# CHAPTER 8

# WORK AND FAMILY

*It is fair to say that many employers will say that they can now be trusted to manage their employees without a third party and, my goodness, I think I have even written that rhetoric. But the reality is that I know some who can be trusted and some who cannot, and often the ones who cannot are the ones where we have least coverage industrially to do something about protecting their workers, and that is what concerns me.*

Susan Halliday, Sex Discrimination Commissioner, 1999

## Introduction

8.1 One of the terms of reference for this Inquiry was the impact of the WR Act on the balance between work and family responsibilities, and whether the balance can be improved. The Government Senators' report dealt with this term of reference quite dismissively in just five paragraphs.

8.2 This report provides a more in depth assessment of evidence presented to the Committee regarding work and family. There were actually many submissions to the Committee that dealt specifically with the impact of the WR Act on women, who still tend to have primary responsibility to care for children and elderly family members. The evidence presented in these submissions is not encouraging. Almost all indicated that the ability to manage both work and caring responsibilities had deteriorated under the deregulated environment promoted by the WR Act, particularly through the deregulation of hours of employment. For example, the Human Rights and Equal Opportunity Commission (HREOC) made the following points about deregulation:

> …the flexibility required by employers is often in conflict with the nature of the flexibility required by workers with family responsibilities. The reduction in the role of the AIRC, the deregulation of part-time and casual work and the award simplification process all have potential for negative impact on workers.[1]

8.3 However, the Committee was assured that balance between work and family continues to be a high priority for the Government:

> From its outset, the WR Act has a strong emphasis on work and family balance. This is reflected in the principal object of the WR Act with its specific reference to 'assisting employees to balance their work and family

1 Submission No. 423, Human Rights and Equal Opportunity Commission, Submission No. 472, p. 32

> responsibilities effectively through the development of mutually beneficial work practices with employers'.[2]

8.4 Many submissions from individual employees did not agree that the WR Act had assisted them to reach mutually beneficial outcomes with their employers to balance their work and family commitments. In fact, the reality for many workers seems to be far removed from the Government's rosy view:

> Peter Reith made a promise that no worker would be worse off under his first wave changes. This has been a LIE. Many workers have lost overtime entitlements, sick leave, meal breaks and are required to work unlimited days and hours. Not only have their wages decreased but they have lost quality of life. There is no such thing as family life – the weekend is now work dominated.[3]

> Ms S: We all work harder and harder for less pay, less security and no other rewards. I've been working in this place for 7 years and there has never been a divorce. Last year (1997) two women got divorced and 3 women basically had a nervous breakdown. I am sure there are links between what is happening to us at work and how this impacts on our health and relationships at home.[4]

8.5 Many people were also very concerned that the proposed amendments in the Bill would make the situation worse, and result in them having to spend more time at work, away from their families:

> I am forty five years old and have to work full time as a sales assistant to survive even though my husband is also in full time employment…I wish that I could spend more time with my precious family and have been working towards that goal, but feel that with Mr Reith's proposal I will be working to my grave.[5]

> My husband and I are struggling to make ends meet at the moment and we would probably end up losing our house if this legislation is passed and our pays are cut…I am also concerned for the future of our little girl. She is just four years old. What will she have to look forward to, if we are required to work weekends? We will no longer have any 'family time' and that is very important to us all.[6]

> I am employed full time in the retail industry and only just manage to pay all the Bills required (mortgage, etc). Working in retail, I work odd hours and don't get to spend as much quality time with my family. I have to also

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2 Submission No. 329, Department of Employment, Workplace Relations and Small Business, p. 214

3 Submission No. 336, Julie Heagrey, vol. 12, p. 2442

4 Submission No. 441, Women for Workplace Justice Coalition, p. 5

5 Submission No. 485, Susan Fechner, vol. 24, p. 6167

6 Submission No. 34, Mrs J Luttick, vol.1, p. 148

> work overtime in order to support my family because I am on a low income. If the proposed changes go through I will have to work longer hours with no overtime rate and see less of my family. All this will do is add more pressure and stress, please support ordinary hard working Australians like myself who want to be rewarded and spend quality time with our families. Please say no to the proposed changes.[7]

8.6 The importance to our society of balancing work and family cannot be understated. People need to work to support themselves financially, and the days of the nuclear family with Dad at work earning enough to support Mum and the kids at home have long disappeared. The 'normal' Australian family is no longer a married couple with 2.3 children, and even those families are finding it harder and harder to survive on single incomes.

