

Chapter 4

Social objectives

4.1 In chapter 1 it was noted that while the Government placed emphasis on the employment enhancing claims of its policy and legislation, most of the adverse comment on the policy debate leading up the introduction of the WorkChoices Bill concerned 'quality of life' aspects of employment. The claim of 'improved flexibility' was seen for what it is: an extended period of hours of employment at a standard wage. There was much discussion on the effects of extended hours of work on family life, and on likely cuts to special leave benefits.

4.2 This chapter considers the proposed changes discussed in earlier chapters in relation to social effects, beginning with the likely effects on female wages and conditions and its implications for sex discrimination in the workplace. Women constitute the most significant group of workers experiencing continuing disadvantage in the workforce, particularly in regard to their ability to balance work and non-work obligations.

4.3 The committee has long noted the indifference of the Government to Australia's adherence to international labour obligations. It has presumed that the Government probably regards International Labour Organisation (ILO) conventions as having more relevance to advanced first world European countries than to countries like Australia. For this reason it is particularly important for this report to relate industrial agreement changes to ILO benchmarks.

The work and life balance

4.4 Advanced living standards represent the aspiration of progressive countries. These standards require wages and working conditions that provide a firm foundation for personal and family development. A floor under wages and a ceiling over working hours has been a basic principle – perhaps the central principle – around which industrial relations has been built for over one hundred years. The principle has become enshrined in the standard eight hour working day which is the basis of family-friendly work practices. The contests over pay and conditions have occurred on matters of detail rather than principle. This is still the case, but long fought-for rights over hours of work are now threatened by likely employer demands for 'flexibility' in working hours which have the potential to severely discriminate against people, especially lower-paid workers, in the services and other industries. Current agreements which might be considered to promote flexibility and balance in work and non-work obligations are varied and sometimes onerous, but they commonly include the availability of leave to care for dependents and flexibility around otherwise regular hours of work. Even now, the casualisation of the labour force, especially at the low-paid end of manufacturing and service industries, has no regard for the work and life balance of individuals and families.

4.5 Press commentary over past months on the issue of work and life balance has been as illuminating as academic submissions received by the committee. Economic correspondent Ross Gittins put the issue of flexibility and productivity in the perspective of workplace changes when he wrote:

Now, there's no doubt that keeping our factories, offices and shops open for longer – ideally 24 hours a day – will raise their productivity. That might not be profitable, of course, if the longer hours were a lot more expensive in terms of penalty rates.

But get rid of the penalties and the increased productivity will assuredly lead most of us to higher incomes. ... Trouble is, doing so puts means ahead of ends. It focuses on the income, forgetting why we want it. It makes us servants of factories and offices rather than their masters. ... It robs us of our humanity, taking away our leisure and making us more like robots. The thing about robots... is that they don't have families and don't need relationships to keep them satisfied with life.¹

4.6 The increasing demand for family friendly working conditions is illustrated by submissions such as from the Independent Education Union of Australia (IEU), which cited an unmet need for flexibility for teachers, particularly in senior schools, and the unwillingness by administrators to embrace flexibility measures. The IEU pointed out that the option of working part-time is only a partial solution, as for many workers it is not financially viable, particularly when the part time worker has to pay for child care. The Union also noted that the teaching profession is ageing, a fact which brings with it the need for its members to care for aged or ill parents. Education is hardly alone in this regard. This is a timely reminder that, while child rearing is perhaps the most common reason for needing workplace flexibility, it is not the only one.²

4.7 Some analysis of 'family friendly' provisions contained in agreements has been done. At present, according to the Government's figures, 84 per cent of federal certified agreements contain at least one family friendly measure, and these provisions cover 94 per cent of employees working under such agreements.³ On the other hand, only 70 per cent of AWAs contain any such provisions. The OEA submission reported that provisions such as these in AWAs are more common among those working in the private sector, as many public sector employers have made provision for family-related leave and flexibility through other means. Employees enjoying these benefits were more likely to come from a large organisation.⁴

