entitlements, women have been using anti-discrimination laws to challenge requirements to work full time and assert their rights to family-friendly working arrangements. Women's Electoral Lobby notes that over 66% of all complaints received by the Human Rights and Equal Opportunity Commission (HREOC) under the Sex Discrimination Act in 2002/03 relate to discrimination on the grounds of sex, pregnancy, or family responsibilities. Most of these concern employment discrimination (HREOC Annual Report). In many State/Territory jurisdictions there is also a rising incidence of work-related pregnancy discrimination complaints, evidence of the continuing problems faced by women with family/caring responsibilities. It is now well established in the case-law that

refusal to allow a woman flexibility in working arrangements to allow her to accommodate family responsibilities may constitute unlawful discrimination⁹.

23. The Women's Electoral Lobby support's HREOC's contentions in this matter on the shortcomings of anti-discrimination law as a way to secure family provisions in the workplace. It relies on individual complaints from women and is reactive – indeed women have often lost their jobs before they are able to take action. It has limited application to men who are also seeking flexible work options to enable them to care for their children. We need a more positive framework that balances rights and obligations, and applies to men as well as women. The Women's Electoral Lobby supports HREOC's contention that provisions in Awards which at least reflect standards already established or foreseeable under discrimination law would provide clarity and consistency for employees and employers.

Work and family balance is in the public interest

24. The Women's Electoral Lobby believes that it is in the public interest that workplace arrangements enable mothers to combine paid employment with child-care responsibilities (see *s.90 Workplace Relations Act*). Enhancing family provisions in industrial awards will promote economic prosperity and the welfare of Australians (*s.3 Workplace Relations Act*) by facilitating mothers' workforce participation.

25. These issues are well summarised in the ILO Report *Equality at Work*: "*In the present context of plummeting fertility rates, rises in life expectancy and restrictive immigration policies, it is crucial to keep working mothers in the workforce to compensate for shortfalls in labour supply and for the payment of taxes needed to finance welfare provision for the aged and those in poor health*"¹⁰. Given the Commonwealth Government's own concern about these issues and the projections for Australia, WEL is surprised at the

⁹ Bourke, J. *Using the Law to support work/life issues – the Australian experience*, Journal of Gender, Social Policy and the Law, 2004, 12:1, pp 19-64

¹⁰ *ibid*, at para 230

Commonwealth's failure to support workplace changes that would facilitate increased workforce participation by mothers and other carers.

26. It has been pointed out that employment rates for women with one child are more than 13 percentage points lower than those for women with no children in Australia compared with an OECD average of only three percentage points, and the rate for women with more than one child is 25 percentage points lower compared to an OECD average of 12 percentage points¹¹. WEL's view is that the large gap in workforce participation rates between non-mothers and mothers attests to the prevalence of workforce barriers and does not simply reflect women's preferences. In any event, around the OECD work and family measures are being put in place to increase mothers' workforce participation¹². As the Women's Economic Policy Analysis Unit (Curtin University of Technology) showed in their submission to the House of Representatives Inquiry into Workforce Participation: "*The availability of leave provisions and working time arrangements that accommodate the caring roles that both men and women have,....will be directly important to women's future labour supply.*" It is hard to understand the opposition to progress in this area.¹³

Enhancing productivity

27. ACCI identifies business efficiency, viability and productivity as core considerations, and flags that the provision of family-friendly work entitlements could impede achieving these goals. Considerable research indicates that making workplace provision for family responsibilities is entirely consistent with these objectives. As the ILO report *Time for Equality at Work* says: "Work/family policies also help maintain women's labour market skills ... This translates into women's greater productivity, due to investments in firm-specific experience and training. In turn this improves their career

¹¹ Whitehouse, G, *Child friendly employment conditions in Australia: an assessment of current information*, Forum Proceedings, Health for Life! Work, Health and Families, Canberra, August 2003

¹² *Babies and Bosses* – a series of OECD reports and a rolling program of country reviews still in progress.

¹³ For further information on this see the National Pay Equity Coalition Submission (July 2002) to Valuing Parenthood, Options for Paid Maternity Leave, HREOC.

development prospects, employability and earning rates in the long run". (para 231)

28. Indeed the present lack of flexible working arrangements means many women take jobs that fit with the requirements of their family responsibilities rather than jobs that match their skills, qualifications and experience. This compromise must undermine productivity.

29. WEL believes that the continuing under-utilisation of women's skills, qualifications and experiences, caused by the present structures of work and family, warrants further investigation by the Productivity Commission. This could usefully be combined with its current reference on the Economic Implications of an Ageing Australia.

Extending Parental Leave

30. WEL supports the claim to extend parental leave to two years, for the reasons set out in the ACTU contentions. In particular WEL supports measures such as this because they strengthen women's attachment to the labour market. It expands the choices open to women combining work with family and for this reason WEL is surprised that the Commonwealth does not support it. It is oft-stated federal Government policy to support choice for women. WEL acknowledges that for many women taking two years unpaid leave will be financially impossible, or will not fit their preferences. For others, however, it will provide much-needed job protection and cover a period when child-care costs may outweigh the immediate benefits of a return to work. For women unable to secure child-care positions for children under two years of age, the scarcest type of child-care placement, a two year leave period creates a realistic buffer for families.

31. WEL finds it disingenuous of the Commonwealth to argue that parental leave policies can have an adverse impact on women's earnings and preserve the unequal division of labour in the family (para 7.21 Commonwealth Contentions in Response) when the Commonwealth's own employment deregulation and tax policies tend explicitly to this result. As

mentioned above, it would be more consistent for the Commonwealth to support women's choices. Alternatively, the Commonwealth could introduce a national funded parental leave scheme.

32. WEL does not believe extending parental leave will increase costs to business, and that any costs are likely to be outweighed by the benefits of retention. Take-up may be limited for the reasons advanced by the Commonwealth (paras 7.23-7.25), especially if access to flexible work arrangements is enhanced by the AIRC in this case (see para 7.27 Commonwealth Contentions in Response). Issues regarding return to work are addressed by other aspects of this claim, especially improved communication and consultation between employer and employee (below).

Eight weeks simultaneous leave

33. The Women's Electoral Lobby supports the application for 8 weeks simultaneous leave for both parents. Any measures that facilitate fathers' involvement in the family at such an important transition time are to be welcomed. They relieve the burden on women, tend to enhance gender equity at home and at work, and have positive outcomes for children. Men's increasing desire for such involvement is extensively documented in the report on *Men's Uptake of Family Friendly Employment Provisions*, as are the workplace barriers they currently encounter.¹⁴

34. It is true that men are much less likely to take leave where it is unpaid and this will limit take-up. WEL considers that providing for simultaneous leave in the award would create a foundation on which workplace provisions for paid paternity/parental leave can build. Meanwhile the 'baby payment' may enable more families than hitherto to afford to take some simultaneous unpaid leave. Of course a fully-funded and legislated parental leave scheme would be preferable, and as the Commonwealth demonstrates (paras 7.49-7.51) would increase the utility of the leave but this ACTU proposal is a welcome start.

¹⁴ Bittman M, Hoffman S, Thompson D, *Men's Uptake of family-friendly employment provisions*, Policy Research Paper No 22, Department of Family and Community Services, Canberra, 2004

Communication during Parental Leave

35. WEL supports this ACTU application and notes that it is relatively uncontentious. It is accepted that good practice in this area enhances retention and smoothes the transition back to work. WEL considers that there are benefits for employee and employer in requiring an employer to provide the opportunity for discussion as it will diminish any uncertainty or misunderstanding about employee's return to work intentions and options. This may in turn avoid potential anti-discrimination claims against employers. It would seem a helpful and cost-effective provision. Where necessary, employers should provide language support such as an interpreter or trained bilingual staff member to ensure the employee understands.

