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

**First submission of the
Women's Electoral Lobby
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Part 1 INTRODUCTION

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

Women's Electoral Lobby

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

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

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

WEL Policy on Family Responsibilities and Industrial Relations

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

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

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

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

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

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

WEL's intervention in this case

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

Need to accelerate spread of family friendly work provisions

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

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

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

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

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

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

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

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

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

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

PART 2 WEL'S POSITION ON THE APPLICATIONS

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

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

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

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

Importance of Award Minimum Conditions for women

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

Workplace bargaining does not guarantee equitable outcomes

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

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

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

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

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

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

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

Building principles of non-discrimination into awards

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

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

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

Work and family balance is in the public interest

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

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

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

¹⁰ *ibid*, at para 230

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

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

Enhancing productivity

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

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

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

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

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

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

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

Extending Parental Leave

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

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

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

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

Eight weeks simultaneous leave

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

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

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

Communication during Parental Leave

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

Right to return part-time

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Right to request variation in hours of work

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

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

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

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

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

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

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

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

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

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

53. Flexible working and the gender pay gap

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

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

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

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

²⁴ see Bittman ref above

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

²⁶ see reference to National Pay Equity Coalition Submission above.

Personal/family/carer's leave

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

Pricing women out of work?

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

Conclusions

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

²⁷ See ABS Child Care Survey

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

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

Supporting material

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