

WORK AND FAMILY TEST CASE 2004

ACTU Outline of Contentions

30 April 2004

Contents

Introduction	1
1 The Legislative Environment.....	4
2 The Labour Force, Families and Dependency	8
3 Changes in the Organisation of Work Have Not Been Met With Changes in the Provision of Care	12
4 Family Health and Wellbeing.....	18
5 Ensuring the Safety Net Meets Families' Needs	22
6 The Economic Impact of the Claims	39
7 Family Responsibilities and Women's Workplace Disadvantage	46
8 International Comparisons	50
9 The Needs of the Low Paid and the Role of the Safety Net	52
10 Conclusion.....	54
List of Cases.....	55

Introduction

1. This outline of contentions and evidence is filed by the ACTU in accordance with the directions of the Commission issued on 20th April 2004, in support of the following applications:
 - a) Application by the SDA to vary the Retail And Wholesale Industry - Shop Employees – Australian Capital Territory - Award 2000;
 - b) Application by the ASU to vary the Clerical And Administrative Employees (Victoria) Award 1999;
 - c) Application by the CPSU to vary the Pharmaceutical General – CSL Award 1998;
 - d) Application by the AMWU to vary the Metal Engineering and Associated Industries Award 1998; and
 - e) Application by the AMWU to vary the Graphic Arts General- Award 2000collectively referred to as **“the ACTU Applications”**.
2. Following conciliation before SDP Marsh the ACTU has amended its applications. Attached is a Table comparing the union applications as originally filed and the variations now sought. Also included is a revised draft application to vary the Graphic Arts Award General Award 2000.
3. The contentions and evidence is presented as follows:
 - a) The ACTU Applications are consistent with the Commission’s objects, within its powers, and appropriate, taking into account the Commission’s obligations (Part I);

- b) Changes in the labour force, in family and household structures, and in the rates of disability within the community mean that a significant sector of the workforce have responsibilities outside their work for the care and support of family members¹ (Part II);
- c) Changes in the organisation of work have not been met by new arrangements for the care of dependents (Part III);
- d) Workers bear the impact of these changes, and work has a negative effect on their family life (Part IV).

4. The ACTU Applications provide solutions which:

- a) recognise that workers' family responsibilities vary across the life course, but are predictably more intense during major life events;
- b) recognise that it is appropriate to intervene in the labour force in support of families at these times. The extent of the intervention should be proportionate to the risk to workers and their families, including risks associated with withdrawal from the labour force;
- c) have a particular focus on granting parents of pre-school children special rights that facilitate and support parents in their parenting role, and which recognise the extensive evidence about the importance of early childhood in improving the life chances of individuals; and
- d) are consistent with the observed practices and stated preferences of the Australian workforce (Part V).

¹ "Family" includes a member of the employees household.

5. The ACTU Applications will reap benefits for the economy by:
 - a) removing barriers to employment for workers with family responsibilities;
 - b) In the context of an ageing population and declining fertility levels, encourage labour force participation without jeopardising improvements in the fertility rate; and
 - c) Improving business performance (Part VI).
6. The ACTU Applications will address the disadvantage women and workers with family responsibilities face in the labour force (Part VII).
7. The ACTU Applications are consistent with regulatory arrangements in other OECD nations (Part VII).
8. The Commission should act to protect the needs of the low paid, who are less likely to obtain the benefits of family friendly working arrangements through bargaining or informal arrangements (Part IX).

1 The Legislative Environment

1.2 The measures sought are consistent with the objects of the Act. They will:

- a) Encourage high levels of employment, especially employment of mothers of young children and carers of disabled dependents² who are currently under-represented in the labour force;
- b) Support improved living standards, by facilitating parents and carers attachment to the labour force during times of risk of withdrawal from paid work;
- c) Contribute to higher productivity through staff retention, workforce diversity, lower turnover, return on training costs, improved morale, lower absenteeism and other benefits to business;
- d) Contribute to labour market flexibility;
- e) Involve no or negligible costs to employers, and therefore are not inflationary;
- f) Encourage employers and employees to reach agreement at the workplace or enterprise level, consistent with the foundation of minimum standards and an effective safety net of fair conditions of employment;
- g) Assists employees balance their work and family responsibilities in a mutually beneficial way;
- h) Respects and value diversity in the workplace; and
- i) Assist give effect to Australia's obligations under international labour standards.

² Consistent with ABS practice, the term carer is used to refer to individuals who have responsibility for the care and support of dependents other than their own children, or who care for a disabled child. Some individuals will have both parental and carer responsibilities.

