



# **WorkChoices: Family Impact Statement**

**Prepared by the  
Australian Council of Trade Unions**

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## Introduction

The purpose of this briefing document is to ensure that all Members of Parliament and Senators have been alerted to the impact that the Workplace Relations Amendment (Work Choices) Bill 2005 (the Bill) will have on workers who have responsibility for the day to day care of family members; family functioning and well being; and its impact on women workers.

### **1. Framework for assessment: Workers with family responsibilities**

The first section of this document examines the impact of the Bill on the work and family reconciliation measures available to workers with family responsibilities. The section focuses on changes to the regulation of hours of work; and on the quantum, accessibility and quality of leave arrangements.

Will the passage of the Bill:

- Retain the current safety net of work and family measures?
- Promote quality part time work?
- Provide a mechanism to adjust the safety net from time to time in light of changes to labour force participation patterns and the demands of families?

### **2. Framework for assessment: Family well-being**

The second part of this document looks at the impact of the Bill on Australian family life.

Will the passage of the Bill:

- Provide families with adequate and secure incomes?
- Ensure families have access to sufficient resources, including time to develop and maintain their relationships?

### **3. Framework for assessment: Women workers**

The final section of the paper examines the impact of the WorkChoices Bill against the following criteria:

Will the passage of the Bill:

- Promote women's participation in quality jobs?
- Promote fair wage fixing systems, both within and across workplaces, that recognise skills and are free of gendered assumptions about women's contribution to work?

- Retain and extend the ability of women workers to have their work reviewed to address historical undervaluation of women's work?
- Promote gender pay equity?
- Promote and extend workplaces that are free of discrimination and harassment?

## 1. Workers with family responsibilities

Shifts in labour force participation patterns can affect the decisions young people make to have children, or to have more children.

Similar concerns have been expressed that increased female employment will have an impact on the supply of carers, especially in light of an increase in the numbers of frail and disabled elderly people in the community and the current preference for non-institutional care.<sup>1</sup>

Thus the reconciliation of work and family roles has significance beyond the impact on individuals, and may have significant impact on population projections, the ratio of workers to dependants in the community and consequential impacts on government income and expenditure.

However this section of this statement is concerned with the impact on individuals.

The relationships between our personal/family life and our working life are two-way. However research indicates that when work and family responsibilities conflict, most people feel the effects at home, not at work.<sup>2</sup> Change at work therefore cannot be isolated from change at home.

### Working Hours

Workers with family responsibilities are generally 'time-poor', especially those working in full time jobs. In couple families with children, feelings of being rushed, stressed and under pressure are common. Feelings of time pressure are greatest amongst those with children and spouses. Sixty two per cent of couple mothers with a child under 4 years, and 59 per cent of single mothers always or often felt rushed.

These feelings are based on measured increases in time spent in paid and unpaid work.

Between 1987 and 1997 time spent on unpaid housework and childcare increased in the majority of couple households. Where both adults worked full time there was an increase of an hour per week unpaid work, and in families where the father worked full time and the mother part time the increase was four hours per week. Both these household types also experienced an increase in their combined hours in paid work

The time-use data shows that working mothers of pre-school children cut back on housework, personal care and child-free leisure time. Research shows that mothers of children under 5 working full time begin their days earlier and end them later than their

<sup>1</sup> Australian Institute of Health and Welfare 2003 Australia's Welfare 2003

<sup>2</sup> Glezer and Wollcott (1998) Work and Family Life: Reciprocal Effects, Australian Institute of Family Studies, Family Matters No.52 Autumn 1999

counterparts who are not in paid work. It also shows that mothers of pre-school children working full time have no child-free leisure time at all.

### Control over hours of work

Workers with family responsibilities report that flexible working hours are the most valuable form of work and family measure sought in the workplace, and various surveys show that families regularly access flexible hours to help them meet their caring responsibilities.<sup>3</sup>

However many employees do not have sufficient freedom to do this. Forty per cent of respondents to a recent survey felt that they had no real choice in balancing work and family. Fathers felt this more acutely than mothers. (Relationships Australia 2003)

Although deregulation of the labour market has been associated with increased flexibility in the hours of work, most of flexibility has been at the initiative of the employer. Deregulation has led to less, not more employee-control over working hours.

Control over workloads and decision making, predictable schedules, and working hours that are compatible with family routines are associated with low stress, good parental mental health and high quality family relationships.<sup>4</sup>

Current provisions	The Bill
<p>Overtime and penalty rates in awards.</p> <p>These are currently a disincentive to long, unsocial or irregular hours and compensate employees for the disadvantage they suffer from working these unsocial, or family hostile hours.</p>	<p>No similar guarantee in minimum conditions (AFPCS).</p> <p>Workers can be required to work reasonable overtime but there is no requirement to pay overtime rates.</p> <p>Minimum guaranteed overtime rate for hours required to be worked is ordinary rate of pay. (ie no effective financial penalty)</p> <p>Current award provisions are only protected for employees who are not in agreement – making stream. Once an agreement (collective or individual) is made the award does not underpin the agreement.</p>
<p>Minimum breaks between shifts, meal breaks, span and spread of hours clauses</p>	<p>No equivalent in minimum conditions (AFPCS)</p>
<p>The no disadvantage test provides that agreements must be tested against awards, and must not provide for working arrangements that are overall less advantageous to the employee than the current arrangements.</p>	<p>Only test is 38 hours averaged over 12 months.</p> <p>Minimum guaranteed overtime rate for hours required to be worked is ordinary rate of pay.</p>
<p>Reasonable hours provisions in awards that permit employees to refuse overtime on grounds of conflict with their family roles.</p>	<p>Similar provision, but the base hours upon which to determine what are additional hours is subject to the 12 month averaging period.</p>

<sup>3</sup> ABS 4903.3 October 2002, ABS 4402.0 June 2002

<sup>4</sup> Strazdins, L. et al, 2004

The Bill will, if enacted, jeopardise employee control over working hours by facilitating the working of longer, irregular and unsocial hours. Overtime rates of pay and penalties for working nights and weekends are not part of the minimum guarantee, nor need they be compensated for in agreements.