Right to return part-time

36. WEL strongly supports the ACTU's claim for a right to return to work part-time after parental leave and until the child reaches school age. It is an important option for women and it could also help to break down the segregation of full-time and part-time work. This is important for the achievement of equal employment opportunities.

37. The federal Government and ACCI commonly point to the high incidence of part-time work in Australia as evidence of the scope for balancing work and family. When companies are asked to report on measures available to employees to assist them with work and family, the most frequently cited measure is part-time work. In cross-national comparisons, Australia has a very high incidence of part-time employment, second only to the Netherlands (46% of Australian women workers are in part-time work, 57% of mothers).

38. At present, however, part-time employment is commonly a trade off made by women with few options. In return for the opportunity to work reduced hours, they tolerate poor conditions, lack of training opportunities and vastly reduced prospects. Part-time work is still largely confined to certain sectors and much of it is anything but family-friendly – low-paid, insecure, poor quality, often involving unpredictable and/or un-social hours (especially

weekends or nights), with no paid leave. Many of these jobs are associated with very short hours – almost 8% of employed persons (and 12.5% of employed women) are working in jobs of less than 10 hours a week. HILDA data shows that 60.5% of 'under-employed workers', that is those working part-time and preferring more hours of work, are women.

39. Around two-thirds of all part-time jobs are casual – which means that they lack job security, and have no paid sick leave or carer's leave, paid maternity leave, or paid holiday entitlements. These jobs tend to be segregated from full-time jobs – concentrated in low status occupations and jobs and in sectors such as retail. Although permanent part-time employment has been a reasonable option in some sectors – eg finance, public sector – there is evidence of degradation, and the pay parity with full-time rates has deteriorated¹⁵.

40. These problems may be alleviated if there were enhanced rights and opportunities to move between full-time and part-time within the same job or occupation. This is particularly important for women returning to work after having a baby. Despite the high incidence of part-time work in Australia many women still experience difficulty negotiating a return to work part-time after maternity leave. Evidence for this is the incidence of discrimination claims, representing as they do the tip of an iceberg.

41. WEL does not accept that the present patterns of casual and part-time work amongst women with family responsibilities simply reflect their preferences, as suggested for example by the Commonwealth in its Contentions in Response (para 8.12-8.14). Government complacency on this issue is a betrayal of women's best interests as well as ignoring the implications of predicted labour shortage as described in the Government's Intergenerational Report.

¹⁵ Whitehouse, G, 2001. *Recent Trends in Pay Equity: Beyond the Aggregate Statistics* – Journal of Industrial Relations, 43 (1) 66-78

42. Survey data that show high levels of satisfaction with objectively poor quality jobs and conditions have been extensively critiqued¹⁶. Shortcomings include the fact that high satisfaction levels can reflect low expectations, limited options and practical necessities. Further, for many mothers paid work is a welcome respite from the relentless demands of the domestic environment and provides highly-valued adult interaction. WEL believes that women's (especially mothers') employment patterns can more truly be understood in terms of the concept of 'constrained choice', a key aspect of gender inequality. Recent empirical evidence in support of this can be found in a Parliamentary Research Note on Casual Employment¹⁷ which shows that casual work is more likely to be an alternative to unemployment than a first preference.

43. Crude 'satisfaction' data is not an adequate basis for workplace relations policy. It does not justify government or business complacency about the quality of part-time jobs or the long-term employment and financial disadvantages that women experience as a result of being trapped in part-time and casual employment. These include lifetime loss of earnings, poor superannuation, and poverty in old age. With divorce rates now at 46%, women's economic independence is increasingly important¹⁸.

44. There are serious superannuation consequences of women's current working patterns – concentrated in low-paid part-time work – generally to accommodate family responsibilities. Men's retirement incomes are 50% higher than women on the same exit level of income because of women's time out of paid work. A woman on the median income for women who works from the age of twenty to the age of sixty with a five year break in her late

¹⁶ See for example Rubery, J. et al, 1994, *Part-time work and Gender Inequality in the Labour Market*, Ch 6 in A MacEwen Scott (ed) *Gender Segregation and Social Change*, Oxford University Press

¹⁷ Kryger, T. *Casual employment: Trends and characteristics*, Research Note No 53, 2003/4, Parliamentary Library, Canberra

¹⁸ For an analysis of women's earnings loss caused by the current incompatibility of childrearing and paid work see Chapman B et al *The Foregone Earnings from Child Rearing Revisited*.

twenties would retire on 1.5 times the age pension, while a man working from twenty to sixty would retire on three times the age pension.¹⁹

45. It is a source of frustration to WEL that crude survey indicators of 'satisfaction' can be used to argue for policy positions when what is needed is an up-to-date comprehensive national survey of workplace arrangements and needs, encompassing employee and employer perspectives.

46. The Women's Electoral Lobby also contests ACCI's claim that "the role of part-time and casual employment is essentially similar", as casual work lacks the security, predictability and leave entitlements that are important to employees with family responsibilities.

Right to request variation in hours of work

47. The Women's Electoral Lobby strongly supports the inclusion in awards of an employee's right to request a variation in hours (within the terms of the relevant award) to help accommodate family responsibilities²⁰. WEL believes this will have a positive impact on women, families and workplace productivity. WEL supports the inclusion in awards of a mechanism for dealing with such requests, as proposed by the ACTU, including the employer's duty to consider and not unreasonably refuse the request. This is important, given women's disadvantaged bargaining position. WEL notes the similarity with the 'duty to consider' provisions now operating in UK employment law, which appears to be operating extremely well there and has not caused any significant problems for employers or for business outcomes (see fn T. Palmer). It should be noted that this provision is of particular relevance to non-English speaking immigrant and refugee women, who are more likely than other women to work full-time and, at the same time, to have greater family care responsibilities.

¹⁹ Donath S. (1997) *Women and Superannuation*, Seventh Interdisciplinary Women's Studies Conference, Adelaide.

²⁰ Strong demand for this among women employees was demonstrated in the ABS Surveys of Managing Paid Employment and Unpaid Caring Responsibilities (eg Queensland, 2002, Cat 4903)

48. WEL prefers the ACTU formulation of this provision to ACCI's, as it retains existing award protections, and provides more helpful detail of how applications can be made and dealt with which is important if the power imbalance between employer and employee is to be redressed.

49. WEL believes the provision proposed by the ACTU will not only assist with negotiating short-term adjustments to meet particular circumstances over the life-course but will also help to break down the traditional model of full-time work that entrenches women's workplace disadvantage.

50. The Women's Electoral Lobby therefore supports the ACTU claims for the right to request variation in hours and improved access to part-time work as this will help integrate part-time work and reduce the divisions between it and full-time work. The experience in the UK is that a system that clearly sets out the rights and duties of employee and employer is leading to positive, negotiated outcomes²¹. There is also evidence in the UK Work-Life Balance studies (see fn 1) that employees have an appreciation of employer business needs and do not recklessly pursue flexible work entitlements where these are in fact difficult or costly to accommodate.

51. Access to flexible work arrangements is of vital importance to parents in the paid workforce. A telling indication of the continuing demand for flexible work arrangements was the number of submissions on this issue to the Sex Discrimination Commissioner's Inquiry into Paid Maternity Leave – which was not formally considering the issue. Pleas for 'cultural change at the workplace' being necessary before equity for parents could be achieved – were unsolicited but oft-made. **More than 100 submissions argued the need for legal and policy changes to make work more flexible and family friendly.** It was suggested that the federal government should do more to

²¹ T Palmer, Employment Relations Occasional Paper (2004), *Results of the first flexible working survey*

encourage permanent part-time work and job-sharing²². One way to do this would be to support the ACTU's application in this case.

52. At present working women still do 'the double load' – that is they perform most of the unpaid domestic and caring work in the home in addition to their paid work²³. Because flexible work arrangements are not widespread, this limits their employment options – they are constrained to take work that fits in with their family responsibilities. At the same time, if men had more access to flexible work arrangements they would be better placed to share more equitably in the domestic workload of family life²⁴.