1.3 The international labour standards, and other relevant international conventions are found in the following conventions to which Australia is a signatory:

- a) ILO Convention (No. 156) Concerning Equal Opportunities And Equal Treatment For Men And Women Workers: Workers With Family Responsibilities;
- b) ILO Convention (No. 111) Concerning Discrimination In Respect Of Employment and Occupation;
- c) UN Convention on The Elimination Of All Forms Of Discrimination Against Women (CEDAW); and
- d) UN Convention On The Rights Of The Child.

1.4 The ACTU Applications relate to industrial matters pertaining to the relationship between an employer and a group of employees. The elements of the application are allowable matters or are incidental and necessary for the effective operation of the awards.

1.5 The applications are all directed to enabling, or further supporting individual's ability to take care of their dependents and engage in paid employment. This is a public interest issue within the meaning of Section 90. If granted the applications will have a positive effect on the national economy, including levels of employment.

The relationship between the WRA and the Sex Discrimination Act 1984

1.6 If granted the ACTU Applications will reduce the disadvantage that workers with family responsibilities, and in particular women face in participating in paid employment.

- 1.7 The Sex Discrimination Act 1984 (*Cth*), has amongst its objects “to eliminate, so far as is possible, discrimination against persons” on the various grounds (Section 3(b)). The Commission must take into account federal anti-discrimination laws (Section 93). In contrast to the *Sex Discrimination Act 1984* the Commission is also bound under Section 88B(3)(e), to “have regard to the need to prevent and eliminate discrimination” on various grounds including sex and family responsibilities. It must also, under Section 3(j), to “respect and value the diversity of the work force by helping to prevent and eliminate discrimination” on the various grounds. The Commission’s role is both remedial and preventative.
- 1.8 In recent years industrial practices which have, until now, been regarded as neutral have been found to have a bias against women, or workers with family responsibilities. It is appropriate that the Commission have regard to these decisions. However the Commission’s obligations go beyond the remedial, or complaint-driven focus of the *Sex Discrimination Act 1984* and relevant State and Territory laws. The Commission’s preventative role, coupled with its obligation under Section 93A to “help workers reconcile work and family responsibilities” means that Anti-Discrimination legislation sets a floor, not a ceiling, on the Commission’s role.

The Family Responsibilities Convention

- 1.9 The measures sought are consistent with Commission’s obligation, under Section 93A, to take into account the principles in ILO 156 Convention Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities (“the Family Responsibilities Convention”). Granting the ACTU Applications will:
- a) assist workers with family responsibilities to enter and participate in economic activity (Article 1);

- b) promote effective equality of opportunity between men and women workers and potential workers, by reducing the conflict between their employment and family responsibilities (Article 3); and
- c) promote effective equality of opportunity between men and women workers and potential workers by taking account their needs in setting terms and conditions of employment (Article 4).

2 The Labour Force, Families and Dependency

2.1 Over the past 30 years the size and composition of the labour-force has changed. There are also more disabled within the community. Full time care-givers have moved into paid employment, and employees have assumed caring responsibilities. In most households with dependent children all the adults work. Simply – more workers have family care duties, and more carer's have work roles.

Changes in labour force composition

2.2 Women have increased their involvement in the labour market. This is true across all age groups, and cohort trends suggest it will continue [Austin and Giles (2003) ACTU II 49-61, Gruen and Garbutt (2003) ACTU III 114-149].

2.3 Thirty years ago women's participation varied considerably over the life course, with women leaving the labour market during the child bearing years, returning when children were at school and then leaving again in the older age groups to undertake elder care responsibilities. Today's cross sectional data shows much higher participation during the child-bearing years. There has been strong growth in employment amongst older women. [See Campbell and Charlesworth (2004) ACTU I, p 59-188 at p 70-72 and p 147-148, Gray and Mc Donald (2002) ACTU III, p 230-262 at p 237].

2.4 Male participation has declined over the period, and male and female participation rates are converging. [See Campbell and Charlesworth (2004) ACTU I, p 59-188 at p 66-67].

Young people are staying in education longer and delaying entry to paid work, which shortens the duration of an individual's working life. [See Campbell and Charlesworth (2004) ACTU I, p 59-188, p 76-77].

2.5 In combination these trends have led to demographic compression. Key life events such as partnering, family formation, home purchase and caring for

parents are compressed into a shorter space of the overall lifecycle placing greater demands on caregivers, who may be raising their own children and caring for elderly parents.

