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AUTHORISED

MC

The Hon Bronwyn Bishop MP
657 Pittwater Road
DEE WHY NSW 2099

Dear Mrs Bishop,

Thank you for the opportunity to participate in the House of Representative Standing Committee on Family and Human Services inquiry into Balancing Work and Family.

The Committee asked the ACTU to provide additional information on three matters.

1. Assessments of the UK flexible work for parents legislation

Attached are three reports on the UK Flexible Work for Parents. Two of these reports were prepared by the UK Department of Trade and Industry following surveys of employees. The third report reports upon a survey of employers, and shows no real opposition to extending the right beyond parents of children under aged 6 to carers generally.

I understand Dr Charlesworth has forwarded other assessments of the legislation.

I also enclose the regulatory impact assessments in which the Department of Trade and Industry has attempted to quantify the costs and benefits of extending the provisions to parents of all children, and to all workers with caring responsibilities.

This material highlights the positive impact of the regulation for employees, and the extent of acceptance of it by employers.

2. Agreed amendments to the award safety

Attached are the terms of settlement between the Ai Group, ACCI and the ACTU. These were supported by the Commonwealth in its submission to the AIRC, and have now been endorsed by the AIRC.

3. The role of anti discrimination law

Finally I have attached our submissions from the case regarding the developments under anti discrimination case law.

Anti discrimination law should complement workplace laws. On its own it is a poor substitute for proper workplace laws. For example the Workplace Relations Act obliges the AIRC to "prevent and eliminate" discrimination on the various grounds, while the Sex Discrimination Act does not have prevention in its objects.

Anti discrimination laws (as currently understood in Australia) suffer from the following deficiencies:

- (a) While they prohibit discrimination, there is no positive onus on employers to systemically develop programs to prevent discrimination. This can be compared to OHS laws, and the EOWA legislation applying to businesses of more than 100 employees;
- (b) There are no enforcement agencies. Discrimination laws require a complainant to bear the risks of the complaint. Again, compare this to OHS where breaches are prosecuted by an authority, or to awards where the inspectorate can bring enforcement proceedings. There are weakness in these systems too, but they are not as weak as anti discrimination;
- (c) The remedies are restorative between the complainant and the offender. This highlights that discrimination is seen as a matter between the parties, rather than an offence against the community. This also reduces the effectiveness in both specific and general deterrence;
- (d) Confidentiality provisions in the settlements of conciliated complaints weakens the capacity of individual complaints to have any general deterrence effect; and
- (e) The transfer of proceedings to the Federal Magistrates' Court, legalism in the proceedings and the risks of costs associated with taking a compliant deters complaints, rendering the remedies available anti-discrimination laws inaccessible to many workers.

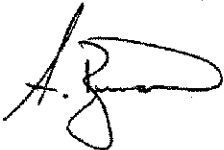
Having said that, if the forthcoming workplace relations legislation removes or restricts the role of the AIRC in preventing discrimination in the workplace or removes the role of the AIRC in encouraging family friendly measures then the ACTU would advocate amendments to the anti discrimination laws to address these concerns.

This would include:

- (a) expanding the prohibition of discrimination on family responsibilities ground to include indirect discrimination;
- (b) prohibiting all forms of detrimental treatment on this ground;
- (c) expanded capacity for representative actions; and
- (d) the establishment of a prosecutions agency to assist complainants with the costs of pursuing their complaint.

The ACTU would be happy to discuss these matters further with you or other members of the Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Burrow', with a stylized flourish at the end.

SHARAN BURROW
President