It is argued by some that the current system does not protect against the working of family-hostile hours, but simply provides additional financial reward for doing so. This is a simplistic view, as it ignores the fairly evident proposition that as the hourly rate for weekend or night work reduces the number of family hostile hours to be worked by the employee, under the Bill, these will increase and the total hours spent away from the family will increase.

There is no evidence that promotion of individual bargaining is likely to assist employees negotiate more family responsive hours of work. On the contrary, a recent analysis of a representative sample of AWAs found that:

- Up to a quarter of the AWAs provided for a fixed hourly, weekly or annual wage regardless of how much overtime is worked;
- 36 per cent permitted the employer to unilaterally require additional hours be worked;
- 26 per cent of agreements provided no set ordinary hours of work;
- 13 per cent provided hours could be worked at any time;
- 14 per cent permitted the employer to unilaterally vary hours of work; and
- 14 per cent provided hours could be unilaterally varied within an unlimited span of hours.<sup>5</sup>

## **Leave arrangements**

### **Parental leave**

Parental leave provides an opportunity for parents to remain attached to the labour market while taking a period of leave to care for an infant. In most developed nations, maternity leave and parental leave are distinct, with maternity leave available to the mother and related to child and maternal welfare, while parental leave is available to both parents and is related to providing job security while taking leave to care for infants and young children.

Australia's parental leave standard was adopted in 1990, and lags the majority of developed nations, both in relation to the duration of leave, and because the leave is unpaid.

The Bill will enact a new parental leave standard. Federal awards will no longer contain parental leave provisions, and state legislation will be over-riden for those employees in the federal system.

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<sup>5</sup> Mitchell, R and Fetter, J 2004

Current provisions	The Bill
12 months unpaid parental leave; right to request further 12 months, employer to not unreasonably refuse.	12 months unpaid leave No extended leave.
Maternity leave taken any time before or after the birth, no mandatory confinement.	At least 6 weeks unpaid leave must be taken after birth of the child. Mandatory exclusion from work is discrimination on grounds of pregnancy.
1 week concurrent leave, right to request up to 8 weeks, employer to not unreasonably refuse.	1 week concurrent leave.
Right to request return to work part time until child is school aged, employer to not unreasonably refuse.	No such provision.
Return to work in current job, if that job abolished, another comparable job.	No such provision.
Communication during leave, which obliges both the parent and the employer to advise the other about significant changes that will affect the return to work arrangements.	No such provision.

The Bill does not translate the current award minimum entitlements into the new legislated minimum.

The Bill fails to adopt the AIRC's decision to permit fathers to take longer leave at the time of the birth of the child, subject to the needs of the business.

This right was endorsed by the AIRC after hearing evidence about the rise of caesarean births, increasing multiple births, and new medical research indicating relating to the incidence of post partum complications during the first 6–8 weeks after the birth of the child. The AIRC was also presented with evidence relating to the absence of traditional post-birth support networks associated with increasing female labour force participation.

The Bill fails to adopt the AIRC's decision to permit additional parental leave, subject to the needs of the business.

This right was awarded after the AIRC heard evidence about the extreme demand on mothers' time associated with children under aged 2, and the propensity for mothers to return to work when their children are between 12 and 24 months. The Commission considered community attitudes to non-parental care of infants. The Commission also heard evidence about the acute shortage of childcare places for children under 2 years of age, and evidence from child development experts about stranger anxiety and difficulties settling children aged 8-14 months into care

The Bill fails to adopt the AIRC's decision earlier this year to permit part time work after parental leave until a child is school aged, subject to the operational requirements of the business.

This right was awarded after consideration of evidence of employee, and community preference for part time employment of parents (especially mothers) of pre-school children; the time pressure on parents of pre-school children; the associated

dissatisfaction with work family balance felt by parents; especially mothers of pre-school children who are employed full time. The AIRC also heard evidence about the relative disadvantage of mothers who change jobs to secure part time employment after parental leave (loss of seniority, access to training, loss of long service leave and sick leave credits, and the poor quality of available part time work).

The Bill will prohibit women from working for 6 weeks after their child is born. This is not currently a provision in awards. A 2002 ABS survey showed that almost 20,000 mothers (or 6.6 per cent of those surveyed) took less than 6 weeks leave at the time of the birth of their child.<sup>6</sup>

If enacted the Bill will prescribe an exclusion from paid employment which discriminates against women on the ground that they have recently given birth.

### **Annual leave**

Annual leave is an important, if inadequate work and family measure, particularly for parents of school aged children.

As the Institute of Family Studies noted in its review of child care arrangements during school holidays

*"couple parents who are dual earners may organise parental care for up to eight weeks if each parent takes annual leave during different school holiday periods, but unless parents take other forms of leave (including unpaid leave or sick leave), the family would never enjoy a holiday together and there would still be three to four weeks each year when neither parent would be on holiday with their children. Sole-parent families with little contact with the non-resident parent would be in an even more difficult position."*<sup>7</sup>

Annual leave is currently under pressure, and some evidence suggests that workload pressures and job insecurity prevent employees accessing annual leave. The option to 'cash out' annual leave may promote and legitimise employer pressure and make it even harder for employees to access leave.