- 2.6 Converging levels of labour force participation does not mean men and women's participation patterns are the same. Having children and elder care responsibilities effect female employment, while male participation rates are largely unaffected by parenthood or family caring responsibilities. [See Campbell and Charlesworth (2004) ACTU I, p 59-188 p 88-94, Bitman et el (2004) ACTU II 298 –509 at 346-368, Austin and Giles (2003) ACTU II 49-61, Tudball and Hand (2002) ACTU II DEWR ACTU II 510 – 516 Thornthwaite ACTU II 232 –278 at 259]
- 2.7 Women still move in and out of employment to cover periods when the demands of dependents are high. [See Campbell and Charlesworth (2004) ACTU I, p 59-188 at p 73-75].
- 2.8 However the cross sectional data under-estimates the participation rates of mothers of young children, whose labour force participation has dramatically increased over a generation. The birth of a child is no longer associated with long term or permanent exit from the labour force. The withdrawals are both temporary, and their duration has diminished in recent years. Mothers of quite young children are returning to work in greater numbers than their did their mothers. [See Campbell and Charlesworth (2004) ACTU I, p 59-188 at p 147-148, Russell and Bowman (2000) ACTU I, p 322-380 at p 339-340].
- 2.9 The growth in female, and particularly maternal employment, has been largely in part-time employment. Much of the growth in part-time work has been in casual employment. [See Campbell and Charlesworth (2004) ACTU I, p 59-188 at p 182-184].

Dependency and caring

- 2.10 Disability rates in the community have increased across all age groups. The rate of disability in the community is predicted to increase as the population ages, both numerically and structurally. Between 1993 and 1998 there was an increase of 257,500 people aged 5-64 years with severe or profound core activity restrictions living in the community, mainly with relatives. The number of people across all ages with severe or profound core activity restrictions in 1998 was 954,900, more than twice that of 1981.
- 2.11 De-institutionalisation of care for people with disabilities of all ages has been a feature of the Australian system, and is expected to continue.
- 2.12 This places demand on the community to provide care and support to individuals with a disability or impairment. More disabled people live at home, and rely on relatives and friends for their support, often for routine daily personal care. [See: Campbell and Charlesworth (2004) ACTU I, p 58-188 at p 80-94, AIHW (2003) ACTU I, p 420-482, ABS (2001) ACTU I, p 485-492].

Households and families labour force participation.

- 2.13 Labour force participation and caring roles describe the two potentially conflicting roles that individuals undertake. How these are managed in households and workplaces is the key to work and family reconciliation. Workplaces need to be involved in the adjustment process to achieving balance.
- 2.14 The way we live in households has changed over the past thirty years. There has been a growth in lone person households, due to longer periods in education, delayed family formation, marital breakdown and older people ageing in their homes. Families are increasingly heterogeneous, with more single parent families and blended families. One in five families with children are sole parent families. [See: Hugo (2001) ACTU I, p 381-420 at 405-409,

Campbell and Charlesworth (2004), ACTU I, p 59-188 at p 84-87, Russell and Bowman (2000) ACTU I, p 323-380 at p 340-341].

- 2.15 These changes in household and family composition have an impact upon the supply of parental care for children in households. They also affect the availability of informal carers for the disabled and elderly in households, as the next generation of older dependents will be less likely than the current aged population to live with a spouse, and may well live geographically remote from their families and service providers. [See: Campbell and Charlesworth (2004) ACTU I, p 58-188 at p 80-83 and 88-94, AIHW 2003 ACTU I, p 420-482 at p 467-478].

The way that families participate in paid employment has changed. Couple families with children are now overwhelmingly dual income families. Sole parents have increased their participation in paid employment. Most children grow up in households where all the adults work. However a significant minority of children live in households where no adults work, and these children are at risk of poverty, and potential long term disadvantage. [See: Campbell and Charlesworth (2004) ACTU I, p 59-188 at p 76-100 , Russell and Bowman (2000) ACTU I, p 322-380 at p 340].

- 2.16 Australia has also witnessed a rise in the number of carers who are also employed, and have a duty to both their employer and their dependent. Almost half the primary carer population is employed, and two thirds of non-primary carer's are employed.

Summary

- 2.17 Families with no full-time care giver available to do the caring work represents the new social norm. More workers care and more carers are employed. It is appropriate that the safety net be revised to take into account the prevailing work and care arrangements.