4.8 The OEA submission also said that bereavement leave (paid or otherwise) was the most common 'family friendly' provision contained in AWAs surveyed. Given

1 Ross Gittins, 'An efficient ride up the garden path', *Sydney Morning Herald*, 19 October 2005, p.11

2 Independent Education Union of Australia, *Submission 1*, p.11

3 *WorkChoices: A New Workplace Relations System*, Australian Government, 2005, p.64

4 OEA, *Submission 19*, pp.32, 33

that nearly half of those contained only one such provision – bereavement leave – for many AWA employees could constitute the beginning and the end of active provision for a healthy work and life balance.⁵

4.9 The Government's figures are contested by the ACTU, which claimed that:

Analysis of the evidence upon which the government relies reveals that it double counts the incidence of provisions that are guaranteed through awards or legislation, i.e. where a clause [in an agreement] simply mirrors the provision of an entitlement under an award or in legislation, it is counted as having enhanced workers ability to reconcile their commitments. This is ludicrous. When the government's data is examined, only three provisions appear in agreements in double-digit percentages – carer's leave, part time work, and single day absences on annual leave. Each of these is standard in awards, having arisen from the Personal/Carers leave test cases in 1994 and 1995.⁶

4.10 A study by Dr Gillian Whitehouse, published in 2001, also contained findings which were significantly different from the Government's figures, as is illustrated by the following Table.

Percentage of agreements with reference to work/family measures⁷

	Collective agreements							AWAs			
	1995	1996	1997	1998	1999	2000	Total	1997	1998	1999	Total
Any work/family provision	0.6	8.5	19.3	22.0	15.2	12.0	13.5	12.7	15.5	7.4	11.6
Family/carer's leave ^b	0.3	3.4	4.2	3.8	2.2	1.6	2.4	2.4	3.4	1.5	2.4
Paid maternity leave	-	1.7	8.0	7.0	4.5	4.7	4.4	6.8	6.4	2.7	5.1
Paid paternity leave	-	0.4	4.2	2.2	1.2	0.7	1.3	6.0	5.4	0.9	3.8
Job sharing	0.3	3.8	5.9	4.6	3.1	3.6	3.4	0.8	2.0	0.3	1.0
Childcare ^c	-	0.4	0.8	0.6	1.7	0.2	0.7	0.4	-	-	0.1
Work from home	-	1.3	-	2.8	2.4	0.7	1.4	2.0	2.7	0.6	1.7
Career breaks	-	-	0.4	0.4	0.3	0.2	0.3	0.4	0.3	-	0.2
Elder referral	-	-	0.4	0.4	0.2	-	0.2	-	-	-	-
N (agreements)	319	236	238	500	580	443	2379	251	296	339	889

Notes

a. Low numbers of AWAs from 2000 in the sample and low incidence of work/family measures in collective agreements prior to 1995 mean that not all years are represented in the table, hence yearly Ns do not sum to the full datasets.

b. Family or carer's leave additional to sick leave

c. Childcare facilities at workplace or provision for subsidised places

Data source: ADAM databases of collective agreements providing coverage details and AWAs (March 2001), ACIRRT, University of Sydney, unpublished data.

5 OEA, *Submission 19*, p.33

6 ACTU, *Submission 22*, p.46

7 Dr Gillian Whitehouse, *Australian Workplace Agreements and Work/Family provisions*, Paper for presentation at ACIRRT/OEA Conference, University of Sydney, 7 September 2001. Accessed at <http://www.oea.gov.au/graphics.asp?showdoc=/home/papers-whitehouse.asp> on 18 October 2005, p.6

4.11 The stark differences in the findings can largely be attributed to Dr Whitehouse's omission of provisions which reiterate statutory rights or test case standards. A number of other disparities are also evident. The research differs from the OEA findings in concluding that 13.5 per cent of collective agreements and 11.6 per cent of AWAs contained a family friendly measure, and only 7 per cent of private sector AWAs contained such a measure, compared with 34 per cent in the public sector.⁸ This is in direct contrast to the OEA's findings, and once again throws doubt on the accuracy of its statistics.