Many employees are unable to take their current annual leave entitlements. Industry research conducted in 2002 found that a quarter of employed people did not take annual leave due to work commitments. In the same survey 36 per cent of respondents who had not taken leave in the past 12 months agreed that a reason for not taking leave was job insecurity.

A 2003 survey conducted for the Australia Institute by Newspoll found that 58 per cent of full time employees did not use all of their annual leave. Of those who did not take their leave, 42 per cent cited as the main reason either being too busy at work or an inability to get time off that suited their needs.<sup>8</sup>

The Bill will enact a federal annual leave standard. Federal awards will no longer contain annual leave provisions, and state legislation will be over-ridden for those employees in the federal system.

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<sup>6</sup> ABS 6254.0 Career Experience Nov 2002, p35

<sup>7</sup> Qu, L, Minding the children during school holidays, Family Matters No 65, Winter 2003

<sup>8</sup> Denniss, R 2003.

Current laws	The Bill
4 weeks annual leave in awards and State legislation	4 weeks annual leave for 38 hour per week workers; accrues monthly No guarantee of 4 weeks for part time employees working irregular hours
Annual leave loading paid when leave taken. On federal minimum wages this is \$339.15	No loading
Additional week for 7 day shift workers	Additional week limited to employees working in 24 by 7 establishments who normally work weekends, accrues every 12 months. 7-day shift workers who work in establishments that are not open 24 hour will lose the entitlement to leave
Leave taken in several periods (varies) but cap of 10 single days annual leave per annum	No limit on periods of leave, criteria is operational requirement of the business No guarantee of blocks of annual leave
No cashing out in awards, can be cashed out in agreements, subject to no disadvantage test	2 weeks may be cashed out

If enacted without amendment the Bill fails to guarantee 4 weeks leave, as the accrual formula only guarantees accrued hours, not a minimum period away from the workplace.

If enacted the Bill will permit the entire accrual of annual leave to be taken in single days. Most awards currently preserve at least 7, and often 14 days leave to be taken as consecutive days of leave. The AIRC recently declined an application by the ACCI to permit all the leave to be taken in single days, opting instead to increase the cap from 5 to 10 days.

If enacted the Bill will provide only limited access to the additional week of annual leave that is currently available in awards for 7-day shift workers. This additional leave was introduced to recognise the strains that weekend and night shift work places on family life.

If enacted the Bill will facilitate cashing out of 2 weeks of annual leave, by giving legitimacy to the option of trading money for rest and recovery from work.

### **Carers leave**

Carers leave is a critical minimum condition of employment, as it assists employees with family responsibilities respond to unpredictable calls for them to provide care and support to family members.

The Bill will, if enacted, introduce a national legislative standard for carers leave. The provisions in the Bill are modelled upon the standard adopted by the AIRC after agreement was reached between the ACTU, the Australian Industry Group and the Australian Chamber of Commerce and Industry in 2004. This agreement arose in the context of conciliation undertaken in the shadow of arbitration.

The carer's leave contained in the Bill improves on the previous award standard as follows:

- The purpose for which leave may be taken is expanded to include unexpected emergencies as well as family or household illness;
- The number of days of paid personal leave available for family care is increased from 5 to 10 days per annum; and
- Unpaid carer's leave is available for employees who are otherwise ineligible for leave, either because they have exhausted all paid leave or are employed on casual basis.

However the Bill is inferior to the current standard as follows:

Current laws	The Bill
Proof of illness can be statutory declaration or medical certificate	Proof of illness is medical certificate Employee will have to get certificate for sick family members
Unpaid leave for casuals to care for sick family member, in case of unexpected emergency, in case of death or to attend a birth	Unpaid leave for casuals only to care for sick family member, in case of unexpected emergency Casuals will have no right to time away for death or to attend birth

## 2. Family wellbeing

Labour market dynamics can have an effect on family functioning and well-being. Changes in working arrangements may affect the resources (including time) that family members can devote to their relationships with each other.

The second part of this statement is designed to ensure the community is aware of the impact of proposed workplace laws on Australian family life.

This section looks at the potential for the changes introduced by the Bill to have an impact upon family functioning and wellbeing. Our key concerns are whether the Bill promotes adequate and secure family incomes, and adequate resources (including time) to build and maintain relationships. Particularly important is the time available to parents to maintain strong relationships with their children which foster their child's development.

The adequacy of family incomes is especially important, given estimates that as many as one in seven Australian children lives in poverty.

The relationships between our personal/family life and our working life are two-way. However research indicates that when work and family responsibilities conflict, most people feel the effects at home, not at work.<sup>9</sup> Change at work therefore cannot be isolated from change at home.

Time spent together is the glue that builds family relationships, and is important to the maintenance of personal relationships as well as parent-child relationships.

<sup>9</sup> Glezer and Wollcott (1998) Work and Family Life: Reciprocal Effects, Australian Institute of Family Studies Family Matters No.52 Autumn 1999

Lack of time has replaced money problems as the top issue negatively affecting relationships. In a 2003 survey the top issue negatively influencing relationships was lack of time (38%). This was highest amongst people aged in their 30s and with children still at home.<sup>10</sup>

Changes in the labour market that affect the arrangement of working hours across the working day, working week and working year have an impact upon time available with other family members. The way in which hours of work are arranged will have a direct impact on family life.