3 Changes in the Organisation of Work Have Not Been Met With Changes in the Provision of Care

The organisation of work

- 3.1 There have been changes in the organisation of work, many of which have made it harder for employees with families to provide care for their dependents. The alternative providers of care (relatives, childcare services, schools, disability services and aged care providers) provide only a partial solution to this gap.
- 3.2 The key trends are:
- a) A decline in the standard working week, involving longer hours, dispersion of working times, fewer days of work but longer days, more work at unsociable hours, and work intensification. [See: Bittman, and Rice (2002) ACTU I, p 495-506, Gray (2001) ACTU I, p 508-515, Russell and Bowman (2000) ACTU I, p 322-380 at p 336-337, Working Hours Decision, July 2002, Full Bench (PR072002), Selected Data Exhibit.]
 - b) Increasing casual work, particularly amongst workers with family responsibilities; [See: Parental Leave for Casuals Decision, 31 May 2001 Full Bench (PR904631), Selected Data Exhibit, Russell and Bowman (2000) ACTU I, p 322-380 at p 336-337].
 - c) Perceived increased job insecurity, and work intensification and increasing competitive pressure [See: Russell and Bowman (2000) ACTU I p 322-380, Bittman et al (2004) ACTU II 298-509 at 361–370].
- 3.3 The changes in work organisation have left many workers with family responsibilities ineligible for the safety net protection that do exist. The

changes to hours of work are not always compatible with the needs of dependents and the availability of alternative care.

New ways of work illuminate gaps in the provision of care

3.4 The provision of alternative care has not kept pace with the changes in labour force participation or organisation of work. Employees face difficulties accessing affordable and appropriate care for dependents that co-incide with their working arrangements.

Pre-school children

3.5 There is unmet demand for formal child-care, especially long day care. In 2002 parents of 106,400 children aged 0-4 years old wanted more care for their child. Forty per cent of the demand was for long day care, 23 per cent for family day care and 28 per cent for occasional care. In 2002, 22 per cent of community based, and 28 per cent of private sector long day care centres had no vacancies. A further 42 per cent and 29 per cent respectively had part time vacancies. [See: DFACS (2002) ACTU I, p 516-556 at p 549-554, Selected Data Exhibit].

3.6 Unmet demand is most keenly felt in the 0-2 age group. The provision of places in both privately run and community based long day care, and family day care, are skewed to the older age groups. This is a structural feature of the supply of childcare, due to regulatory regimes in each State and Territory which mandate additional staffing levels, and hence higher cost of providing places for children under aged 2. [See Witness statement of Carol Ellison, Jacqueline Luttick, Kathleen Drayton, Catherine McAnda].

3.7 Evidence shows parents of younger children favour informal care (usually grandparents). Use of informal care is decreasing, and parents favouring this care option for infants and toddlers face declining availability as older women are increasingly employed. This not only affects the supply of informal care, but grandparents then face their own work and caring role conflict.

- 3.8 For those families who can access a place, childcare centres provide only a partial solution. Sixty per cent of parents of pre-school children complain of problems with childcare related to the opening times, breakdown of care and sick children. [See Thornthwaite (2002) ACTU II at p 233 – 278 at 268 - 272. Pocock ACTU II at p 5-28, Witness statement of Catherine McAnda, Carol Ellison].
- 3.9 Few centres are open all year round, and operating hours are usually limited to weekdays during ordinary hours. Childcare places, once allocated, are inflexible and must be paid for regardless of whether they are used. When supply is tight parents cannot switch days or buy additional days. The requirement to purchase regular childcare in half day or full day sessions means that parents pay for more care than they use. Occasional care places which can be bought by the hour are scarce, and regulations restrict the number of hours per session or per week that children can attend. [
- 3.10 Childcare centres and schools are unable to admit children suffering certain illnesses, and children suffering these conditions are sent home³. In addition to mandated exclusions most providers have a policy to discourage the attendance of sick children. Pre-school children with developing immune systems are prone to illness. [See Witness statement of Frank Oberklaid].

Before and after school

- 3.11 School hours are incompatible with the standard working week. Flexible start and finish times would assist families cover before and after school care of children.
- 3.12 In 2002, 67 per cent of the unmet demand for childcare for children aged 5-11 was for before and after school care. A recent Commonwealth allocation of

³ A list of illnesses and recommended exclusion periods is found at <http://www.nhmrc.gov.au/publications/fullhtml/exclusion.htm>.

10,000 new places falls short of meeting this demand. [See Witness statement of Joanne Dennington, Selected Data Exhibit].