53. Flexible working and the gender pay gap

Improved access to flexible working may help to reduce the gender pay gap by allowing women (and men) to combine paid employment with caring more easily²⁵. Reducing the pay gap is in turn important to 'levelling the playing field' for women and men and the choices they can make about combining paid work and care. Also relevant here is the importance of women's earnings to household income²⁶.

54. There is considerable evidence that as long as the emphasis is on individual employee 'choice' it will be difficult for men in particular to ask for and use flexible working arrangements because of workplace culture. A key way to achieve greater gender equity is for flexible working to become mainstream (Smithson, p128). Improving Award entitlements to flexible working will help to normalize it and make it easier for men to consider.

²² Human Rights and Equal Opportunity Commission (2002), *A Time to Value: Proposal for a national paid maternity leave scheme*, Sydney, pp 105- 108

²³ Note that the federal Government ran a campaign 'Working Families: Sharing the Load' to address this, as part of its implementation strategy for ILO 156, in the early 1990s.

²⁴ see Bittman ref above

²⁵ Anderson et al, 2001, *The Gender Pay Gap, Final report to the Women and Equality Unit*, London, Cabinet Office; see also Smithson et al *Flexible Working and the Gender Pay Gap*, *Work Employment and Society* Vol 18 Number 1 March 2004

²⁶ see reference to National Pay Equity Coalition Submission above.

Personal/family/carer's leave

55. WEL notes that this aspect of the ACTU claim appears to have been settled by the parties and may not be the focus of evidence or argument. WEL does however wish to point out that unless separate and additional paid leave entitlements are available for the care of sick children or other dependents, women will continue to bear a disproportionate cost in this respect and be disadvantaged at work. As the Commonwealth says at para 5.24, it is especially hard to find care for a sick child. Women therefore use their own sick leave, more so than men²⁷. In WEL's view, a woman who exhausts her 'family/carer's leave' entitlement and then runs out of sick leave for her own use would have a strong claim for sex discrimination. Women re-entering the workforce will be disadvantaged as they will not have accumulated sick leave, as will women who had to use their sick leave during pregnancy and after childbirth. WEL also notes that some awards have poor first-year sick leave entitlements and this would pose problems for employees who need to take personal/carer's leave.

Pricing women out of work?

56. WEL notes the Commonwealth's suggestion that the ACTU's proposals may have an adverse effect on women's employment by 'pricing them out of the market'. This is of course the stock objection made to every attempt to improve women's working conditions. The same objection was made when twelve months unpaid parental leave was introduced. However, the onward march of women's rising workforce participation tells its own story. This increase has continued inexorably around the OECD alongside reforms – particularly in the European Union – to improve women's pay and conditions.

Conclusions

57. WEL believes the ACTU claims constitute a much-needed, indeed overdue, and comprehensive package of family provisions at the workplace that will support workers, especially women, in combining paid work with caring for dependants over the life-cycle.

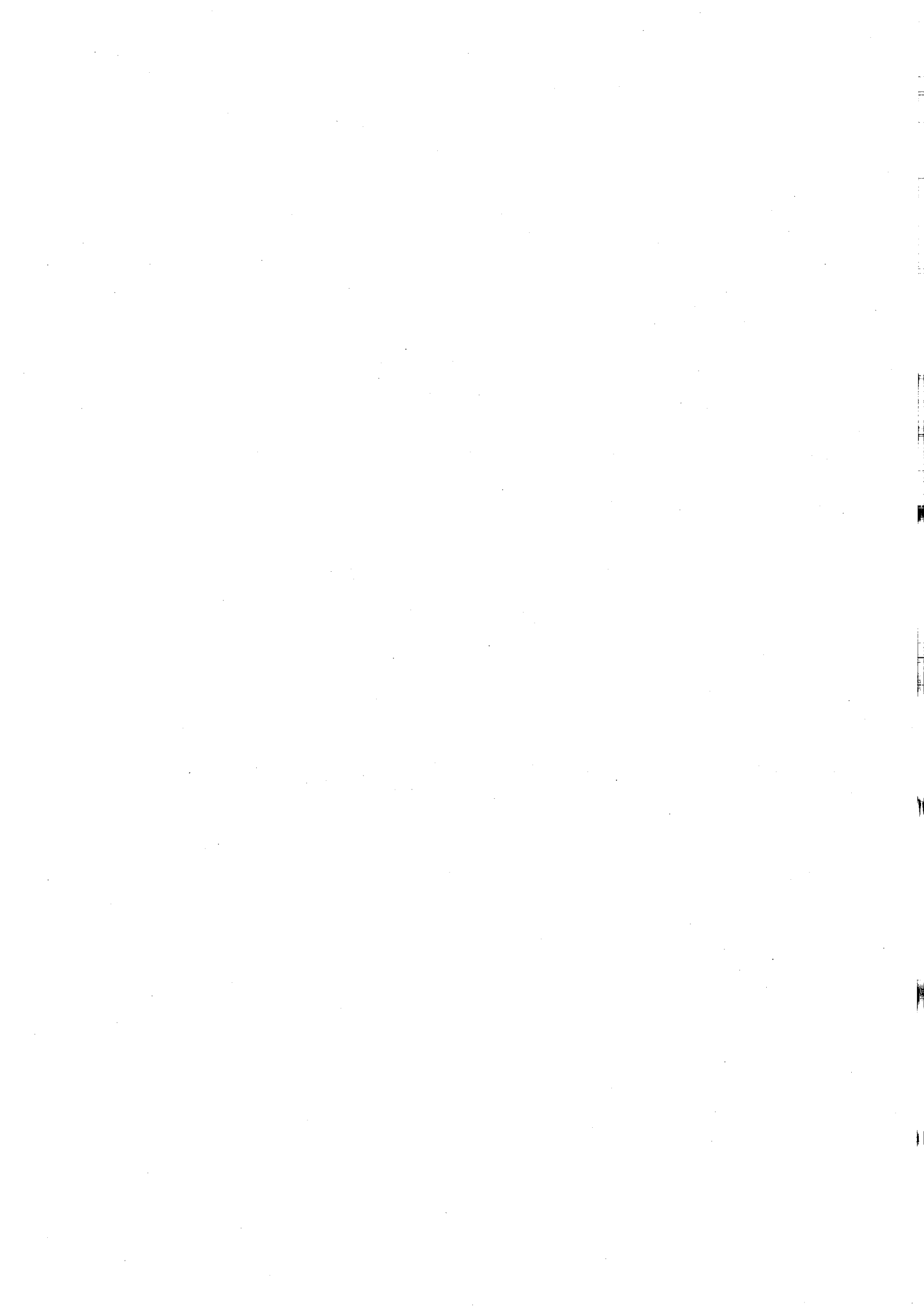
²⁷ See ABS Child Care Survey

58. Enterprise-level initiatives (themselves very unevenly spread across organisations) are too limited, piecemeal and fragmented to provide an adequate framework and meet contemporary standards for the majority of women workers. For example, enterprises with paid maternity leave but no part time work; generous personal/carer's leave but no flexible working time; a range of flexible and family friendly conditions but a long-hours full-time only culture for managers, may all be barriers to workplace equality for women.

59. The provisions proposed by the ACTU will provide increased opportunities for employees and employers to negotiate mutually beneficial working arrangements, by specifying both standards and procedures but without mandating useage. WEL is hopeful that these measures might help catalyse widespread workplace culture change so that our sons and daughters do not have to struggle for equal opportunities and work-family balance as we have done.

Supporting material

The supporting material referred to in this submission is available from WEL at the request of the AIRC or the parties. It is intended that relevant parts of this material will be provided with final submissions.