Providing parents sufficient time to be with their children is critical, in light of estimates that one in four five-year-olds is at risk of learning difficulties because of their struggles with language and cognitive skills, physical health, or social and emotional competence, and such developmental difficulties increase their risk of poor outcomes as adults if they are not addressed.<sup>11</sup>

### **Family incomes: Adequacy**

Families are best served by having secure, predictable incomes which are adequate to meet their needs. The level of family income is important for the material and emotional wellbeing of families. The ABS has noted that an adequate and reliable income from employment gives families access to the basic requirements for normal life, such as food, shelter, clothing, transport etc., as well as the ability to enjoy recreational activities such as holidays and entertainment. (ABS 2002)

Surveys consistently confirm that financial stress is a cause of relationship stress. In 2003 one in five people indicated financial stress is a negative influence on their relationships. Financial stress was the fourth most common negative influence on relationships.<sup>12</sup>

Although the incidence of working poor in Australia is currently low, there is evidence that 4 per cent of full time workers experience financial disadvantage and comprise a substantial 15.9 per cent of those in poverty (NATSEM 2004). The authors report:

*The low rate of poverty amongst people who receive most or all of their income from wage and salary earnings is unsurprising. However, there is incidence of 'working poverty' in Australia, as can be seen in the noteworthy proportion of those in poverty that is made up of people whose main source of income is wages and salary (10.7 per cent) ... As found in earlier studies (Harding et al, 2001, p.11) the risk of being in poverty among wage and salary earners is low but, because wage and salary earners comprise a large share of Australian families, this small risk still represents a significant number of people. Poverty among wage and salary earners could perhaps be attributed to the increasing casualisation of the workforce, as those in part time work have higher poverty rates than those working full time. (NATSEM 2004)*

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<sup>10</sup> Relationships Australia (2004) Relationships Indicator Survey 2003, [http://www.relationships.com.au/utilities/about/ri2003exec\\_summ.pdf](http://www.relationships.com.au/utilities/about/ri2003exec_summ.pdf) (accessed 24 Sept 2005)

<sup>11</sup> Flood, M. (2004). Flood, M. (2004) Lost children Condemning children to long-term disadvantage, The Australia Institute, Discussion Paper Number 64 May 2004

<sup>12</sup> Relationships Australia 2004.

The measures that the Bill proposes that will have an impact on the level of wages are the introduction of the Australian Fair Pay Commission, and the new minimum standard underpinning agreement-making.

Current laws	The Bill
<p>The AIRC must, when adjusting the safety net of minimum wages, consider economic effects on employment, inflation and productivity, and must also consider the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community, and the needs of the low paid.</p>	<p>AFPC must, when adjusting wages, consider</p> <ul style="list-style-type: none"> <li>• the capacity for the unemployed and low paid to obtain and remain in employment;</li> <li>• employment and competitiveness across the economy;</li> <li>• providing a safety net for the low paid;</li> <li>• providing minimum wages for junior employees, employees to whom training arrangements apply and employees with disabilities that ensure those employees are competitive in the labour market.</li> </ul>
<p>The members of the AIRC are independent, and its procedures are transparent.</p>	<p>AFPC members appointed for fixed term, all are part time.</p>
<p>The veracity of the evidence considered by the AIRC is tested through the adversarial processes.</p>	<p>AFPC determines the timing and frequency of wage reviews; the scope of particular wage reviews; the manner in which wage reviews are to be conducted; and when wage-setting decisions are to come into effect.</p>
	<p>The decision to separate the adjustment of the national minimum wage from all other award rates. This means that the majority of award-dependent workers who are classified at wage rates above the federal minimum are not guaranteed any wage adjustment.</p>
<p>All agreements must meet the no disadvantage test which provides that agreements must be tested against awards, including all components of take home pay including penalty rates, overtime, allowances and loadings.</p>	<p>Test for agreements is the ordinary hourly rate of pay, excludes significant components of take home pay including penalty rates, allowances and overtime.</p>
<p>Collective bargaining is the primary vehicle for over-award payments.</p>	<p>Proposals to promote AWAs as the predominant form of agreement making, in preference to collective agreements and awards. AWAs are associated with lower wages for non-managerial employees.</p>

The Bill will, if enacted, facilitate lower real minimum wages.

Evidence from Western Australia indicates that in industries where wage costs are a significant proportion of the total costs, and there is an incentive to drive down labour costs.

## Will the Bill address joblessness in families?

The Government argues that increasing employment levels by people currently excluded from the labour market, including sole parents, will offset any negative impact of the Bill.

There is no doubt that joblessness is a significant risk factor to both family wellbeing and to children's outcomes. And, despite more and more mothers being employed, including lone mothers, Australia has low employment rates compared to other OECD nations. Thus barriers to employment should be removed.

The problem is that there is no evidence to support the theory that lower real wages are associated with increased employment. The counterview is that:

- The decision to employ is based on demand for the products or services produced by the employer. Wage prices (the cost of labour) do not affect this.
- Modest falls in the real costs of labour will not cause employers to substitute technology for labour. Any increase in employment flowing from lower real labour costs would require significant reductions in labour costs.
- Modest increases in minimum wages have a consumption and consumer confidence effect that stimulates growth.