4.12 Dr Whitehouse concluded that her data:

... provide little support for optimism about continuing growth in the use of industrial agreements for work/family provisions ... although the prevalence of these types of provisions in collective agreements increased significantly from the mid-1990s, a downturn is evident since 1997/98. A similar trend is evident for AWAs, with the 1999 figure the lowest of the three years available for all items.⁹

4.13 Nor does analysis from other sources support the argument that AWAs are family-friendly. Professor Bradon Ellem made the point that women tend to bare the brunt of inflexible workplace practices and Australian Workplace Agreements are less likely to contain family friendly provisions:

...[W]e do not find things like flexible working hours ... we do not find measures to encourage affirmative action within particular workplaces or to have sexual harassment clauses or child-care facilities. We do not find those very particular and readily measurable changes taking place in AWAs – nor, indeed, as I say, in as many enterprise agreements as we might expect or look for.¹⁰

4.14 The Queensland Working Women's Service (QWWS) reminded the committee that the adoption of flexible conditions is often ad-hoc and that the availability of part-time work was not mandatory for employers of workers following the birth of a child or after significant changes in caring responsibilities. The QWWS also submitted that organisational culture was variable and frequently hostile to the concept of flexibility for workers, and that the career consequences for women choosing to be away from the workplace were often significant. Notably, in this context, it also informed the committee that 'pregnancy discrimination' was reported by 657 of their clients over a three year period, and that more than half of this cohort was employed in the clerical or personal services sectors.¹¹

8 Whitehouse, *op cit*, p.8

9 Whitehouse, *op cit*, p.5

10 Professor Bradon Ellem, *Committee Hansard*, Sydney, 26 September 2005, p.20

11 Queensland Working Women's Service, *Submission 31*, pp.4, 5

4.15 The relative disadvantage of women in terms of their income and prospects for promotion was set out in a paper by Marian Baird and Patricia Todd. The paper argues that the lack of support for the increasing number of women who choose to combine work with motherhood is a fundamental example of where workforce measures let women down. This lack of support includes the lack of universal access to paid maternity leave. Baird and Todd argue that the broader use of individual agreements and the reduction in the role of awards will serve to decrease protections for women who wish to have children.¹²

4.16 Professor Bradon Ellem also commented on the likely effect of increased coverage of individual agreements on women, submitting that:

Australia has very high levels of casual work compared to other OECD countries, which in turn have negative effects on gender equity and skill development ... the proposals do nothing substantial to address the work-life balance. In fact, we argue that the changes are likely to exacerbate the problems of low pay, fewer entitlements and job insecurity which already affect female employees.¹³

4.17 Notwithstanding the legislative entitlement to parental leave, the OEA's own data confirmed that less than one quarter of AWAs surveyed specifically allowed for it.¹⁴

4.18 Employer groups argued that flexibility benefits both their membership and workers. The Australian Industry Group (AiG) argued in support of flexibility in agreement-making, and observed that AWAs fit easily into a society which values the needs and circumstances of individuals in the determination of employment conditions. Conversely, awards and collective agreements were limited in their ability to cope with the differing needs of individuals.¹⁵ This argument has also been made by the government in support of increasing the role of AWAs and 'simplifying' the award process.¹⁶

4.19 However, in her 2001 study of the effect of AWAs on the work and life balance, Dr Whitehouse noted that:

... [S]tudies to date of the role of both collective and individual industrial agreements in delivering work/family measures offer little encouragement. Agreement databases have shown little incidence of provisions explicitly oriented to work/family goals and a high incidence of hours flexibility

12 Marian Baird and Patricia Todd, *Government Policy, Women, and the New Workplace Regime: A Contradiction in Terms and Policies*, Submission 32