- 3.13 Parents and children resist the use of outside school hours care for the full week, recognising the impact on children of long days. The use of before and after school care can add to family conflict, and parental guilt. [See Pocock ACTU II at p 3 –30].
- 3.14 One survey suggests that a small minority (3.8 per cent) of children aged 5-8 are left to care for themselves before or after school. Although the incidence of self care is low, the fact that such young children are unsupervised before and after school is a stark indicator of the conflict between competing obligations that parents face. [See De Vaus and Millward (1998) ACTU I, p 558-561].

School holidays

- 3.15 There are 12 weeks of school holidays each year. This poses a problem for parents regarding supervision of their children. In 2002 273,400 children (or 15 per cent of primary school children) would have liked to attend vacation care but did not do so. Of these, more than half were from families where all parents worked.
- 3.16 Secondary school aged children are not catered for by vacation care programs, yet parents are often reluctant to leave children under 15 years of age unsupervised for long periods.
- 3.17 The evidence shows that parents use a range of strategies to cover the school holidays, which rely on parents having access to flexible working arrangements. Despite this one survey shows that a minority of children under 15 years of age are caring for themselves during the school holidays, and a small group of children under 10 years of age are left alone at home over the holidays. [See Qu (2003) ACTU I p 563-566].

3.18 Granting the ACTU claim for purchased leave for family and caring responsibilities would assist families manage the school holidays. [See Witness statement of Jacqueline Luttick, Kathleen Smalley].

Curriculum days

3.19 Unlike school holidays which are common across a State and Territory, pupil free days are arranged at school level. Most non-school based providers of vacation care (local government, community and youth organisations) do not provide care on pupil free days. The ACTU claim for unpaid leave for curriculum days would provide parents with an option where alternative care is unavailable.

Breakdown of care

3.20 Parents relying on other relatives to care for their children face unexpected demands when the informal care giver is themselves sick. Schools and childcare centres are unable to provide appropriate care for children at all times. The NSW Department of Education lists 13 critical incidents (from physical damage to school property to staff or student suicides) which may compromise a school's capacity to provide adequate care and supervision for students. In additional discipline matters involve parental attendance at school. ABS data suggests that workers currently take leave when there has been a breakdown of their usual care arrangements. [See Selected Data Exhibit].

Non-parental care – the needs of the disabled and their carers

3.21 Carers are not immune from deficiencies in alternative care. Carers cite the lack of available care as a key reason for undertaking their caring jobs indicating the paucity of alternatives. In 1988 over one third of primary carers reported they had no fall back carer and one in ten reported difficulty accessing respite care. AIHW estimates unmet need for respite care,

community access programs and employment support programs. [See Witness statement of Katherine Edwards and AIHW ACTU I, p 420-482 at p 455 and Campbell and Charlesworth (2004) ACTU I, p 59-188 at p 174].

- 3.22 Granting the ACTU claim for purchased leave for family and caring responsibilities would assist families provide respite to primary carers.

Summary

- 3.23 The Commission has recognised that the way in which work is organised has changed significantly in the past 20 years. The rise of long hours, irregular hours and intense working arrangements have been accompanied by increased part time employment which is primarily casual, and without leave entitlements. These changes in working arrangements have not been met by changes in the provision of care. Most formal care is structured around employees who work a standard week, whose dependents have good (or at least stable) health and, who have other family resources available when usual care arrangements fail.

4 Family Health and Wellbeing

- 4.1 When work and family responsibilities are in conflict, this can affect an employee's work or an employee's family. The evidence is that it is employees who bear the impact of the work/family collision. There is also evidence of negative impact on family functioning. There are concerns about the impact of work/family imbalance on children's development and health. [See Glezer and Wolcott (1999) ACTU II at p 280-283 and Witness statement of Lyndall Strazdins].
- 4.2 Studies show that work has both a positive and negative effect on family life, health and well-being. The negative impact varies across ages and at different stages of life. They include stress, mood disorders, feeling tired, feeling rushed and time pressured, and dissatisfaction with the opportunities to enjoy time with family. Certain working arrangements are more likely to be associated with these negative effects, and there are some common mediating factors.
- 4.3 Spill-over effects seem to be felt most acutely by employees who are full time, (men and women), work long hours, are employed in high status jobs, or have low levels of job satisfaction. Long hours of work are associated with negative effect of work on family life. Half of the men and 44 per cent of women in the Australian Family Life Course Survey (AFLCS) said they did not have enough time for their family. Women working part-time are the least likely to report a negative impact, but are not immune from it. [See Glezer and Wolcott (1999) ACTU II at p 33–38, Peetz et al (2004) ACTU II at p 40–49, Lewis, Tudball and Hand K (2001) ACTU II at p 69-74, Millward ACTU II at p 51-58, Hand and Lewis ACTU II p 76-79 and Witness statement of Lyndall Strazdins].
- 4.4 Generally employees, and parents, who are working longer hours, and those who would prefer fewer hours are more likely to report negative effects.
- 4.5 One Australian Institute of Family Studies (AIFS) study reported that men's long hours have a negative effect on time pressure, which reduces life