When the relationship between labour costs and employment is tested there is no consistent evidence that suppressing wages at the low end will increase the labour force participation rate of family members currently outside the labour force. In its 2003 review of the evidence the AIRC concluded:

- A general assessment of employment data, including a focus on more heavily award reliant sectors, does not disclose any basis to suggest that past safety net adjustments have had significant adverse employment effects;
- There remains a continuing controversy amongst academics and researchers as to the employment effects of minimum wage improvements. As noted by the UK Low Pay Commission the research undertaken often produces conflicting results;
- The various studies do not establish that moderate increases in the minimum wage, of themselves, will diminish aggregate employment effects;
- Whilst there is no automatic relationship between the two, real wage growth can adversely affect aggregate employment growth. The extent of such effect will depend upon the prevailing economic circumstances and the extent of the real wage movement.<sup>13</sup>

In its 2005 review, the Commission considered further argument and concluded:

*"...The material to which we have been referred does not undermine the conclusion expressed by the Commission in the May 2003 decision that there is a continuing controversy amongst academics and researchers about the employment effects of minimum wage improvements. There is nothing before*

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<sup>13</sup> AIRC 2003 Safety Net Review and Decision PR002003

*the Commission to indicate that the controversy has been resolved."* (AIRC 2005)<sup>14</sup>

Thus, when independently assessed, the econometric evidence has been found to be inconclusive.

### **Secure incomes and family life**

As well as adequate incomes, families thrive when they can plan for their future with confidence. Changes in the labour market have an impact upon the actual and perceived income security of families.

Confidence about having ongoing paid employment may influence people's decisions about, and ability to undertake, long-term commitments such as raising children, entering into mortgages, and borrowing to invest or to purchase assets such as cars, furniture and appliances. A move away from permanent employment towards contract employment, which promises a job for only a specified period of time, and casual employment, in which there is not necessarily an expectation of continuing employment, could generate concern among some people about diminishing job security.<sup>15</sup>

The growth of insecure forms of employment has been associated with delayed child bearing and fewer children in families. While fertility decisions are complex, risk aversion, is cited as a partial explanation for Australian families having fewer children. The Australian government's Fertility Decision-Making Project study, conducted last year, consisted of interviews with 3201 men and women aged 20-39 years. Both men and women were asked what influenced their decision about whether to have children. Job security and being established in a career were very important factors, especially for younger people.<sup>16</sup>

Thus, changes to workplace laws that affect job and income security can be expected to affect decisions about whether to have any or more children.

Job insecurity is a major cause of employee stress. Work at the ANU recently confirmed that employees who felt insecure or uncertain about their job future, had lower levels of job demands or work loads, had lower control over decisions at work, reported less social support at work; or who had difficulty accessing family friendly conditions reported more depression.

This multi-disciplinary study is examining the relationship between parents working arrangements and childhood stress is being examined. Stress markers in children are measured to assess the impact of night work on the levels of cortisol (a biological measure of stress) in children.

The preliminary results of a small pilot study found some (but not all) work conditions were also associated with children's well-being. Parents who felt insecure about their job future, or had undemanding jobs reported more emotional or behavioural difficulties in the selected child. (NCEPH 2004)

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<sup>14</sup> AIRC 2005 Safety Net Review and Decision PR002005

<sup>15</sup> (ABS 2002)

<sup>16</sup> Weston, Qu, Parker and Alexander 'It's not for lack of wanting kids...' A report on the Fertility Decision Making Project, AIFS 2004

There are three key components of labour market regulations affecting income and job security that are affected by the Bill: changes to the regulation of casual employment; changes to unfair dismissal laws, and changes to redundancy and retrenchment arrangements.

Current laws	The Bill
Unfair dismissal laws that provide a remedy for employees whose employment is terminated harshly, unjustly or unfairly.	Unfair dismissal protection removed for all employees in firms of fewer than 100 permanent or long-term casual employees. Unfair dismissal claims prohibited where employer gives operational grounds as a part of the reason for the decision to dismiss.
Redundancy provisions in awards.	No longer available to employees in workplaces of fewer than 15 employees.
Provisions in some awards and agreements that provide that employees in insecure forms of employment (casual or fixed term) have the option to convert to permanent employment after a fixed period.	Will be a non-allowable matter in awards, and will be unenforceable from the day the Bill is law. Will not form part of test underpinning agreement.
The no disadvantage test which provides that agreements must be tested against awards, including all components of take home pay including redundancy provisions.	Retrenchment pay not part of guaranteed minimum.

The Bill will remove provisions in awards that allow casual employees who have been employed on a regular basis for a reasonable period (generally 6-12 months) to elect to convert to permanent employees. These become unenforceable from the date of the reforms.

These provisions were introduced in response to the significant increase in the employment of casual employees to undertake roles that are part of the routine and ongoing work of the enterprise.

In Australia over the past 15 years there has been strong growth in insecure work, be that casual employment or dependent contracting arrangements. There are over 800,000 independent contractors and 230,000 people working in the labour hire jobs. A third of all employed people are employed casually. While casuals are often thought of as students of mothers of young children, the growth in casual employment has been amongst men working in low skilled occupations. Recent data indicates the growth in casual employment has been full time casual work. While casual employment is concentrated in the retail and hospitality industries, its incidence has increased across all sectors.

Casual employment is not family friendly employment. Casuals have less predictable start and finish times, and less say over their hours of work than permanent employees. Nor is casual employment associated with higher wages. Casual employees earn on average less than permanent employees, despite the existence of the casual loading. This is not due to casuals being younger, or more likely to be female. If casual and ongoing employees had the same age and sex distribution as all employees, the hourly earnings of casual employees would be 87% of those of ongoing employees.<sup>17</sup>

<sup>17</sup> ABS 2005, Australian Social Trends 2005

The ABS noted that:

*Current Australian government policy supports workplace flexibility and the diversification of forms of employment. However, casual employees, particularly those who have been casual for an extended period, may be disadvantaged because they do not enjoy the same rights and entitlements as ongoing employees. For example, their working conditions may involve low levels of training, poor career opportunities and adverse occupational health and safety outcomes.*

The Bill will change the current arrangements relating to redundancy pay. Retrenchment pay for employees in companies employing fewer than 15 permanent or long-term casual employees will be unenforceable.