8.7 If we do not ensure that our working arrangements allow for people to mix work with having children, we will find the long term effects on our population very serious:

> Australian demographers are discovering that the trend towards childlessness and smaller families is no longer confined to women at the upper end of the income and education scale. In what amounts to a new demographic phenomenon, women from low socioeconomic backgrounds, who have historically had larger than average families, are also reducing their fertility, and are doing so at a surprisingly fast rate. The result, revealed in Australian Bureau of Statistics data released this week, is a fall in the national fertility rate for six consecutive years to an all-time low of 1.76 births per woman.[8]

8.8 Academic researchers believe that a lack of family friendly employment practices is contributing to the decrease in the birth rate:

> [Australian Institute of Family Studies researcher, Christine] Kilmartin suggests that the family-friendly work practices increasingly available to women in high-status jobs (such as job sharing, paid maternity leave and flexible hours) are not making their way down to small businesses or women working on the factory floor, and that this is beginning to show up in fertility levels.[9]
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> Low fertility is the result of conflict between a liberal economic agenda and the persistence of social institutions which are premised on the male breadwinner…The answer is not the conservative social agenda promoted by the Howard Government, but, rather, a liberal social agenda that

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7 Submission No. 74, George Papadopoulos, vol. 1, p. 231

8 Michelle Gunn, Social Affairs writer, *The Australian*, 20 November 1999, p 22

9 *The Australian*, 20 November 1999, p. 23

> encourages women to have children and, at the same time, maintain a high level of attachment to the labour market.[10]

8.9 The rest of this chapter considers in detail evidence suggesting that the WR Act has seriously reduced the ability of workers with children to remain in the labour market, and considers how the proposed changes to the Act set out in the Bill could further destroy work and family balance.

**Impact of the Workplace Relations Act**

8.10 The Government provided the Committee with its *Work and Family State of Play 1998* publication, which consolidates and analyses the most recent information on work and family from various data sources. The Report finds that 'organisations are increasingly providing family friendly provisions that meet the needs of employees and employers at the workplace.'[11]

8.11 The Report outlined what sorts of 'family friendly provisions' are being provided by private sector workplaces, based on data collected from the reports of 2000 firms to the Affirmative Action Agency. The most recent figures were provided for 1997, and indicate that, from this sample:

- paid maternity leave is provided in 15 per cent of workplaces[12];
- permanent part time work is available in 81 per cent of workplaces[13];
- job sharing opportunities exist in 63 per cent of workplaces[14];
- child care or child care assistance is provided in 13 per cent of workplaces[15]; and
- personal/carer's leave is available in 72 per cent of workplaces.[16]

8.12 These data suggest that family friendly entitlements that are costly for employers (child care and paid leave) are still only available in a small minority of workplaces. Personal/carer's leave is an exception, and the report explains that the rapid increase in the availability of personal/carer's leave is predominantly due to the

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10 Peter McDonald, Australian National University demographer, quoted in *The Australian*, 20 November 1999, p. 23

11 Work and Family State of Play 1998, Work and Family Unit, Department of Employment, Workplace Relations and Small Business, p. 1

12 *ibid*, p. 18

13 *ibid*, p. 20

14 *ibid*, p. 21

15 *ibid*.

16 *ibid*, p. 22

efforts of the Commission, which established standard personal/carer's leave clauses in awards through the Carers' Leave Test Case decision in 1994.[17]

8.13 The report comments on the trends as follows:

> …while paid maternity and paid paternity leave are obviously important conditions for employees, and are beneficial for employers in terms of increasing retention rates, they are accessed at most only a few times during the working life of an employee. Similarly, on-site child care centres are a great facility, particularly if no other child care providers are available close to work or home, but they are generally only used by parents with children of pre-school age…Unlike paid maternity leave or child care, being able to leave during the day to care for a child or other family member and having control over start or finish times are part of ongoing conditions that provide employees with greater choice in balancing work and family over a number of years.[18]

8.14 The Report clearly indicates that the Government's current focus is to promote more flexible working hours and arrangements to assist employees in balancing work and family commitments, rather than more expensive options such as paid maternity leave or child care. However, much of the evidence presented to the Committee suggests that the legislative framework provided by the WR Act to achieve flexible working arrangements is actually acting to the detriment of workers with family commitments.

*Flexible working arrangements*

8.15 Unfortunately there was no comparable information provided by the Affirmative Action Agency on the proportion of workplaces where employees have access to flexible working arrangements to meet caring responsibilities. However, data included in the Work and Family Report from the earlier Australian Workplace Industrial Relations Survey 1995, indicated that at only 37 per cent of workplaces employees reported that they 'could use flextime or make the time up later, if they needed time off work to look after family or household members.'[19] This figure is surprising as, unlike the Affirmative Action Agency data, the AWIRS data include public sector employees, many of whom have had access to flextime as an established condition of employment for years.

Agreements

8.16 The Report noted that 53 per cent of certified agreements contained flexible working hours provisions and '79 per cent of AWAs provide at least one family-friendly provision when flexible hours provisions are included.'[20] However, the

17 *ibid*.