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**Australian Industrial Relations Commission
Family Provisions Test Case
Matter C2003/4198**

**Final submission of the
Women's Electoral Lobby
November 2004**

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Part 1: Introduction

Highlighting the impact of the proposed award variations on the employment rights and opportunities of women – the focus of the Women’s Electoral Lobby’s intervention

1. The purpose of Women Electoral Lobby’s final submission in this case is to clarify and highlight arguments about the impact of proposed variations to the awards on the employment rights and opportunities of women. Women’s interests in this matter should be strongly represented, given the particular burden they carry of balancing work and family, and the direct impact of work and family entitlements on the quality of their lives. It is noted that while the Commission has been presented with extensive evidence of the particular implications for women of the Australian Council of Trade Unions (ACTU) claims, the Women’s Electoral Lobby (WEL) is the only independent women’s advocacy organisation intervening in this case. Women’s voices must be heard in this case, including the workers and expert witnesses called by the ACTU.¹
2. Most women seek to combine paid work with caring for children or other family members in different ways over the course of the life-cycle. It is important to understand that the interface between home and work is where gender differences are most stark and where gender inequalities still manifest strongly. The traditional model of full-time work had at its centre a ‘male breadwinner’ with a wife providing the necessary domestic support and infrastructure. Demographic and social changes, and women’s aspirations for substantive equality, mean this is no longer sustainable.
3. The Commission has received much evidence about these changes and associated social trends. Here WEL simply emphasises that widespread workplace change is now imperative, to allow women and men more flexibility in managing their family responsibilities while participating

productively in paid employment. Varying awards on the basis of the provisions encapsulated by the ACTU application would bring community standards into the award system. The ACTU claim is based on the way many families seek to arrange their work and family life in Australia.

4. Although WEL regards the ACTU claims as modest, we note the importance of this case for women and urge the Commission to deliver an outcome that will take us further along the road to women's equality, as have previous landmark decisions by the AIRC. Earlier test-cases on maternity leave, parental leave, adoption leave and family/carers leave have improved women's employment security and conditions, advancing women's equality with no adverse impacts on the economy. However, Australia still lags markedly behind most other developed economies in work and family workplace entitlements. Without progress in this area women will continue to pay a disproportionately high price for having children, and the economy will continue to be deprived of many women's skills.

Overview of the Women's Electoral Lobby argument

5. There is broad agreement between the Commonwealth, employer bodies, unions and women's groups about the desirability of extending family friendly workplace provisions to more employees in the workforce. Disagreements are focused on the nature of these provisions and the mechanisms to extend them (in particular, whether they should be award entitlements or should only result from agreement making).
6. ACCI's and the Commonwealth's positions are broadly in support of the status quo. The Commonwealth argues that agreement making is the most appropriate mechanism to extend family provisions. WEL disputes this contention and, together with our first submission, this submission presents evidence to show that the current system is not meeting the needs of workers, particularly women, who have family responsibilities. The

¹ See APPENDIX ONE for more information about WEL

submission argues that in the absence of statutory entitlements, it is through the awards system that we can substantially improve the spread of family provisions through the workforce, promoting broadly accepted equity and economic goals.

7. Although the wages and conditions of most workers are set out in certified agreements, awards establish standards for these agreements and thereby influence the workforce as a whole in a way that dispersed agreement-making alone cannot. Significantly too, awards benefit the substantial proportion of workers who do not have access to agreement-making, or who are not in a position to demand family-friendly provisions through agreements. Only an entitlement-based system, such as the award system, can adequately accelerate the spread of family-friendly provisions and provide (in the absence of statutory entitlements) the most equitable possible access to these.

8. The submission first rebuts the Commonwealth's contentions in response to WEL's first submission, demonstrating the inadequacy of the evidence on which the Commonwealth has relied to argue for the advantages of agreement making. A response to the Commonwealth's and others' threats of sex discrimination is also presented. The submission then puts forward further evidence of the failure of the current system and the importance of improvements to Awards. The role of the AIRC in meeting national public policy goals, and keeping pace with community and international standards relating to family provisions in the workplace, is then discussed, and evidence regarding the economic importance of the ACTU's claims is presented. The submission then deals in turn with each of the ACTU's applications.

The Commonwealth's arguments

9. In their response to WEL's first submission, the Commonwealth "reiterates its contentions that agreement making provides the appropriate avenue to introduce workplace flexibilities" (para 1.5, 13 August 2004). WEL notes that the Commonwealth does not say it is the most effective avenue. In fact

the Organisation for Economic Cooperation and Development (OECD) commented in its review of work and family that “opinion is very divided on whether this (the decentralisation of industrial bargaining) has promoted the penetration of family friendly work practices, or hindered it” (para 6.4.3, *Babies and Bosses*, Vol 1, OECD 2002).

10. In contrast, award variations have indisputable direct and flow-on impacts on wages and conditions. The Commonwealth’s rejection of most of the applications and its promotion of agreement making as the “appropriate avenue” therefore suggests that despite its stated adoption of the goal of family-friendly workplaces, this goal is seen as secondary, and not to be allowed to impinge on existing arrangements. In this submission, WEL presents evidence to support the view that, instead, existing arrangements must be fundamentally altered, and that this is only achievable through a system based on entitlements, not on bargaining.

11. Like other parties in this case, WEL has been hampered by the present inadequacy of national data on work and family provisions. It is nearly a decade since the last comprehensive Australian Workplace Industrial Relations Survey (AWIRS 1995). Therefore, when the Commonwealth states, in para 1.10, referring to the introduction by employers of family friendly policies and practices, that “there is clear evidence that this is happening”, unfortunately clear evidence is just what is lacking.

12. Because of public concern about the potential inequities of workplace bargaining, the Commonwealth Government has a statutory duty to report on the outcomes of agreement making. Under s.358A of the *Workplace Relations Act 1996*, the relevant Minister must review and report on ‘developments...in bargaining for the making of agreements covered by Parts VIB and VID’ and ‘*in particular, the effects that such bargaining has had in Australia during that period on the employment (including wages and conditions of employment) of women, part-time employees, persons from a non-English speaking background and young persons*’. For this it

relies on its internal Workplace Agreements Database (WAD) to which the public and independent researchers have limited access.

13. The WAD data is of limited value in considering the ACTU application because:

- it does not consistently distinguish between mutually beneficial and employer-oriented flexibility in its reporting on flexible work provisions. Evidence on this and on the importance of some measure of employee control in identifying provisions in agreements as family friendly, can be found for example in *Key Work and Family Trends*, Appendix 1 PARA 261, p. A1-7 (in evidence). The point has often been made, including by the OECD review, that "flexible hours certainly can be a family-friendly provision, but are not inherently so"².
- it does not record whether a provision in an agreement is just reiterating an award or statutory provision (for example family/carers leave), in which case it is of course quite misleading to suggest that the entitlement derives from the agreement; or necessarily provides an enhanced entitlement;
- it does not reveal sectoral differences and these can have a significant impact, including on gender coverage and on types of provision for example on working hours arrangements; and
- it provides no information on employee take-up and usage of provisions, for which an AWIRS-type employee/employer survey is required; In the absence of that we must rely on case-studies and the Commission has been presented with a great deal of evidence of this kind.

14. The Commonwealth cannot, in light of these limitations, legitimately claim that it has clear evidence of a positive impact of agreement-making on workers' access to and use of family-friendly provisions. In fact, as presented below, there is evidence that the current system, in which employers are simply encouraged to introduce family-friendly measure, is failing.