satisfaction. For higher paid men, the time pressure also had an impact on the quality of their relationship with their spouse. For low paid men there was no offsetting increase in overall satisfaction associated with long hours work. This is consistent with Glezer and Wolcott's (1999) finding that white collar occupations felt higher levels of family interference due to work. [See Weston, Qu and Soriano ACTU II p 60-67].

- 4.6 Other surveys show high job intensity was strongly associated with dissatisfaction in family balance, and they find that long hours are related to dissatisfaction, not just because of the pressure it places on time at home, but because of the associated work intensification. The impact of this was a deterioration in the quality of domestic relationships. [See Peetz et al ACTU II at p 40-49].
- 4.7 Fathers interviewed in the DFACS *Family and Work: The Family's Perspective* study, particularly those with younger children, reported not having sufficient time with their children. This was especially true of shift workers. [See Hand and Lewis (2002) ACTU II at 76-79].
- 4.8 Mothers report they are constantly rushed and exhausted. Low-income parents, especially sole parents working full time, report feeling exhausted. [See Russell and Bowman (2000) ACTU I, Gregory et al (2003) ACTU II at p 285-297 at 291, Campbell and Charlesworth (2004) ACTU I, p 59-188 at p 119, 120 and 188].
- 4.9 Certain work arrangements compound the ill-effects. UK surveys reports that an absence of choice and control over their arrangements of hours of work limited satisfaction with working arrangements amongst employees working non-standard hours. Peetz et al (2004) reported that irregular hours (weekend and night work) and unpredictable hours exaggerated the negative impact of long hours and job intensification. Conversely, flexibility over hours was found to be associated with reduced stress for parents who were interviewed in the DFACS study. [See Lewis, Tudball and Hand (2001) ACTU II at p 69-74, Millward (2002) ACTU II at p 51-58, Peetz et al, (2004) ACTU II at p 40-49.

- 4.10 A number of the surveys also report on the impact of work on marital harmony, and relationship quality. [See Bittman et al (2004) ACTU I, p 299-509, Russell and Bowman (2000) ACTU I, p 322-380 at p 348-352, Peetz et al (2004) ACTU II, p 40-49, Weston, Qu and Soriano ACTU II p 60-67, Witness statement of Esther Konings and Cynthia Tutalo].

Time Use evidence

- 4.11 Studies measuring time consumed in paid and unpaid work show that employed Australians are undertaking more total work. For women, the evidence shows an increase in their overall working hours (paid and unpaid) over the past 25 years, as well as a dispersion in the hours of work. For men the evidence points to a polarisation of working time between employed men and those without paid employment. [See Bittman and Rice (2002) ACTU I, p 495-506, Craig 2003 ACTU II at p 81-94].
- 4.12 Mothers of young children are particularly pressed for time. Having young children adds up to 6.5 hours unpaid work per day to a household. The evidence suggests mothers of pre-school children working full time have effectively no child-free leisure at all. [See Craig 2003 ACTU II, p 81-94].

Effect of Parents' Work on other family members

- 4.13 The Commission's has traditionally protected employees from the detrimental effect of work upon their health and well-being. Employers owe a duty of care to their employees and to their employees' children which extends to the psychological health of the children. It is appropriate that in adjusting the safety net, the Commission considers the impact of work on employees' dependents. [See *Gifford v Strang Patrick Stevedoring Pty Ltd* [2003] HCA 33 (18 June 2003)].
- 4.14 There is some concern about the impact of parental employment spilling over, through parenting stress, marital disharmony and on children's health and

well-being. [See Russell and Bowman (2000) ACTU I, p 322-380 at p 343-347, Witness statement of Lyndall Strazdins].

- 4.15 Work and family conflict spills over to other family members. A study of employed grandparents showed that they report some negative effects of assisting care for their grand-children in addition to their other caring roles. [See Goodfellow and Lavery (2003) ACTU II at p 96-101, Witness Statement of Cynthia Tutalo].