18 *ibid*, pp. 5-6

19 *ibid,* p. 44

20 Submission No. 329, Department of Employment, Workplace Relations and Small Business, p. 217

Report noted that flexible work provisions in agreements may not actually benefit employees with families in practice:

> …it should be noted that the existence of such arrangements is not necessarily an automatic indicator of family-friendliness in agreements. The way in which the flexible working hours arrangements are determined and implemented will impact on the benefits for workers with family responsibilities.[21]

8.17 For this reason, HREOC criticised the Report's methodology in analysing the 'family friendliness' of flexible hours provisions in agreements:

> …an examination of the coding fields used in the report's analysis raises concerns about the report's conclusions on the incidence of work and family provisions in agreements. Indicators of potentially work and family friendly provisions included time off in lieu at ordinary time rates: this provision is most commonly used to reduce the take home pay of employees…and are at the discretion of management so would therefore not be seen as a work and family provision;…and hours averaged over an extended period, compressing working week and flexible start and finish times: these provisions are equally indicative of working patterns that actively make it difficult for employees to balance work and family responsibilities such as increased irregularity of hours and ordinary hours or work at unsociable times including weekends and early or late start and finish times. These figures would be considerably different if these less robust indicators were removed from the analysis.[22]

8.18 This is a significant point. While in theory, many certified agreements and AWAs made under the WR Act may appear to include family friendly hours provisions, these provisions are often open to be used in a way that actually limits the ability of workers to balance their family commitments.

8.19 The evidence presented to this Inquiry suggests that flexible working hours are more often used to benefit employers, rather than employees:

> Changes to working time arrangements can provide flexibility to both employers and employees, for example, where available, 'make-up time' provisions allow employees to take time off for reasons such as family responsibilities and 'make-up' the time at a later stage. A significant number of the changes in working time arrangements however appear to have provided flexibility to, and gains for, management – particularly in terms of deploying staff to cover peak periods of activity while limited flexibility has been achieved for workers. For example, when asked if they could take some time off work to care for a sick family member, a fair proportion of

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21 Work and Family State of Play 1998, Work and Family Unit, Department of Employment, Workplace Relations and Small Business, p. 6

22 Human Rights and Equal Opportunity Commission Supplementary Submission, 26 October 1999, pp. 2-3

> workers could do so by using their own sick leave or holiday leave (42 per cent) and a smaller proportion could take leave without pay to do so (36 per cent). But only 16 per cent of all workers could take time off and then make it up later. The workers who did have flexibility in this area were primarily managers and professionals.[23]
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> The recent report on work and family, produced by the Department of Employment, Workplace Relations and Small Business found that 'flexible hours' were common in agreements, with 20 per cent of AWAs containing a provision for averaging of hours of work over an extended period. While this was presented as 'family friendly', the reality is that these provisions enable employers to change hours around on a daily or weekly basis, rather than being required to provide regularity. There is no indication that these provisions give the workers involved any flexibility at all.[24]

8.20 Also, it was submitted that agreements reached under the WR Act were often more likely to trade off family friendly conditions that had previously been available to workers. In addition, these conditions were not generally being traded off for decent wage increases:

> We are seeing perhaps the most egregious examples of trade-offs of compensatable hours, of penalties and of protections against working unsociable hours to be found amongst low paid workers and in industries which are highly feminised…that can be a matter of weekly hours of work being too long—weekly hours being regarded as normal from Monday to Sunday— and the daily span of hours…We are also seeing in bargaining other provisions, which are of disproportionate importance to women, not being settled in AWAs at quite alarmingly low rates. For example [provisions that] relate to child-care arrangements; [that] relate to carers leave. They…at least make some attempt to allow workers time off, typically for family reasons, or that offer some sort of compensation or subsidy, in particular for family and child-care arrangements. Those very important provisions—which we all hoped would be the sorts of provisions to be worked out when employers and employees came together to bargain—have simply not eventuated. Only about 20 per cent of AWAs have mentioned those sorts of provisions at all.[25]
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> Some people have argued that women are accepting lower pay rates in such bargains because they are getting better family friendly outcomes on other questions—better hours, paid maternity leave and so on. Unfortunately, the research evidence on that from a recent paper developed at ACIRRT in Sydney suggests that is quite to the contrary. Where you find low wage outcomes in highly feminised areas you find poorer outcomes in terms of

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23 Human Rights and Equal Opportunity Commission, Submission No. 472, pp. 49-50

24 Submission No. 466, UTLC Women's Standing Committee, p.12; Submission No. 164, Katherine Wrigley, pp. 6-7;

25 Dr Richard Hall, Australian Centre for Industrial Relations Research and Training, Evidence, Sydney, 22 October 1999, p. 255

> access to family friendly issues. What you find is a pattern of double disadvantage—poor wage outcomes and, in my view, greater loss of control over hours, which is the critical question when you want to examine whether a provision is family friendly or not. I find much of the evidence in a range of reports talking about family friendliness is offered to you in such vague terms that it is very difficult to determine exactly who is benefiting from the flexibility—the employee or the employer.[26]

8.21 The Finance Sector Union provided a specific example. They submitted that their members who work in the banking industry were having problems balancing work and family commitments because agreements had limited their access to paid overtime:

> …our members are increasingly losing control over their hours of work... This is a big issue for our members as 62 per cent of our workers are women…And more than half of our women members have family responsibilities at any time. It is difficult for our members to reconcile their family responsibilities with increasingly excessive hours of work. Our industry has received a lot of publicity around this issue. The figure of one million hours overtime per week being worked in our industry, much of which is unpaid, is a heavily publicised figure.[27]

8.22 The Finance Sector Union suggested measures to improve work and family balance:

> In particular, we agree with the recommendation of the ACTU that a way of overcoming this problem would be to ask the Industrial Relations Commission and the Sex Discrimination Commissioner to develop award provisions which would somehow scrutinise hours of work provisions for their likely effect on workers' ability to meet their family responsibilities as well as their work responsibilities. Further, based on the evidence that Australian workplace agreements are more likely to include provisions around flexible hours of work, and that if the legislation were to go forward Australian workplace agreements would take precedence over other agreements, we would be concerned that the Employment Advocate would be seen to have some responsibility for assessing the impact of flexible hours of work provisions on workers and that this would be a key part of the no disadvantage test.[28]

8.23 HREOC suggested that in some cases 'flexible' hours of work provisions were actually discriminatory in their operation and should be referred to the Sex Discrimination Commissioner:

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26 Dr Barbara Pocock, Evidence, Canberra, 28 October 1999, p. 512

27 Susan Kenna, Finance Section Union, Evidence, Melbourne, 7 October 1999, p. 86

28 *Ibid*

> Hours of work agreement provisions are an area where indirect discrimination may be difficult to identify at the time of agreement approval, and in many cases may only be assessed as discriminatory in their impact in retrospect. For example, a common wording of agreement provisions dealing with hours of work is phrased in terms of '…hours will be worked (so far as practicable) continuously subject to family responsibilities, seasonal fluctuations and the operational requirements of the business'. In this case, an employer may sensitively deal with actual hours worked by an employee in response to caring responsibilities. Equally, organisational requirements may consistently take precedence. In this case, the discriminatory impact of an agreement may only become evident in retrospect.[29]

Awards

8.24 Flexible hours have also been introduced into awards under the WR Act. One of the main 'flexibilities' introduced for working hours was subsection 89A(4), which provides:

> The Commission's power to make or vary an award…does not include: (b) the power to set maximum or minimum hours of work for regular part time employees.

8.25 Provisions in awards setting maximum and minimum hours of work for part time employees have therefore been removed from awards as part of the award simplification process.

8.26 This has had a particular impact on women for two reasons. Firstly, as discussed elsewhere in this report, women are much more likely to rely on awards to set their terms of employment than men, who are more likely to be covered by agreements. Secondly, women make up 72.4 per cent of all part time workers in Australia, as it is still primarily women who are required to combine both paid work and family responsibilities.[30]

> Award simplification has enabled employers to distribute working hours and incidence of work in ways which dislocate private life and family commitments. Rather than providing women with increased flexibility, these changes have negatively influenced the working lives of women by reducing their security of employment and increasing the risk of exploitation. The 'flexibility' that was much touted as the end product of the 1996 amendments has tipped the scales in favour of flexible outcomes for employers at the expense of those employees with reduced industrial muscle.[31]

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29 Submission No. 472, Human Rights and Equal Opportunity Commission, vol. 23, p. 5847

30 Submission No. 155, Kim Draisma, University of Wollongong, vol. 3, p. 593

31 Submission No. 441, Women for Workplace Justice Coalition, vol. 21, p. 5185

8.27 Much if the evidence about the balance between work and family related to the removal of the Commission's ability to regulate hours of part time work in awards:

> An indicator of how the changes have reduced the protection afforded by award regulation for working women is the inability of the Commission to set maximum or minimum hours of work for regular part-time employees. Split shifts are problematic. Under the previous award system many women in the hospitality and cleaning industry used to work two shifts: one week from 6.00am to 1.00pm and the next week from 1.00pm to 7.00pm. Now, many of these women are required to work split shifts; from 6.00am to 9.00am and again from 4.00pm to 8.00pm on the same day.[32]

8.28 The Women for Workplace Justice Coalition's submission provided anecdotal reports from some women as to how the changes had affected them. For instance:

> Ms O: Until 2 years ago my husband and I were able to share the child care and the car. Now that I have to work two shifts this is not possible any more. First I used the train at 5.30 in the morning but I was attacked, harassed and touched a few times now I am too scared and my husband drives me to work. This means we have to drag the children out of bed at 5.30am or leave them on their own for over an hour. Sometimes I take a taxi. I don't know what to do. We need the money and I like working but I also feel very worried about my children.[33]
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> Ms N: My husband and I work in the same factory. There used to be three shifts and we always got different shifts so we could look after our children and had family time together. Now they want us to work 4 days per week, 12 hours every day. If this happens, one of us has to leave because we can't leave our children at home.[34]

8.29 The Women for Workplace Justice Coalition also pointed out that 'the difficulties associated with employment hours are exacerbated by the lack of flexible and affordable child care. Parents who book their children into child care are usually obliged to give many weeks notice and are liable to pay for the booked time. For women who then may only get a few hours of work, this is not cost-effective and often results in a net loss of money.'[35]

8.30 The Sex Discrimination Commissioner agreed:

> It is a case of saying, 'It is something that you will now do because if you want your job here you have to start at 6.30 in the morning.' It does not coincide with the way the rest of the world works out there. That does not mean that your child-care centre is now going to open for you at 6 o'clock

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32 ibid

33 ibid, p. 9

34 ibid.