² Babies and Bosses: Reconciling work and family life, Vol 1, 2002, para 6.4.1, p.182

15. WEL is concerned that the Commonwealth has misinterpreted the basis on which WEL is critical of current arrangements, and might not fully appreciate the policy goals that might be pursued through the applications. Contrary to the Commonwealth's assertion in its Contentions in Response (13 August) WEL did not "suggest that the Government is not doing enough to support families" (para 1.18). It is accurate to say that WEL is critical of the lack of Government investment in measures to support mothers' workforce participation and attachment. These are distinct though overlapping policy goals. WEL is concerned that the issue of women's workforce attachment is being overlooked, despite the fact that it is critical in demographic and economic, as well as social, terms. Evidence about this is presented below. As Whitehouse recently noted in commenting on the Treasury discussion paper *Australia's Demographic Challenges*, "policy suggestions thus far have been limited to extremely broad notions of enhancing opportunity and flexibility with the most specific initiatives focused on restricting options for early retirement."³

Eradicating structural sex discrimination in employment

16. WEL notes suggestions from ACCI and the Commonwealth that if the applications were granted employers would be deterred from employing women. It would of course be unlawful to discriminate against women in the way threatened. It is certainly disappointing to see such attitudes being legitimised by the Commonwealth twenty years after passage of the Sex Discrimination Act, and despite the evidence of the business benefits of providing family-friendly work arrangements (some of which is presented below).

17. The threat that employers would refuse to employ women is also unrealistic, given the labour market's reliance on women's labour supply, especially in the current climate (and with regard to future projections) of labour shortages and in the sectors represented in this case. The question is to what extent direct and indirect discrimination against

³ Whitehouse, G. Policy and Women's Workforce Attachment, Just Policy, September.

women (and workers with caring responsibilities in general) is institutionalised, legitimised and entrenched. The Commonwealth's and ACCI's comments appear designed to encourage women to accept existing levels of discrimination, and to expect retribution if further steps toward equity are pursued. This highlights the continued structural inequality of the labour market, in which women are allowed a place, provided we do not demand the kind of changes that would allow substantively equal opportunities. Further evidence of sex discrimination in Australian workplaces is provided in the sections following.

18. WEL is concerned that one of ACCI's witnesses appears to engage routinely in unlawful recruitment practices, for example questioning applicants about their family responsibilities. The company, Chubb Security, also claims that enabling women to return part-time after maternity leave and allowing employees to request hours that accommodate their childcare responsibilities "would be a nightmare for Chubb"⁴. Yet they provide no information about the numbers of women they employ. They say that extending parental leave would create problems yet they provide no information about how they manage the current one year entitlement. It would be useful to know, for example, how many of their employees are on maternity or parental leave at any one time. It is hard to believe that this is a "nightmare" for a security company given the other challenges they must face. It is also hard to believe they cannot manage rostering to accommodate a proportion of employees with family responsibilities. They are certainly not the only industry that has to contend with the demands of a "24/7 society" and the need to manage client expectations of continuity. Rather than presenting Chubb's account of its experience as an acceptable norm, ACCI should instead be assisting it and other companies to change its practices and implement equal opportunities.

⁴ Witness statement of William Fisher, General Manager, Human resources of Chubb Security Australia Pty Ltd.

Failure of the current system and the need to step up the pace of change

19. As the OECD review stated in *Babies and Bosses* “leaving aside those areas where legislation is present...it is difficult to avoid the conclusion that the spread of family-friendly work practices is at best patchy.” (Vol 1 – p.200). After more than a decade of enterprise bargaining and ‘encouragement’, this is a very telling conclusion. WEL therefore urges the Commission to take this opportunity to improve award standards and help accelerate the spread of family-friendly workplaces, which appears to be a goal shared by all those involved in this case.

20. The Commission has a great deal of evidence before it that shows how uneven family-friendly work arrangements are, both across and within workplaces. This has been confirmed in a recent Parliamentary Research paper⁵ which concludes that:

“...the system with the most application across the workforce – federal (and state) legislation – has a limited spectrum of work and family policies currently under its wing. Therefore, the delivery of work and family measures is likely to be made through awards or company policy. Work and family measures delivered through enterprise agreements and individual agreements have had growth, but for a variety of reasons are still limited in terms of the scope of provision and the numbers affected (in the federal system)”. (page 24)

21. The weight of academic and community opinion, much of it presented in evidence to the Commission, overwhelmingly confirms that “most family friendly benefits are available only to a minority of employees, primarily

⁵ O'Neill, S, Work and Family Policies as industrial and employment entitlements, Research Paper No 2,, 2004-2005, Department of Parliamentary Services, Canberra

composed of higher skilled workers in large and/or public sector enterprises.”⁶

22. We know from a range of research that many mothers of young children have few workplace entitlements. For example, Edith Grey has analysed data from a 1997 nationally representative survey, *Negotiating the Lifecourse* (NLC), which surveyed 2231 men and women on issues of work and family ⁷ and found that “Women who have a child under five are not eligible for many workplace benefits”. She reports that “of employed women with a child under five, only 57 per cent report access to paid sick leave, 29 per cent are eligible for paid maternity leave and 38 per cent have access to family or carers' leave. Men in this group are more likely to be able to receive these benefits than men without children, or women with children, which is related to job stability”. The impact of motherhood on women’s workplace entitlements is dramatic, as before they have a child their eligibility for workplace benefits is high. Ninety per cent are entitled to paid sick leave, 42 per cent report they can access paid maternity leave, and 57 per cent are entitled to family or carers' leave. These results highlight the failure of the current system to meet the needs of those who most require support to combine work and caring roles.
23. WEL supports the promotion of best practice (such as the National Work and Family Awards) but these initiatives need to be underpinned by adequate minimum entitlements if the benefits (for employees and employers) are to be widespread. As the OECD review commented:

Prizes and publicity for good employers are no doubt valuable in educating employers about what is possible, but do not as a matter of fact, appear to have led to great inroads in spreading such practices to “difficult groups”, such as small employers or employers of low skilled workers. Hence the penetration of family

⁶ See for example the assessment of Campbell I., and Charlesworth S., *Key Work and Family Trends in Australia*, April 2004, RMIT which analyses a host of empirical material.

friendly policies is highly uneven. (OECD Babies and Bosses Vol 1, p.200).

24. The inadequacy of measures to support gender equitable economic participation is strongly implicated in women's disproportionate risk of poverty, especially in older age. As a recent research report commissioned by the Hudson Group found, "women with high levels of education (a degree or diploma) forego AUD \$239,000 in lifetime earnings from having one child," while a "woman with average education (completed Year 12) foregoes AUD \$201,000 and a woman with a low level of education (not completed Year 12) foregoes AUD\$157,000" (p.3). Partly as a consequence, "women are two and a half times more likely to live in poverty during retirement than men, and by 2019 are expected to have half the superannuation accumulated by men," as the Hudson report also found (p. 3).⁸

Part 2: WEL's position in the applications

The importance of improving Award Minimum Conditions for women

25. WEL supports the ACTU claim because of the importance for women of the safety net provisions in awards. In addition to the important standard-setting effects discussed above, women comprise over 60% of award-dependent workers. They are much more likely than men to rely on provisions in awards for their wages and conditions. Nearly double the proportion of women (26%) compared to men (15%) have their conditions determined by awards only⁹. Therefore, even if there was equality of outcomes for women and men under workplace agreements, gender inequality will persist or worsen overall if award provisions are not brought up to an adequate standard. There is research evidence of this and of the importance of safety net increases for women.¹⁰

⁷ Edith Gray, Colliding spheres: work and family initiatives, and parental realities, Just Policy, No. 24, December 2001, pp. 33-40, p.37

⁸ Hudson Global Resources & Human Capital Solutions/Josephine Palermo, 'Breaking the Cultural Mould: The Key to Women's Career Success', November 2004

⁹ ABS, Employee Earnings and Hours Survey, May 2002, Cat no 6306, 2003, p.43.

¹⁰ Whitehouse G & Frino B, 'Women, Wages and Industrial Agreements', *Australian Journal of Labour Economics*, Vol No 4, December 2003, pp 579-594

26. Women of non-English speaking backgrounds, whose capacity to bargain is constrained by their social and labour market circumstances, are especially dependent on award and statutory entitlements. They often have extensive responsibilities for family care but are not in a position to negotiate above award benefits from their employers. Their reliance on award provisions for determining their conditions makes it vital that these provisions are adequate.