Summary

- 4.16 There is evidence that employment can have a negative effect on employee's health and wellbeing, as well as causing dissatisfaction with the balance in their lives. Workers with highly dependent family members (especially mothers of pre-school children working full time) feel the pressure the most, while long hours fathers experience the most dissatisfaction with work and family balance. Working irregular hours and having no control over hours take their toll on employees and their families.

5 Ensuring the Safety Net Meets Families' Needs

- 5.1 Having argued that a greater proportion of the workforce are exposed to conflicting and competing work and family responsibilities, and having shown the difficulties incurred, this next part identifies and advocates appropriate solutions, which should be inserted within the award safety net.
- 5.2 Employee's and their families' needs are not static across the life course. They vary with the needs of their dependents and the household model (eg. single or couple family). Employees need to re-negotiate their employment arrangements to suit the different phases and intensity of caring demanded by their dependents. The focus of the ACTU Applications is to assist employees to do this without interrupting their workplace attachment.
- 5.3 Although families differ, there are predictable events which present employees with specific needs. The more acute these needs, the greater the risk to the employee of losing touch with the labour market, or becoming marginalised within the workforce, and the greater the extent of intervention in the labour market advocated. The ACTU Applications have been framed to protect employees, especially women, from these risks. The following Table illustrates the place of each of the ACTU claims across the life course. [See Witness statement of - Katherine Edwards, Peter Gough, Joanne Dennington, Esther Konings, Kathleen Smalley, Carol Ellison, Jacqueline Luttick, Susan Bennett, Catherine McAnda, Patricia Jack, Sonia Tatchell, Kathleen Drayton].

Key Transition	Existing Safety Net	ACTU Application	Level of intervention
Birth	Unpaid parental leave for mothers and fathers with more than 12 months service, and, if casuals, regular employment. 1 week concurrent leave, 3 weeks for adoptive parents	Reasonable unpaid leave for parents with less than 12 months service, or irregular casuals. Leave for other family members who are essential at time of birth (eg to support single mothers, to care for other children while parents at the birth)	Employee entitlement
		Additional simultaneous leave for eligible fathers –8 weeks	Employee entitlement
Routine care of infants and toddlers	12 months parental leave In some awards retention of parental leave test case option for part time employment until child is 2, subject to employers' agreement	24 months parental leave	Employee entitlement
		Part time employment until child school aged	Employee entitlement
		Flexible hours or place of work	By request, employer to not unreasonably refuse
Routine care of children aged 2-school aged	By agreement part time employment in most awards	Additional periods of 12 months child rearing leave, until child school aged	By request, employer to not unreasonably refuse
		Flexible hours or place of work	By request, employer to not unreasonably refuse
		Part time employment until child school aged for parent returning from parental leave	Employee entitlement

Key Transition	Existing Safety Net	ACTU Application	Level of intervention
		Up to 6 weeks unpaid leave per annum, with pay averaging	By agreement, employer to not unreasonably refuse
Transition back to work (parent) and to non-parental care (child)	Potential for part time employment with consent of employer, up until child is 2 (some awards) or under general part time provisions.	Part time employment until child school aged	Employee entitlement
Routine and ongoing care of dependents pre-school, school aged children, and dependents with disabilities	Part time employment by agreement	Up to 6 weeks unpaid leave per annum, with pay averaging	By agreement, employer to not unreasonably refuse
		Flexible hours or place of work	By request, employer to not unreasonably refuse
Illnesses, breakdown of care, and other family emergencies	5 days paid carers leave per year for eligible employees, subject to having personal leave available. Only for illness of family member. No uniform treatment in awards of unpaid leave – sometimes available by agreement, sometimes 3 days available	Unpaid emergency leave for otherwise ineligible employees, also for purpose of breakdown of care, or school being unable to provide care.	Employee entitlement
Death of family member	Paid bereavement leave for eligible employees- 2-3 days per occasion/per annum	Unpaid emergency leave in connection with death of a family member for otherwise ineligible employees	