35 ibid.

> in the morning, and there are very few that do. And to change rosters or to have rosters that rotate often means child-care hell because child-care centres do not work with that scenario, nor are they interested in doing so from my experience. It is about saying, 'No, you have got to drop your child off at 7 a.m. and pick the child up at 6 p.m.' And the days when your rosters are changing—say, you work Monday this week, Tuesday next—the child-care centre booking has to be permanent, so that means you end up paying for both days both weeks, even though you only worked one each week. So you have got to ask who does the flexibility suit and be realistic about all the other infrastructure and support mechanisms that men and women need to actually go to work.[36]

8.31 Other submissions reinforced the view that flexible hours, and particularly the lack of award provisions to set maximum, minimum or even regular hours for part time workers, had negatively affected employees' ability to manage work and family:

> Our concerns in this area have always been to ensure regular and predictable hours of work for part time employees and to ensure that they are not forced into part time work when their preference is for full time work or longer hours, as necessary for financial survival…It is essential for part time women workers to have totally predictable hours of work so that they can meet these [caring] commitments. Schools and childcare centres close at particular times each day and do not open on weekends. These are the non-negotiable realities that most women who work part time must work around.[37]

> One of the issues that we lost last time was the regulation that awards had to say what your minimum and maximum hours would be if you were a part-time worker. Now we have many cases of women, in particular, with no certainty in their hours of work. One week the employer might call them in for five hours, the next week they might get nothing at all.[38]

> On the question of balancing work and family responsibilities in an industry of approximately 70 per cent women [education], the 1996 act has failed in its object and should be amended. A clause in the Victoria schools award was diluted which provided for limiting the spread of part-time hours. That means that if you are a 0.4 teacher, you can be required to come in for four or five days, rather than concentrating the spread of those hours in one or two days. Again, the face-to-face teaching hours dilution is a great concern where it comes to balancing work and family responsibilities.[39]

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36 Susan Halliday, Sex Discrimination Commissioner, Evidence, Sydney, 26 October 1999, p. 379

37 Submission No. 429, Women's Electoral Lobby, National Pay Equity Coalition and Business and Professional Women Australia (NSW), vol. 20, p 25

38 Jennie George, Australian Council of Trade Unions, Evidence, Canberra, 1 October 1999, p. 24

39 Robert Durbridge, Australian Education Union, Evidence, Melbourne, 7 October 1999, p. 113

8.32 It should be noted that the WR Act already purports to provide some protection for part time workers: under subsection 89A(5) the Commission may include provisions in an award facilitating a regular pattern of hours for 'regular part time employees'. A regular part time employee is defined in section 4 as:

> an employee who: (a) works less than full-time ordinary hours; and (b) has reasonably predictable hours of work…

8.33 In light of the evidence discussed above, these provisions are clearly not providing a sufficient guarantee of regular hours for part time employees. The National Pay Equity Coalition suggested that the definition of part time worker should be amended, and provisions reintroduced to allow the Commission to regulate hours of work for part time workers in awards:

> …the availability of part-time work is not in itself helpful to women unless the part-time work is of a regular and predictable nature and the jobs are well designed so as to promote career progression. We believe the definition of 'regular part-time employee' currently in the act does not go far enough in protecting women's income and giving them the certainty they need that they will be able to meet their other responsibilities at certain times of the day. We would like to see the reference to 'reasonably predictable hours of work' replaced with 'regular and predictable hours of work'. This would be consistent with the government's publicly stated reason for wanting to make part-time work more readily available—that is, to help women balance work and family responsibilities. For the same reason, we believe there should also be a provision in the act to prevent an employer unilaterally making full-time jobs part time or reducing part-time hours without consultation with the employee.[40]

8.34 This would require a slight reversal of the current deregulated approach to working hours. However, the Women for Workplace Justice Coalition made an interesting point about the effect of removing regulatory provisions from awards for the sake of improving 'choice' for employers and employees:

> We cannot agree that the present system provides women with valid choices. On the contrary, we consider that the workplace now offers less flexibility for women than it did prior to the 1996 amendments, resulting in increased stress and greater inequity in the workplace…The limitation of the Australian Industrial Relations Commission's award making power means that women cannot 'choose' to have certain matters safeguarded by their award, as they used to be able to do…Nor can women 'choose' to have the Commission arbitrate on matters in the way it used to.[41]

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40 Fran Hayes, National Pay Equity Coalition, Evidence, Sydney, 26 October 1999, p. 408