13 Professor Bradon Ellem, *Committee Hansard*, Sydney, 26 September 2005, p.19

14 OEA, *Submission 19*, p.33

15 Mr Stephen Smith, *Committee Hansard*, Sydney, 26 September 2005, p.10

16 See, for example, *WorkChoices: A New Workplace Relations System*, Australian Government, 2005, p.63

measures, some of which may impede the successful combination of work and family responsibilities by reducing control and predictability of hours.¹⁷

4.20 The relative failure of collective and individual agreements to assist in balancing work and private lives was picked up on by a number of submissions. In addition to the unmet need for flexibility highlighted by the Independent Education Union¹⁸ the Australian Nursing Federation questioned the extent to which employers took this issue seriously, observing that while promises by employers to facilitate the striking of a balance were frequently made, action was often restricted to a recitation of the human resources policy manual and little else. This, the Federation submitted, was the underlying reason for the relative lack of progress.¹⁹

4.21 The ANF also submitted that their members struggled to cope with tensions created by work and private demands, exacerbated by labour shortages in their industry. Indeed, it argued that: 'Nurses often conflicting roles as family members and community participants appears to be an increasingly key issue in the way nurses view their employment'.²⁰

4.22 The union movement was not alone in levelling criticism at the wider use of individual agreements. Ms Kate Wandmaker, of the Western New South Wales Community Legal Centre, stated categorically that, of the thousands of AWAs she had given advice in relation to, she had never come across one which provided favourable conditions in relation to being able to better balance work and family commitments. Ms Wandmaker observed that AWAs were almost always drafted by employers, who have been slow in Australia to realise the benefits of promoting a balanced lifestyle for their employees.²¹ In Scandanavia, better family policies are led by the Government and are then reinforced by companies, not the other way around.

4.23 It is clear to the committee that neither collective nor individual agreement-making in Australia has resulted in sufficient progress in striking a proper balance between work and non-work activities for many workers. This is a matter of serious concern, and warrants continued scrutiny in the future. However, the committee finds that, in all likelihood, AWAs and other individual agreements tend to offer a far less satisfactory result than do collective agreements for those workers who have family-related responsibilities outside work. The increased coverage of AWAs therefore augers badly for the increasing number of employees who require flexibility in their leave and hours of work. Any government initiative to reduce the availability of pattern or industry bargaining is likely to have a negative impact on the ability of employees to strike a balance between their work and private lives.

17 Whitehouse, *op cit*, p.2

18 Independent Education Union of Australia, *Submission 1*, p.11

19 Australian Nursing Federation, *Submission 2*, p.6

20 *ibid.*

21 Western New South Wales Community Legal Centre, *Submission 28*, p.3

4.24 It is worth noting the United Kingdom, one of the countries the Prime Minister argues Australia needs to be more attuned with respect to labour regulation, has recognised the importance of the work and family balance. The UK Government legislated for six months government funded paid maternity leave and the right of employees of children under six (or 18 if the child has a disability) the right to request flexible hours, including part-time work.

4.25 The committee is also concerned about the negligent application of the no disadvantage test by the OEA, and the need for inclusion of leave provisions and negotiations for hours of work ceilings in the list of allowable matters. It is beyond doubt that a number of unscrupulous employers will attempt to exploit the 'flexibility' provisions to suit their own exclusive purposes. With the proposed changes to unfair dismissal laws, lower paid, and mainly young and female workers will be vulnerable to pressure from these unscrupulous employers. The committee will be paying particular attention to this issue when it considers the Government's proposed WorkChoices Bill.

The gender pay gap

4.26 The fact that women on average in Australia receive less pay per unit of time is well documented. The Australian Bureau of Statistics report on Employee Earnings and Hours reported that, as late as May 2004, average income for full-time non-managerial males was \$974.90, compared with \$828.00 for women. This represents a disparity of more than 17 per cent.²² While significant strides have been made in recent decades, a disparity of this magnitude is of great concern. It is in this context that the committee has examined the effects of individual agreements on the gender pay gap.