The role of AIRC in meeting international and national requirements

27. The pursuit of equitable outcomes for women from workplace measures is a requirement of national laws. The *Workplace Relations Act 1996* (Cth) provides that, in performing its functions, the Commission must further the objects of the Act, which includes “assisting employees to balance their work and family responsibilities effectively through the development of mutually beneficial work practices with employers”¹¹ It also includes “respecting and valuing the diversity of the work force by helping to prevent and eliminate discrimination on the basis of ... sex, family responsibilities, pregnancy”¹² and “assisting in giving effect to Australia’s international obligations in relation to labour standards”¹³.

28. Australia’s international obligations include compliance with the *ILO 156 Convention concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities* which is incorporated into the Act. It is important to note the framework of equality within which work and family measures are required to be implemented. Article 1 and Article 4 are particularly relevant here.

29. The *Convention on the Elimination of all forms of Discrimination against Women* (CEDAW) is also important and the Commonwealth government has recently reaffirmed its commitment to implementation of that in its

¹¹ Section 88B, section 90 and section 3(i)

¹² section 3(j)

¹³ section 3(k)

report¹⁴ to the UN: "State Parties agree to take all appropriate measures including legislation and temporary special measures so that women can enjoy all their human rights and fundamental freedoms" (page 96).

The public interest and economic considerations

30. The Commission is also obliged to "take into account the public interest" which includes "the state of the national economy and the likely effects on the national economy of any award or order" that the Commission may make¹⁵.

31. Among the biggest challenges for policy makers are the mounting skills and labour shortages in the Australian economy. Research recently presented by the Women's Economic Policy Analysis Unit (WEPAU) at the Curtin University of Technology to a House of Representatives Committee Inquiry into increasing participation in paid work found that women's labour force participation will be critical in meeting these challenges.¹⁶ The Commission has evidence before it of the extent of women's untapped labour due to the barriers to mothers' workforce participation. The measures proposed in the applications will assist by facilitating women's continued participation in paid work after having children. As the WEPAU research found, "[t]he availability of leave provisions and working time arrangements that accommodate the caring roles that both men and women have....will be directly important to women's future labour supply."

32. Some employers and their peak bodies allege that entitlements such as those proposed are burdensome and costly to employers, and would therefore have a negative impact on the economy. However, where employers have actually quantified the costs and benefits they seem to

¹⁴ Women in Australia, Australia's Combined Fourth and Fifth Reports on Implementing the UN's Convention on the Elimination of All Forms of Discrimination Against Women, Australian Government, 2003

¹⁵ section 90(1)(b)

¹⁶ Women's Economic Policy Analysis Unit (WEPAU), Curtin University of Technology, Submission to House of Representatives Standing Committee on Employment and

find such policies save them money. Examples abound, but a recent case cited in the Hudson report is the Ford Motor Company of New Zealand which saved nearly half a million NZ dollars over two years when it introduced the right to return part-time (p. 9).

33. The incongruence between businesses' perception of costs and the evidence of benefits is, in part, a result of the underestimation of women's skills and value in the workforce. The experience of businesses employing women who were re-entering the workforce is illustrative:

'Employers believed re-entry women were unfamiliar with current work practices and technology, lacked the skills necessary for the labour force, were likely to have high rates of absenteeism due to sick children, and would be inflexible with their hours of work and mobility. Furthermore, they believed re-entry women lacked energy, confidence, drive, ambition, and initiative. The age of re-entry women also concerned employers, who believed they would be set in their ways, difficult to train, and unable to handle stress. However, the study also found that when re-entry women got past the interview, a huge change in employer attitudes occurred. Re-entry women were reported to be stable, reliable, dedicated, mature, and responsible. They were also believed to have organisational and interpersonal skills, a good work ethic, empathy, understanding and compassion, the ability to work autonomously, and increased confidence and ambition.'¹⁷

34. There is increasing evidence of the business case for workplace policies that value diversity (including by promoting the prospects of women through family-friendly provisions). The Hudson report also cited a

Workplace Relations Inquiry into employment: increasing participation in paid work, 2003
<http://www.aph.gov.au/house/committee/ewr/emp/subs/sub08.pdf>

¹⁷ Ruth Hamon, Jacqui Cleland and Paul Toutson, 'Reassessing Worth: Recognising the Abilities of Re-entry Women'. *New Zealand Journal of Human Resource Management*, 2002 No. 2.

Standard & Poors 500 study, which found the average annualised return on investment for businesses with policies that promote minority and women workers was 18.3 per cent over a five year period, compared with only 7.9 per cent for those without such a commitment (p. 8).

35. New Zealand's EEO Trust has compiled considerable evidence that promoting workplace diversity, for example by offering work and family provisions, has many business benefits, including "improve[ing] the effectiveness of [the] organisation, recruit[ing] from the biggest possible pool of talent and enable[ing] the people ... employ[ed] to contribute their full potential."¹⁸
36. Several case studies compiled by the Australian Equal Opportunity for Women in the Workplace Agency (EOWA) also support the argument that promoting women's presence and progression in the workplace has considerable benefits.¹⁹ For example, Holden introduced "a number of initiatives to instil a cultural change which supports the role that women have to play in the business", and found as a result that "[t]he business case for diversity indicates that the costs are minor when compared to the benefits offered by a culture and organisation which strongly supports diversity."²⁰
37. In terms of the possible effects of the ACTU's applications on the overall quality of the labour market, WEL is aware that the Commission may be concerned that the proposed extension of part-time work opportunities risks entrenching women's inequality because of the known characteristics of part-time work (low-paid, casual, insecure, with poor training and promotion prospects). WEL's view, supported by much of the

<http://www.humanresources.co.nz/articles/2002.asp> (accessed 19 November 2004)

¹⁸ EEO Trust, Reaping the business benefits of EEO,

<http://www.eeotrust.org.nz/about/business.shtml> (accessed 19 November 2004)

¹⁹ Equal Opportunity for Women in the Workplace Agency, Chief Executives Unplugged Case Studies 2003, http://www.eowa.gov.au/Case_Studies/CEOs_Unplugged_03.asp (accessed 19 November 2004)

²⁰ Equal Opportunity for Women in the Workplace Agency, Chief Executives Unplugged Case Study 2003: Holden, http://www.eowa.gov.au/Case_Studies/docs/CEObook_03_Case_Study_Holden.pdf

research evidence presented to the Commission, is that strengthening women's right to modify their working hours and arrangements in accordance with family care needs would be a step forward. It will improve their employment security, their employment opportunities, and their long term financial independence. Importantly, measures such as allowing women to return to their original jobs part-time would remove the need to move to segregated lower-level part-time positions, and would have a positive impact of the overall composition of part-time work.

Right to return part-time

38. As stated in our first submission, WEL strongly supports the ACTU's claim for a right to return to work part-time after parental leave and until the child reaches school age. WEL emphasised in our First Submission that access to part-time work is not a panacea. Indeed part-time work can represent a 'mummy-trap' or at least a 'mummy-track' for women. This is because at the moment part-time work is largely segregated from full-time work and confined to low paid sectors and occupations. WEL believes a right to return part-time will help break down this segregation and improve the quality and security of part-time work, while easing the transition back to work at a difficult time for many women.
39. As stated in our earlier submission, these problems may be alleviated if there were enhanced rights and opportunities to move between full-time and part-time within the same job or occupation. This is particularly important for women returning to work after having a baby. Despite the high incidence of part-time work in Australia many women still experience difficulty negotiating a return to work part-time after maternity leave. Evidence for this is the incidence of discrimination claims, representing as they do the tip of an iceberg. (Para 40 of first WEL submission).
40. Concerns about the costs to business of introducing entitlements such as the right to return part-time must be considered, but the evidence presented above supports the business and broader economic benefits of family friendly practices.