41 Submission No. 441, Women for Workplace Justice Coalition, vol. 21, p. 5182

Schedule 1A - Victoria

8.35 There is evidence that deregulation of part time hours has not only been a problem for part time workers under awards and agreements, but also for Victorian workers whose conditions are set in accordance with Schedule 1A of the WR Act:

> The issue of flexible working hours, which you raise, is interesting because for schedule 1A employees we have consistent examples where women are being forced to start at ridiculous hours in the morning, or they have been asked to work 12-hour days. In many cases they are not even receiving payment for their overtime. Obviously, one of the limitations of the current schedule 1A is that there is no statutory right to enforcement for paid overtime. The issue of extension of hours is quite pronounced under the schedule 1A.[42]

*Conclusions*

8.36 The WR Act is not currently operating to allow workers to balance their work and family commitments through flexible working arrangements. The evidence before the Committee demonstrates that flexibility in working arrangements is most often benefiting employers, not employees. Workers are increasingly under pressure to work hours and shifts that suit their employers, involving longer hours, unsociable hours without penalty rates and unpaid overtime. This is not assisting workers with family responsibilities, and is probably discouraging workers from having children at all.

8.37 Regarding agreements, many provisions may appear at face value to operate to allow employees flexibility to balance work and family. However, these provisions will often be worded in a manner that allows them to be implemented by employers to disadvantage workers with family responsibilities. The Commission and the Employment Advocate should examine such provisions more carefully when applying the no-disadvantage test to assess how the provisions will operate in practice, and if appropriate require undertakings regarding employees with family responsibilities prior to certification or approval of the agreements.

8.38 Regarding awards, the removal of the Commission's ability to set minimum and maximum, and regular, hours of work for part time employees appears to have had disastrous consequences for many workers attempting to combine work and family responsibilities. The lack of minimum guaranteed hours affects women who need a regular income to support their families, and lack of notice of changes to shifts and working hours creates havoc with child care arrangements.

8.39 72.4 per cent of part time workers are women, and over a million working women have dependent children under the age of 15, of which 170,000 are sole parents.[43] Clearly a major proportion of part time workers are women attempting to

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42 Vivienne Wiles, Jobwatch Inc, Evidence, Melbourne, 8 October 1999, p. 179

43 Submission No. 155, Kim Draisma, University of Wollongong, vol. 3, p.593

balance work and family commitments, and this should be a primary consideration when considering the need for regulation of part time hours.

8.40 The Labor Senators believe that section 89A(4)(b) should be repealed, and award provisions regulating minimum and maximum hours of work for part time employees that have been removed through the award simplification process should be restored by the Commission. The Labor Senators also agree with the recommendations of the National Pay Equity Coalition that the definition of 'regular part-time employee' in section 4 of the WR Act should be amended to read 'regular and predictable hours of work' rather than 'reasonably predictable hours of work'. The evidence presented to the Committee demonstrates that this existing protection is insufficient.

8.41 The Labor Senators also agree that a new provision should be introduced into the Act to ensure that employers of part time employees cannot unilaterally decide to reduce their hours or convert their jobs to full time status, as suggested by the National Pay Equity Coalition.

8.42 Regarding Victorian workers, the Labor Senators believe that the recommendations outlined elsewhere in this report (ie. that federal award coverage be broadened) will address the particular problems faced by Victorian workers with family responsibilities, in conjunction with our proposed changes to awards outlined above.

*Pregnancy and maternity leave*

8.43 The impact of the WR Act on pregnant workers has already been outlined in Chapter 7 on the 'Needs of workers vulnerable to discrimination'. However, in the context of assisting workers to balance their work and family commitments, some additional comments are relevant here.

8.44 It was reported that women had lost access to paid maternity leave since 1996, even though 'parental leave, including maternity…leave' remained an allowable award matter under paragraph 89A(2)(h):

> We were concerned in 1996 with the move towards reducing allowable matters in awards. Some of our fears have been realised. For example, the award simplification process so far has resulted in women losing employment rights such as paid maternity leave.[44]

8.45 The Community and Public Sector Union also told the Committee that some of its members in the former Commonwealth Employment Service have lost access to

44 Submission No. 429, Women's Electoral Lobby, National Pay Equity Coalition and Business and Professional Women Australia (NSW), vol. 20, p 4896

paid maternity leave as a result of the transmission of CES staff to a new Government owned corporation, Employment National.[45]

8.46 It is disturbing that paid maternity leave seems to be disappearing from awards, rather than being extended to cover more employees as working standards improve over time. It is clear that paid maternity leave is not being picked up to a great extent in agreements, as the Work and Family State of Play Report states that only 7% of certified agreements provide for paid maternity leave. Paid paternity leave is even less frequent, appearing in only 2% of certified agreements.[46]

8.47 It is matter of particular concern that the Commonwealth Government has sought to remove paid maternity leave entitlements from its own employees. The Government is clearly not attempting to lead by example to back up its family friendly rhetoric.