The Bill will, if enacted, remove retrenchment pay from the guaranteed minimum conditions underpinning agreements. Unless employees specifically negotiate retrenchment pay into agreements it can be excluded. As agreements are comprehensive, and outside the operation of the award, this change will leave employees vulnerable in times of economic downturn.

The Bill does not foster employees' sense of job or income security. While employment protection laws are only one component of job and income protection, any erosion of them will have an impact on family wellbeing, especially in families working in sections of the economy that are already experiencing difficulty such as some rural sectors.

### **Time together and family wellbeing**

Despite increasingly diverse family arrangements, the vast majority of men and women form a relationship at some stage in their life and marriage remains by far the most common form of partnered relationship.

The way families participate in work has also changed over the recent decades. Women are increasingly likely to remain in employment during their childbearing years, or take only a short period of time out of the labour force. More mothers are employed and mothers of very young children are employed. At the same time there has been an increase in lone parent families.

These changes compound the effect of changes in working hours on families, as the majority of employees can no longer rely upon a full time homemaker to undertake the caring work of the family.

An AIFS study found:

- 47 per cent of fathers and 41 per cent full-time working mothers in couples with children under age 18 indicated that their work interfered with home life.
- Around 49 per cent of all employed men and 59 per cent of women often felt too rushed.
- 43 per cent of men and 53 per cent of women often felt tired and run down.<sup>18</sup>

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<sup>18</sup> Glezer and Wolcott 1998.

## **Maintaining family relationships**

Research evidence indicates that the quality of intimate relationships can be affected by working arrangements. In a survey reported by Russell and Bowman employees were asked both what family demands have an impact on their work and what work demands have an impact on their family life (and what the specific impact is).

- The five most commonly mentioned family demands were: time pressures (47%); lack of time for social and recreational activities (33%); financial difficulties (23%); problems juggling work/family commitments with spouse (17%); and difficulties in their relationship with their spouse (15%).
- The five most commonly mentioned work demands were: coming home from work feeling stressed (53%); having to change work hours at short notice (34%); difficulties in relationships with co-workers (33%); coming home late from work (27%); and pressures from work deadlines (25%).
- These work demands were reported to have a significant impact on the following aspects of family life: generally poor quality family relationships (45%), not being able to plan family life (19%), not enough time for spouse (17%), not enough time for self (7%) and a high level of conflict with spouse (6%).<sup>19</sup>

## **Weekend work and family time**

People who work on weekends spend less time with their families, which they cannot make up during other times of the week. The time spent with family is lost, not postponed.

A 2003 study examined whether employees who work on Sundays can use the extra time off during weekdays to allow for compensatory family togetherness and social contact in lieu of what they would typically otherwise enjoy on Sundays. The study found that employees either cannot or do not make up on weekdays for the lost opportunities of family togetherness and social contact associated with Sundays.<sup>20</sup>

## **The impact of long, irregular and unsocial hours on families**

Long hours equate with stress, depression, burnout and a variety of other illnesses. This may result in higher absenteeism and lower productivity. Families are affected by long work hours, as it prevents employees from giving adequate time and attention to their children and spouses.

Unpredictable hours are not family friendly hours. Childcare arrangements have long lead times; particularly formal care, while older children value predictable time with parents.

Unsocial hours also mean less time with families because scheduling means that time lost with family and friends while at work cannot be re-scheduled.

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<sup>19</sup> Russell and Bowman, 2000

<sup>20</sup> (Bittman 2003b).

### **The impact of long hours on fathers**

Although most analyses indicate that men are not as actively involved in day-to-day family life as women are there has been a substantial shift in expectations about this involvement. Yet the long hours worked by dads means that they couldn't fulfil this ambition.

Further, as survey of fathers in couple families working full time study conducted by the Australian Institute of Family Studies showed that fathers' long work hours is detrimental to dads and their families.

It found that:

- fathers' satisfaction with their work hours decreases as the number of hours worked increases; and
- the proportion of fathers who would prefer to work fewer hours (taking into account the impact on income) increases with the number hours worked.

The study looked at fathers' mental and physical health; work and family balance; parenting stress; satisfaction with life as a whole; satisfaction with relationships with partner and with children; and satisfaction with job overall. While longer hours did not affect all measures of well-being, fathers working more than 48 hours a week reported a lower sense of 'vitality' and more negative effects of work on family life than fathers working 35 to 40 hours per week.

### **The impact of irregular hours on families**

In a major study of British parents of long and non-standard hours on parenting, family life and intimate relationships, the parents reported not being available for children after school, and especially to help with homework, not being able to attend school functions or sports days, and not being able to do things together at weekends or eat together as a family.

Nearly 60 per cent of mothers who worked frequent non-standard hours said their job prevented them from sharing an evening meal with the rest of the family several times a week, compared with a quarter (25 per cent) of mothers who had more standard hours.

Mothers saw fathers' work as being even more disrupting, with 83 per cent of those whose partner worked frequent non-standard hours saying that their partner's job often prevented them from sharing an evening meal.

Parents working standard hours were much more likely to agree that work didn't limit their time spent reading to, playing with, or helping children with homework than those working non-standard hours. 77 per of couple mothers, and 75 per cent of lone mothers with standard hours said work didn't limit their time. This compared to only 59 per cent of couple mothers and 56 per cent of lone mothers with frequent non-standard hours.<sup>21</sup>

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<sup>21</sup> Millward, C 2003))

## The impact on children

There is potential for children to suffer when parents work long hours or unpredictable hours.