4.27 The statistics are worrying. It is clear that women fare better, on average, under registered collective agreements, earning \$678.50 per week in May 2004, than under registered individual ones (\$636.60 per week). It is also clear that the difference between average earnings by males and females in each of the employment categories is greatest in the case of individual registered agreements. Men working under registered collective agreements earned on average \$943.40 in May 2004, while those on registered individual agreements earned \$1055.20. The latter figure represents an inequity of \$418.60 per week, or nearly 40 per cent, between women and men working under similar employment arrangements.²³

4.28 The Western Australian Minister for Consumer and Employment Protection pointed to figures in his own state, where the gender pay gap is greater than the national average and greater than it was prior to the introduction of individual agreements in 1993, as evidence of what effect individual agreements can have on gender pay equality. The Government submitted that the gender pay gap was up to 9

22 Australian Bureau of Statistics, *Employee earnings and hours*, publication 6306, May 2004, p.4

23 *ibid.*, p.25

per cent higher after the introduction of individual agreements without an award safety net in 1993.²⁴

4.29 The committee is not aware of any evidence which suggests that an increase in the use of individual agreements would help to close the gender pay gap. Indeed, even under the OEA's own analysis of the ABS data, women are considerably less well off under AWAs than under awards or collective agreements. The OEA submission said that women employed under AWAs are worse off in both the private and public sectors:

Overall, the data shows that AWA females earned approximately 60 per cent of their male counterparts' earnings. The overall [certified agreement] and Award female earnings ratio was higher, at 69 and 79 per cent respectively.²⁵

4.30 The Textile, Clothing and Footwear Union of Australia provided the committee with an example of where women working under a certified collective agreement had been 'organised' into a lower level classification than their male counterparts. The certified agreement provided for an independent review of the classification structure by the AIRC, enabling the situation to be challenged. The Union points out that, under individual agreements, there would be no guarantee of pay equity in the first instance, let alone scope to mount a challenge to any unfair gender imbalance.²⁶

4.31 The statistics and other evidence leave little room for doubt. It is clear that, on average, women fare worse under individual arrangements than under centralised or collective ones. The simple application of logic supports the conclusion that broader use of AWAs in the workplace will bring about a widening in the gender pay gap, and that women stand to lose from such a development.

4.32 The Committee is also concerned that in some states, such as Queensland and New South Wales, the state industrial relations commission have developed equal remuneration principles which have been used as a key mechanism to run pay equity cases to remedy the undervaluation of work undertaken primarily by women. Such a mechanism does not exist at the federal level, and with the Commonwealth Government planning to take over the state system, there will be little opportunity to achieve pay equity.

24 Western Australian Government, *Submission 48*, p.14

25 OEA, *Submission 19*, pp.36, 37. This data is underpinned by research conducted by the Australian Centre for Industrial Relations Research and Training (ACIRRT) from sample AWAs provided by the OEA in 2002-2003.

26 Textile, Clothing and Footwear Union of Australia, *Submission 24*, p.20

International obligations

4.33 The ACTU submitted that the current bargaining arrangements breach Australia's international obligations under International Labour Organisation Conventions 87 and 98. The Council submitted that the Workplace Relations Act, as well as sections of the Trade Practices and Crimes Acts, had been singled out for adverse comment by the ILO in relation to Convention 98, particularly insofar as they neglect to promote collective bargaining, restrict the subject matter of agreements, and favour workplace bargaining over bargaining in other forms. The Council also argues that Convention 87 has been contravened through provisions in the Act which restrict strike action.²⁷

4.34 The Committee majority acknowledges the analysis put forward by the ACTU in relation to Australia's likely breach of ILO conventions. However, due to the scarcity of evidence from other sources in relation to this matter, the committee majority is unable to comment further.

27 ACTU, *Submission 22*, pp.59-69. Other submissions on this issue included the Queensland Working Women's Service, *Submission 31*, Northern Rivers Community Legal Centre, *Submission 30*, and Transport Workers' Union, *Submission 36*.