8.48 Some submissions also raised the possibility that employers are deliberately employing women as casual employees to avoid entitlements to paid and unpaid maternity leave. For instance, HREOC submitted:

> Due to the lack of solid data, speculative comment is the only option, but based on the concerns documented for this inquiry, it appears there are employers using casual employment status to avoid the rights and responsibilities associated with pregnant employees.[47]

> The vast majority of TAFE teachers are casual workers. The senior teachers, of whom there are far fewer, are permanent employees, and they are largely men. Then we have examples like one that came through where a casual supply teacher who had been there for two years continuously had a teaching load of four days, four hours and 15 minutes, which is half an hour short of a full-time teacher's load. So when she applied for maternity leave payment she was denied it on the basis that she was only a casual; she had never taught a full load. So what we see is people using the system to fall short by 15 minutes a day of what would then offer an entitlement that every other worker would be likely to be entitled to. That exploitation of a system or that calculated usage is something that we find quite unsavoury. It emerged over and over again with instances of women not being able to put their hand up for even unpaid maternity leave. When you see that the tenure for casuals has increased to 3½ years on average, and they are largely women, why is it that they are disadvantaged, have to leave and are not in a position to return to that job because of that status?[48]

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45 Submission No. 379, Community and Public Sector Union, Attachment C

46 Work and Family State of Play 1998, Work and Family Unit, Department of Employment, Workplace Relations and Small Business, p. 26

47 Submission No. 472, Human Rights and Equal Opportunity Commission, vol. 23, p.5862

48 Susan Halliday, Sex Discrimination Commissioner, Evidence, Sydney, 26 October 1999, p. 376

8.49 The Queensland Government has recently enacted legislation to address this problem, by extending unpaid parental leave to casual employees who have worked for their employer on a regular basis for two years[49]:

> Probably the most significant initiative that is in the legislation that was not in earlier legislation is the extension of maternity leave to long-term casuals. A significant proportion of the casual work force are women. I think it is slightly less than a third. A significant number of casual employees are in fact employed on that basis on a long-term basis.[50]

8.50 HREOC also stated that the New South Wales Government had undertaken to amend the NSW Act to 'give long term permanent casual workers (ie those who have worked more than two years for an employer) access to maternity leave provisions.'[51]

8.51 HREOC recommended that access to maternity leave also be extended to casuals working under the federal jurisdiction:

> For the purposes of this submission to the Senate Employment, Workplace Relations, Small Business and Education Committee, HREOC reiterates recommendation 25…from the Report of the National Pregnancy and Work Inquiry…That the *Workplace Relations Act 1996* (Cth) be amended to extend unpaid maternity leave to casual employees employed for over 12 months.[52]

*Conclusion*

8.52 The Labor Senators agree that the issue of extending unpaid maternity and paternity leave to casual employees should be seriously considered at the federal level. Such legislative protection would ensure that workers can return to their jobs after having children, which will assist workers in balancing their work and family lives.

*Other issues*

8.53 Other submissions made particular comments about the impact of the WR Act on workers' family lives. Several ex-employees of the Gordonstone mine wrote to the Committee about their experiences under the deregulated bargaining system introduced in 1996, including some confidential submissions that unfortunately cannot be included in this report. The long running dispute between ARCO/Rio Tinto and their employees lasted for 22 months and resulted in the mass sacking of more than 300 employees, who were later found by the Commission to have been unfairly dismissed. The dispute took an enormous toll on the employees and their families. For example:

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49 Sections 16 – 18 *Industrial Relations Act 1999 (Qld)*

50 Marion van Rooden, Queensland Government, Evidence, Brisbane, 27 October 1999, p. 469

51 Submission No. 472, Human Rights and Equal Opportunity Commission, vol. 23, p.5857

52 ibid, p. 66

> I received my letter hand delivered by two security guards informing me that I had been sacked. Not long after this I was declared bankrupt. When I started this job I had two cars which we owned and a house I was paying off. At the end of Arco's carnage I had to sell the house and hand all the money…back to the banks. My wife and family now live together apart from me.[53]

8.54 The WR Act, with its emphasis on bargaining at the workplace level and a reduced role for arbitration of industrial disputes, has created a situation where intractable industrial disputes are occurring with disturbing regularity. Other long and damaging industrial disputes referred to in evidence before this Committee include those at the G&K O'Connor abattoir and the Australian Dyeing Company, and the 1998 waterfront dispute.

8.55 The impact that intractable industrial disputes have on families should not be overlooked in our assessment of the impact of the WR Act on work and family.