Research using Canadian data found that the incidence of behavioural problems was higher amongst children whose parents work night shift. The findings were consistent, even when other factors such as socio-economic status and the educational level of parents were taken into account.<sup>22</sup>

Case study interviews with Australian teenagers found that majority of young people want more time with their parents rather than more money through more parental work.

Both boys and girls from dual earner and single earner couple households as well as single parent earner households expressed this view. Pocock also found that children's desire for more time with parents "appears just as strong in households with a mother at home as in dual earner households".

She describes that, in traditional breadwinner families:

*"where the single earner (usually the father) has a demanding job and works long hours to generate income. ... (the), children's preference for time with their absent parent is especially strong."<sup>23</sup>*

She also found that:

*..., in households where parents are working long or unsocial hours, the preference is very consistently in favour of more time over more money. Not all parental time is seen in the same way. 'Hanging time' with an unstressed parent is especially prized by children, including older males and females in Year 11. Young people particularly want parents present for special school events, celebrations, sporting achievements, and when problems arise".*

Importantly, Pocock found that the spill over to children is different depending on the quality of the parent's job. The state in which parents come home from work will affect their children.

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<sup>22</sup> Stazdins et al, 2004

<sup>23</sup> Pocock 2004 Can't Buy My Love

### 3. Women workers

#### Women's wages

In a recent survey of the gap between male and female earnings, the ABS concluded that "Between 1994 and 2004, the growth in average hourly ordinary-time earnings among full-time adult non-managerial employees was higher for males than females, resulting in a slight widening of the gender wage gap."<sup>24</sup>

The ABS also noted that progress in closing the gap has stalled.

*In Australia, prior to the 1970s, female pay rates were set as a proportion of the adult male basic wage. Differences between female and male wages were greatly reduced by a series of decisions on specific awards which followed a 1972 decision granting equal pay for equal work.*

*The gender wage gap, as measured by the ratio of female to male average hourly ordinary-time earnings among full-time adult non-managerial employees, narrowed markedly between 1974 (0.78) and 1978 (0.90).*

*A further but less pronounced narrowing of the pay gap occurred between 1983 (0.88) and 1994 (0.94). Over the last decade, the gap has moved within the range of 0.90 to 0.94.<sup>25</sup>*

While the causes of pay inequity are complex, it is recognised that one cause is the undervaluation of work performed by women compared to men. The ABS found that women performing work at the same skill level as men often receive lower rates of pay.

*While men and women doing the same job for the same employer may get paid at the same hourly rate, men and women performing 'comparable' work in very different occupations are paid at different rates.(endnote 5)*

*Pay rate differences between occupations at the same skill level suggest that factors other than skill (e.g. danger, remoteness, labour supply and demand, competitiveness and bargaining strength) also influence the hourly earnings of occupations in Australia.*

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<sup>24</sup> ABS Australian Social Trends 2005

<sup>25</sup> Ibid.

The Bill will introduce changes that affect women's wages.

Current provisions	The Bill
Skill based classification structures provide transparent criteria for progression with between grades.	Australian Fair Pay Commission to set new Australian Pay Classification Scales. No role in progression criteria. Skill based classification structures no longer an allowable award matter.
Skill based classification structures are benchmarked internally and externally to ensure equal pay for work of equal value.	Bill silent on relativities, rationalisation of classifications process to determine with Minister able to direct how rationalisation takes place.
AIRC Wage fixing guidelines include equal pay for work of equal value, ability to bring award by award applications to AIRC and present a case to reassess the value of work.	AFPC wage fixing parameters include equal pay for work of equal value, but no enshrined capacity to make application for revaluation of work.
The AIRC must, when adjusting the safety net of minimum wages, consider economic effects on employment, inflation and productivity, and must also consider the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community, and the needs of the low paid.	AFPC must, when adjusting wages, consider <ul style="list-style-type: none"> <li>• The capacity for the unemployed and low paid to obtain and remain in employment;</li> <li>• Employment and competitiveness across the economy;</li> <li>• Providing a safety net for the low paid;</li> <li>• Providing minimum wages for junior employees, employees to whom training arrangements apply and employees with disabilities that ensure those employees are competitive in the labour market.</li> </ul>
Primary form of wage fixing for women is collective agreements, followed by awards.	Bill promotes AWAs as dominant wage fixing method. AWAs override all other wage instruments, except minimum floor.
Employees can campaign across an industry for an increase in wages based on changes to work value, or based on gender pay inequity.	Pattern bargaining outlawed. Industry-wide bargaining campaigns to address issues like gender pay inequity will be made illegal.

The Bill will, if enacted, change the way minimum wages are set. Unlike the AIRC, the Australian Fair Pay Commission will not be required to consider fairness when setting minimum wages. Nor will it set wages in the context of living standards in the community generally.

Changes to minimum wage fixing affect women more than men, as women are more likely than men to rely upon minimum rates of pay. While only 15.7 per cent of men rely on awards to set their rate of pay, 24.4 per cent of women are award reliant. 31 per cent of women employed in the private sector are award dependent.

Award reliance is high amongst part time employees (34.3 per cent), casual employees (45.1 per cent) and employees in female dominated industries such as the Accommodation, cafes and restaurant industry (60.1 per cent).<sup>26</sup>

The Bill proposes the abolition of skill based classification structures in awards, and to replace these with new Australian Pay Classification Scales. Skill based classification

<sup>26</sup> ABS 6306.0 Employee Earnings and Hours, May 2004

structures have been important in providing fair and transparent progression criteria within occupations, and in benchmarking female dominated occupations against male dominated occupations. The recent childcare wages claims advanced by unions were based upon a realignment of the key childcare grades against the key manufacturing grades. These resulted in a \$64.50 per week increase for a qualified child care worker.