41. The importance of a right to return part-time after maternity leave was recognised by Justice Elizabeth Evatt in her judgement in the well-known case of *Hickie v Hunt and Hunt*. She inferred “from general knowledge that women are far more likely than men to require at least some periods of part-time work during their career, and in particular a period of part-time work after maternity leave in order to meet family responsibilities.”

42. In a recent speech the Hon John von Doussa QC, President of the HREOC, talked about the growth of precedent in this area and said “I don’t think this proposition can be doubted and it is likely to be accepted by the courts in this area without the need for evidence.”²¹ He referred to several cases from the last two years where the employers’ refusal to allow a woman to return part-time after maternity leave was found to have been unreasonable and hence unlawful. As von Doussa says,

‘A strong message about good management comes out of each of these cases. Significant factors leading to the employee’s success were a failure on the employer’s part to take time to properly understand the reasons for the employee’s request, a failure to properly investigate whether the request could be accommodated and a failure by the employer to reach its decision fairly on the merits.’

43. These women may have won their cases but they and many others have lost their jobs because their need to work part-time was denied.

44. Another telling comment was made by the NSW Administrative Appeal Tribunal in the widely reported case of *Reddy v International Cargo Express*²²:

²¹ Speech by the Hon John von Doussa QC, President of HREOC, Adelaide, 24 March 2004

²² *Reddy v International Cargo Express* [2004] NSWADT218 (30 September 2004).

'While (her) managers may each have held the honest belief that Mrs Reddy's proposition would lead to chaos, loss of business or added costs it is difficult to accept that that would have been the case without some testing of the scheme or at the very least a detailed and thorough assessment of the proposal.'

45. What these cases show is that employer resistance to allowing a woman to do her job on a part-time basis while her children are very young is often based on prejudice and tradition rather than a genuine assessment of the work options and impacts. It is this resistance, and the tradition of full-time work as the norm, that WEL believes the ACTU proposals will address. Any equal opportunity employer knows that 'old habits die hard' and many women can attest to the fact that, unfortunately, 'management prerogative' is often exercised in a discriminatory way. While anti-discrimination law may provide some women with individual remedies for management failures, it is a clumsy and selective instrument for asserting a general right to part-time return from maternity leave. Until there is a general entitlement, women returning from maternity leave will be subject to the discretion of management, which itself remains a largely male domain.

46. The Hudson report found that, "whilst women's representation in management in the public sector compares favourably with other similar countries, there has been no improvement in the private sector, and possibly a decline in representation since 1986, particularly in Australian companies not covered by the Equal Opportunity for Women in the Workplace Act (1999)." (p. 4)

47. Discrimination remains widespread and systemic, despite evidence of women's promotions. For example, the recent Hudson report cited research showing that "although women are given promotions, those promotions are essentially hollow and create a misleading appearance of increasing opportunity and responsibility for women in organisations.

Therefore, promotions 'up' the hierarchy for women do not appear to ensure entrée into the upper echelons of organisational hierarchies."

(p. 7)

48. A recent article by Whitehouse highlights the need for "a guaranteed right to part-time hours for parents returning from parental leave and while their children are young".²³ The paper presents evidence of the current uneven spread of permanent part-time work (from HILDA 2002 data) and argues that such a measure would enhance women's workforce attachment and support gender equitable outcomes over the lifecycle. The author concludes that:

'...a range of studies are confirming the influence of parental policy measures on maternal employment rates. Australian difference in both the employment patterns of mothers and provision of parental policies suggests strongly that there is a need for policy extension.'

49. WEL considers the Award provision proposed by the ACTU to be just such a timely 'policy extension'.

Right to request variation in hours of work

50. Access to flexible work arrangements is of vital importance to parents in the paid workforce, particularly for mothers. At present working women still do 'the double load'. That is, they perform most of the unpaid domestic and caring work in the home in addition to their paid work.²⁴ Because flexible work arrangements are not widespread, this limits their employment options: they are constrained to take work that fits in with their family responsibilities. At the same time, if men had more access to

²³ Whitehouse G Policy and Women's Workforce Attachment, Just Policy, September 2004

²⁴ Note that the federal Government ran a campaign '*Working Families: Sharing the Load*' to address this, as part of its implementation strategy for ILO 156, in the early 1990s.

flexible work arrangements they would be better placed to share more equitably in the domestic workload of family life.²⁵

51. WEL strongly supports the inclusion in awards of an employee's right to request a variation in hours (within the terms of the relevant award) to help accommodate family responsibilities. The Commission has been presented with extensive evidence on the need for this measure and WEL notes that research shows strong demand for this among women with children.²⁶ WEL supports the inclusion in awards of a mechanism for dealing with such requests, as proposed by the ACTU, including the employer's duty to consider and not unreasonably refuse the request. This framework is important, given women's disadvantaged bargaining position. WEL notes the similarity with the 'duty to consider' provisions now operating in UK employment law, which appears to be operating well there and has not caused any significant problems for employers or for business outcomes. The experience in the UK is that a system that clearly sets out the rights and duties of employee and employer is leading to positive, negotiated outcomes²⁷. There is also evidence in the UK Work-Life Balance studies that employees have an appreciation of employer business needs and do not recklessly pursue flexible work entitlements where these are in fact difficult or costly to accommodate.

52. Consistent with our commitment to workplace cultural change, WEL supports the ACTU claims for the right to request variation in hours as this will help integrate part-time work into the mainstream economy and reduce the divisions between part and full-time work.

53. This provision is of particular relevance to non-English speaking immigrant and refugee women, who are more likely than other women to work full-time and, at the same time, to have greater family care responsibilities.

²⁵ see Bittman reference above.

²⁶ Strong demand for this among women employees was demonstrated in the ABS Surveys of Managing Paid Employment and Unpaid Caring Responsibilities (eg Queensland, 2002, Cat 4903)

Extending parental leave

54. WEL supports the claim to extend parental leave to two years, for the reasons set out in the ACTU's contentions. In particular WEL supports measures such as this because it expands the choices open to women combining work with family and for this reason WEL is surprised that the Commonwealth does not support it. WEL acknowledges that for many women taking two years unpaid leave will be financially impossible, or will not fit their preferences. For others, however, it will provide much-needed job protection and cover a period when child-care costs may outweigh the immediate benefits of a return to work. For women unable to secure child-care positions for children under two years of age, the scarcest type of child care placement, a two year leave period creates a realistic buffer for families.
55. WEL notes that a minimum of 26 weeks paid maternity leave now exists throughout Western Europe, and that in most countries this is accompanied by paid paternity and parental leave.²⁸ Paid leave of this nature provides a far more secure foundation for the return to work; in the absence of such schemes, however, an extension of unpaid leave is an important equity measure for women workers.
56. Child development experts, child policy analysts, and an increasing number of child advocates stress the importance of parental leave. Some suggest that such leave can have significant impacts upon child health and development.²⁹ A major trend in Europe in the 1980s and 1990s was to extend the leave policy to 'create a real alternative to out-of home-

²⁷ T Palmer, Employment Relations Occasional Paper (2004), *Results of the first flexible working survey*

²⁸ Deven, F., & Moss, P. (2002). Leave arrangements for parents: Overview and future outlook. *Community, Work and Family*, 5, 237-255.

²⁹ Ruhm, C. (1998) "Parental Leave and Child Health". NBER Working Paper 6554. Cambridge, MA: National Bureau of Economic Research (NBER); Galtry, J. (2000). "Policies, Practices and Support: Breast Feeding". Paper prepared for WHO/Unicef technical Consultation. Geneva, WHO

infant care and to make it a stronger instrument of gender equity'.³⁰

There is also some evidence that generous parental leaves lead to increased investment by fathers in their children and this is of potentially great significance for gender equity both in the home and in paid employment.³¹ (Gauthier and Jatzius, 1997; Carlsen, 1998; Kamerman and Kahn, 1995).