8.56 The Committee also received a submission from the New Zealand Council of Trade Unions regarding disturbing trends that are emerging from New Zealand, which has had a similarly deregulated industrial relations system since the early 1990s:

> [In New Zealand] there has been a bi-polar development in work and its impacts on the discharge of family responsibilities. For some, there is not enough work leading to inadequate incomes and an inability to attend to the financial needs of families. At the other end there is 'over work' resulting in families having too much work to attend the personal and emotional needs of family members. These complex trends apply not only within households but within communities (neighbourhoods) leading to cycles of social disadvantage (low rates of couple formation, inadequate outcomes, sub-standard housing, poor health status, low educational achievement, weak employability) which pass from generation to generation intensifying as they do.[54]

8.57 The Labor Senators are concerned that similar trends will occur in Australia unless the Government takes action to regulate hours of work. More standardised and regular hours of work are necessary to limit both underwork and overwork, and the socially dislocating effects of both phenomena.

**Amendments proposed in the Bill**

*Award clauses dealing with transfers between types of employment*

8.58 The Department's submission, which outlined how the WR Act was delivering family friendly work practices, stated that award reliant employees had access to a number of family friendly provisions:

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53 Submission No. 421, Alex Strudwick,

54 Submission No. 395, New Zealand Council of Trade Unions, p. 18

> The WR Act also maintains an effective safety net of fair minimum wages and conditions of employment through the award system. The protection afforded to workers with family responsibilities by awards is reflected in the WR Act through the inclusion of relevant allowable award matters, notably hours of work, personal/carer's leave, **parental leave** and type of employment (emphasis added).[55]

8.59 This submission is quite astounding given that later, at page 297, the Department also outlines the Government's proposal to prohibit award clauses about transfers from one type of employment to another, which will effectively rip the guts out of current award parental leave provisions.

8.60 An essential part of the standard award clauses that resulted from the Commission's Parental Leave Test Case is the right for employees to transfer to part time work during pregnancy and following the birth (or adoption) of a child, and to transfer back to full time work again when the employee's caring responsibilities have reduced. Otherwise, the employee's ability to provide financial support to their new family and the employee's career prospects will be severely impeded.

8.61 The Government merely explains that '[t]hese matters are more appropriately dealt with by agreement at the workplace or enterprise level.'[56]

8.62 This proposed amendment is considered in more detail in Chapter 7 of this report: 'Needs of workers vulnerable to discrimination'. However, the Labor Senators reiterate their strong opposition to the proposed amendment. It will reduce the ability of new parents to balance their work and family responsibilities and should be rejected.

*Part time hours of work*

8.63 The Bill proposes to re-enact current subsection 89A(4) of the Act in new paragraph 89A(3A)(j). As discussed in more detail above, this provision prevents the Commission from making awards that assist part time workers to manage their work and family responsibilities through regular and predictable hours of work:

> A large proportion of women work part time or casual hours because of the family responsibilities they are relied upon to meet, such as caring for children or elderly parents. It is often essential for part-time workers to work predictable hours so they can meet these responsibilities. The proposed amendments do not ensure regularity of working hours, but rather provide the opportunity for employers to make working hours less predictable.[57]

8.64 This new provision should be rejected.

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55 Submission No. 329, Department of Employment, Workplace Relations and Small Business, p. 214

56 ibid, p. 297

57 Submission No. 253, Kingsford Legal Centre, p. 7

*General comments*

8.65 The Bill would further limit the Commission's power to make awards, and would require employers, employees and the Commission to go through another round of award simplification to remove more entitlements from awards. Women, who tend to have primary responsibility for caring, are disproportionately reliant on awards. The Bill amendments will therefore tend to disadvantage workers with family responsibilities, who are already marginalised from the workplace as they normally work part time or casually and have less bargaining strength.

8.66 The HREOC Report *Stretching flexibility: enterprise bargaining, women workers and changes to working hours* found that:

> …the greatest protection for women workers will be in the maintenance and strengthening of minimum standards and protection through a comprehensive no-disadvantage test and the maintenance and strengthening of consultation requirements.[58]

8.67 The Government's approach to further limiting and reducing the award safety net would appear to ignore the complex interaction between awards and agreements through the no-disadvantage test. Arbitrary reductions in allowable award matters and limiting the scope of safety net wage increases will not only affect award workers, but it will also reduce the standard against which agreements and their provisions are tested.

8.68 HREOC recommends that the Government should provide 'a comprehensive no-disadvantage test in the context of properly fixed award conditions to provide the framework for enterprise bargaining to ensure that any increased flexibility in working time arrangements allows all employees…the opportunity to more effectively blend their work and family responsibilities…'[59]

8.69 The Labor Senators endorse this recommendation, and reject the Bill's approach to reducing the award safety net and no-disadvantage test standards. This is discussed further in Chapter 4 on the 'Standing of the Australian Industrial Relations Commission'.

8.70 Labor Senators also recommend that:

- transparency and review mechanisms for all forms of agreements be provided to ensure work and family provisions deliver their stated outcomes. Provisions such as flexible hours or spread of ordinary time should be closely examined to ensure that work and family responsibilities for current and future staff are enhanced; and

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58 *Stretching flexibility: enterprise bargaining, women workers and changes to working hours*, Sara Charlesworth, August 1996, p. 9

59 ibid p. 12

- priority also be given to the development of model Award and agreement provisions to assist employees balance work and family responsibilities.