There is no comparable mechanism proposed in the Bill. The Bill will expressly prohibit the AIRC from adjusting Australian Pay Classification Scales, or making any equal pay order involving an APCS as the comparator wage. There will not be any avenue for a case of this kind in the future.

Instead wage adjustments are to be achieved through wage bargaining. However two of the new features of wage bargaining will mitigate against women achieving pay equity.

Firstly, the Bill facilitates a shift from collective to individual wage negotiation. Recent ABS data confirms that the gender pay gap is greatest for women employed on AWAs. Women on AWAs earn only 80 per cent of their male counterparts, compared to women on registered collective agreements (90 per cent) and awards (100 per cent).

#### Hourly wage by pay setting method

Method of pay setting	Male (\$ ph)	Female (\$ph)	Gap (\$ph)	Ratio %
Award	16.40	16.40	0.00	100
Registered collective	25.10	22.50	2.60	90
AWA	25.10	20.00	5.10	80
	23.20	20.70	2.50	89

Source: ABS 6306.0 May 2004

Secondly the Bill bans women in low paid occupations from pursuing a re-evaluation of their work through wage bargaining, as it prohibits seeking common wages or conditions of employment for 2 or more proposed collective agreements that extend beyond a single business. This ban on pattern bargaining means that nurses working in two or more aged care facilities, or childcare workers working in two or more childcare centres cannot pursue common wage claims.

Thus award dependent women cannot pursue equal pay for work of equal value or gender pay equity through any of the wage fixing mechanisms: AIRC, the AFPC or collective wage bargaining.

## Discrimination and harassment

The Bill proposes to remove a number of protections against discrimination.

Current provisions	The Bill
All agreements must contain an anti discrimination clause.	No comparable provision.
Unfair dismissal protection provides cheap alternative to costly unlawful termination procedures.	Unfair dismissal protection removed for employees with less than 6 months service, and all employees in workplaces with fewer than 100 employees.
AIRC can hear and determine complaints about harassment and discrimination at work under anti-discrimination clauses of awards, agreements.	No arbitration, only voluntary mediation.

The removal of unfair dismissal protection will affect women, especially young women. Women are more likely to have been in their job for a shorter duration than men.

As HREOC has noted in its review of the incidence of sexual harassment in the workplace, most sexual harassment occurs early in the life of the job:

*Twenty-three per cent of employees in the Australian labour force in November 2002 had been with their current employer for less than 12 months. Complainants of sexual harassment in A Bad Business are over-represented in this category by as much as three times the general population, and targets of sexual harassment in the telephone survey almost double this proportion<sup>27</sup>*

The 6-month qualifying period simply removes a support for women who protest against sexual harassment. A recent full court of the federal court has held that it is not unlawful to dismiss an employee for lodging a complaint, unless the complaint is to an external body.<sup>28</sup> On this authority it is lawful to dismiss an employee for making an internal complaint of harassment.

This underscores the problem with reliance on the unlawful termination jurisdiction as a remedy for discrimination. Firstly not all discrimination results in dismissal. If the discrimination results in detrimental treatment short of sacking, the employee must complain to HREOC and ultimately the Federal Magistrates Court, where the proceedings are legalistic and slow, and the employee risks costs being awarded against her.

Secondly, not all discriminatory dismissal is unlawful, and an employer can avoid the claim simply by relying on another lawful ground (even if the ground is unfair) to avoid the claim.

<sup>27</sup> HREOC, [http://www.hreoc.gov.au/sex\\_discrimination/challenge\\_continues/data/chap3.html](http://www.hreoc.gov.au/sex_discrimination/challenge_continues/data/chap3.html)

<sup>28</sup> He, in the matter of an application for Writs of Mandamus and Certiorari or Constitutional Relief against Lewin [2004] FCAFC 161 (21 June 2004)

## Conclusion

The proposed WorkChoices legislation will introduce significant changes to the regulation of the labour market. This briefing does not attempt to address some of the broader questions relating to the desirability or otherwise of the Bill.

It is a genuine effort to look at the Bill's proposals with the interests of working families and women in mind. And it concludes that the Bill will not be good for working families and will not be good for working women.

This conclusion is not one unique to unions, or critics of the Government from the Left.

Concerns have been expressed by 64 national women's organisations, including the following organisations:

Australian Church Women, the Australian Federation of Medical Women, the Catholic Women's League Australia, the Council on the Ageing, Guides Australia, the Muslim Women's National Network of Australia, the National Council of Jewish Women of Australia, Business and Professional Women Australia (BPWA), Certified Practising Accountants (Women's Network), the National Association of Women in Construction (NAWIC), National Foundation for Australian Women (NFAW) the National Council of Women of Australia, the Pan Pacific and South East Asia Women's Association, the Salvation Army (Women), Soroptimist International, the United Nations Development Fund for Women and Zonta International, the Association of Women Educators (AWE), the Australian Federation of University Women (AFUW), the VIEW Clubs Australia (Voice, Interests and Education), Women in Adult and Vocational Education (WAVE), Women in Mortgage Broking Network (WIMBN) and Women With Disabilities Australia (WWDA).

Regardless of party affiliations, all women politicians should ensure that changes to the regulation of the labour market advance women's position in employment. The Workplace Relations Amendment (WorkChoices) Bill does not.

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