Eight weeks simultaneous leave

57. The Women's Electoral Lobby supports the application for 8 weeks simultaneous leave for both parents. Any measures that facilitate fathers' involvement in the family at such an important transition time are to be welcomed. They relieve the burden on women, tend to enhance gender equity at home and at work, and have positive outcomes for children. Men's increasing desire for such involvement is extensively documented in the report on *Men's Uptake of Family Friendly Employment Provisions*, as are the workplace barriers they currently encounter.³²

58. WEL believes it is very much in the public interest to improve leave entitlements for both parents. As Professor Sue Richardson has explained:

'The question of the quantity of parental time spent on caring for children has assumed a major importance with the movement of mothers into paid employment. When mothers were at home full-time the time spent with their fathers was hardly an issue...'³³

³⁰ Sheila B. Kamerman, "Parental Leave Policies: An Essential Ingredient in Early Childhood Education and Care Policies", *Social Policy Report*, Vol. XIV, No. 2 (2000).
<http://www.srcd.org/sprv14n2.pdf>

³¹ Sheila B. Kamerman, Michelle Neuman, Jane Waldfogel, and Jeanne. Brooks-Gunn, *Social Policies, Family Types, and Child Outcomes in Selected OECD Countries*, OECD SOCIAL, EMPLOYMENT, AND MIGRATION WORKING PAPERS, No.6 Social Policies, Family Types, and Child Outcomes in Selected OECD countries. May 20, 2003

³² Bittman M, Hoffman S, Thompson D, *Men's Uptake of family-friendly employment provisions*, Policy Research Paper No 22, Department of Family and Community Services, Canberra, 2004

³³ Richardson S *The Economics of Families and Children*, in *Investing in our children*, Developing a National Research Agenda, Academy of Social Sciences, 2002, pp 22 – 41.

59. Now there is increased emphasis on and desire for shared parenting. Providing leave entitlements that will enable and encourage fathers' involvement from the beginning, from the birth of their child, is a measure that will support this objective. Around Western Europe parental leave schemes that target working men as fathers, are being implemented. The "main underpinning of this strategy is the intention to bolster the fathers' contact with and care for their children. Another objective is to share the benefits and burdens of working life and family life between men and women."³⁴

60. It is true that men are much less likely to take leave where it is unpaid and this will limit take-up. WEL notes that a recent report in the UK by the Chartered Institute of Personnel and Development found that more than half of all new fathers could not afford to take paternity leave but four out of five would take it if it was increased to 90% of full pay.³⁵ WEL considers that providing for simultaneous leave in the award would create a foundation on which workplace provisions for paid paternity/parental leave can build. Meanwhile the 'baby payment' may enable more families than hitherto to afford to take some simultaneous unpaid leave. Of course a fully-funded and legislated parental leave scheme would be preferable. The Commonwealth demonstrates in its Contentions (paras 7.49-7.51) this would increase the utility of the leave, but this ACTU proposal is a welcome start.

Part 3 : Conclusions

61. WEL believes the ACTU claims constitute a much-needed, indeed overdue, and comprehensive package of family provisions at the workplace that will support workers, especially women, in combining paid work with caring for dependants over the life-cycle.

³⁴ Brandth B and Kvande E, Reflexive Fathers: Negotiating Parental Leave and Working Life, Gender Work and Organisation, Vol 9, No 2 April 2002

³⁵ 'New Parents could get a year's pay to stay at home', Sarah Hall, The Guardian, 27 Oct 2004, Article in the Guardian

62. Enterprise-level initiatives (themselves very unevenly spread across organisations) are too limited, piecemeal and fragmented to provide an adequate framework and meet contemporary standards for the majority of women workers. For example, enterprises with paid maternity leave but no part time work; generous personal/carer's leave but no flexible working time; a range of flexible and family friendly conditions but a long-hours full-time only culture for managers, may all be barriers to workplace equality for women.
63. The provisions proposed by the ACTU will provide increased opportunities for employees and employers to negotiate mutually beneficial working arrangements, by specifying both standards and procedures but without mandating usage. WEL is hopeful that these measures might help catalyse widespread workplace culture change so that our sons and daughters do not have to struggle for equal opportunities and work-family balance as we have done.
64. WEL considers that the application made by the Australian Council of Trade Unions to vary awards by the provisions submitted is both a modest and a reasonable application. The provisions reflect community standards developed over a number of decades by women and men seeking to combine paid employment with their parenting role.
65. The provisions will benefit women workers in particular because they continue to act as primary carers of children, older and disabled family members, yet who also have much to offer Australian workplaces, the community and the economy.
66. Significantly the provisions will also go some way towards redressing the historical gender and structural inequalities that are characteristic of the Australian employment system.

Electoral Lobby Application to Intervene in ACTU Family Provisions Test Case C2003/4198 and others

About WEL

Women's Electoral Lobby Australia Inc is a national, independent, non-profit women's organisation which since 1972 has been advocating on behalf of women and challenging discriminatory practices. Its objectives are attached but include:

- to promote social, political, and economic, equality for women;
- to change social attitudes and practices which discriminate against women;
- to lobby for the implementation of procedures and the enactment of legislation which will advance and benefit women, and combat sexism;
- to inform and educate the public, with a view to advancing the opportunities and conditions of women in the political, creative, civil and social fields as well as in industry, commerce, the professions, and in the community generally.

Its activities include lobbying governments, politicians and candidates, researching and publicising issues important to women, participating in public policy development and public debate, making submissions to inquiries (eg the recent HREOC Inquiry into Paid Maternity Leave), and intervening in legal cases where women's human rights are at issue.

Women's Electoral Lobby receives no government funding and relies entirely on membership fees, donations and voluntary efforts of its members and supporters. .

WEL's interest in the subject matter of the test case

WEL has a longstanding and substantial interest in the measures available to enable employees to combine their family and caring responsibilities with their paid work. The adequacy of these provisions is critical to the achievement of equal employment opportunities between, and equal treatment of, men and women. WEL's National Policy Platform includes several relevant commitments:

WEL's Policy on Family Responsibilities (extracts)

WEL believes that workers must be able to engage in employment without discrimination because of their family responsibilities and efforts must be made to minimize conflict between the two roles.

WEL believes that until society in general and employers in particular recognise that most men are fathers and provide flexible working arrangements for men to fulfill these responsibilities, women will continue to bear an excessive responsibility in private life thus limiting their participation in public life.

WEL supports the International Labour Organisation Convention No 156 Equal Opportunities and Equal Treatment for Men and Women Workers:

Workers with Family Responsibilities, and advocates for its implementation in full.

WEL's Policy on Industrial Relations (extracts)

WEL considers that an industrial relations system that promotes individual contracts and decentralised bargaining disadvantages most women workers. WEL therefore supports the strengthening and maintenance of the award system. WEL considers that equity in the workforce can only be achieved through the adoption of positive measures and actions by governments, employers, unions and industrial tribunals.

WEL has been granted standing to participate in the following inquiries:

- National Wage Cases 1988 –1998;
- Pay Equity developments dating from the 1970s, including the HPM pay equity case brought by the ACTU and MWU to most recently the NSW Pay Equity Inquiry;
- amendment of the *Workplace Relations Act (Cth)1996*.

WEL believes that it can usefully contribute to this case by drawing out and highlighting the impact of the proposed Award variations on women.

Limited intervention

WEL did not seek to call or cross-examine witnesses in this case. WEL sought only to file written submissions relating to the impacts on women that we believe ought to be taken into consideration by the Full Bench.

Reflecting WEL National Policy, WEL broadly supports the contentions of the individual unions and the ACTU, and those of HREOC, and those of the State and Territory Governments. However, we believe our role is to give more emphasis to what is at stake for women, and the extent of their structural disadvantage under current workplace arrangements. WEL does not consider its involvement will prejudice any party in these proceedings nor impose significant additional demands on them. This is a case of potentially historic significance for women and it is important that the independent voice of a national women's organisation be heard.