Caring for infants and young children

- 5.4 The healthy development of children is crucial to the future well-being of any society, and supporting parents in their parenting role is the most important contribution that can be made to child well-being. (CEDAW, UN Convention on the Rights of the Child).
- 5.5 There is compelling evidence that, on a range of indicators, Australian children are falling behind. There is also strong evidence that the most effective and efficient time to protect children against poor outcomes is in the pre-school years. [See *A Head Start for Australia: An Early Years Framework* ACTU II at p 104-122, McCain and Mustard ACTU II at p 124-231 and Russell and Bowman (2000) ACTU I, p 322-380 at p 343-347 and Witness Statement Frank Oberklaid].
- 5.6 The most critical environment for infants and young children is that provided by their parents. Institutions, including employers and workplaces, need to support parents in providing stable, secure, nurturing environments for their children. Protective factors that are relevant to these proceedings include good maternal health and support for breastfeeding, positive attention from both parents, facilitated by family friendly work environments and cultures. Risk factors include poverty, long-term parental unemployment, and parent, especially maternal stress. [See *A Head Start for Australia, An Early Years Framework*, ACTU II at p 103-122, Witness statement of Frank Oberklaid, Lyndall Strazdins, Cynthia Tutalo].

Extending parental leave until children are two years old

- 5.7 Parents want their children to reach particular developmental milestones before they move to non-parental care, or before they resort to full time care. The milestone might be a few weeks after birth or the commencement of school. These choices should be supported. [See Witness statement of Rosemarie Gray, Catherine McAnda, Kathleen Drayton and Frank Oberklaid.]
- 5.8 The ACTU claims for extended parental leave, child rearing leave and part time work until children are school aged facilitate these choices. Working arrangements should facilitate children and parents forming relationships which foster the child's development, while enabling parents to participate in employment.
- 5.9 The current parental leave standard of 52 weeks leave was developed in 1979 when few (16 per cent) of mothers returned to employment when their child was under 12 months, and the norm was for longer periods of withdrawal from work. Awarding the claim to extend the leave to 104 weeks would recognise that today, for most parents, the birth of a child signals relatively short term, temporary exit from paid work. [See Campbell and Charlesworth (2004) ACTU I at p 59-188 at 6770] .
- 5.10 There is much higher community acceptance of the developmental benefits of childcare as children get older. These attitudes affect parents' decisions, and affect the satisfaction or stress associated with work and family decisions. [See Mc Donald (2001) ACTU III at p 28-41, Selected Data Exhibit, Witness statement of Frank Oberklaid].
- 5.11 As parental leave usually covers a short period before the birth of the child, parental leave expires when the child is around 10 months old. For some families complications during pregnancy mean leave is taken early in the pregnancy, thus diminishing the period of parental leave after the birth of the child. At this age children are non-verbal, often not walking, and are wary of strangers. There is evidence that the end of parental leave is not the ideal

time to settle children into child care. Beyond the age of 18 months separation anxiety and stranger anxiety diminishes. [See Witness statements of Cheryl Dissanayake, Rosemarie Gray, Catherine McAnda, Sonia Tatchel].

- 5.12 The World Health Organisation recommends continued breastfeeding until a child is 2 years old. Return to work is a commonly cited reason for weaning.
- 5.13 Some parents have no childcare available at the end of parental leave. Waiting lists mean that parents have to take a place when offered. The availability of places at individual centres is not evenly distributed through the year, and parents do not have unilateral choice about when to return to work. Granting the claim would allow some flexibility for parents to return during the second year, when childcare becomes available. [See Witness statement of Catherine McAnda, Kathleen Drayton, Carol Ellison and Helen Walker].
- 5.14 Employers are granting extended leave on an informal basis. However there has been a low take up of extended leave in bargaining, with fewer than around 2 per cent of agreements providing for extended unpaid parental leave. [See OECD (2002) ACTU I at p 190-321 at 303, Witness statement of Katherine Smalley, Rosemarie Gray, Catherine McAnda].

Granting the claim

- 5.15 Extending the right to parental leave until the child is two would provide parents with greater choice in the care of their children, while recognising parents' longer term attachment to work. The claim builds on the rationale of the Commission in the *Parental Leave Test Case* 26 July 1990 Full Bench J3596.

A right to part time work for parents of pre-school children

- 5.16 The ACTU Application for a right to part-time employment for parents of pre-school children recognises the importance of the early years for children's development. It is also based on evidence that part time work is the option

chosen (within the constraints of available jobs, childcare, the gendered division of domestic labour) by many Australia families to enable them to provide care to young children while not breaking connection to the labour force. [See Thornthwaite ACTU II at p 233-278 at 243-250, Campbell and Charlesworth ACTU I at p 58-188 at 124-127, 108-110 and 67-72].

5.17 Granting the ACTU claim for part time return from parental leave would assist parents (particularly mothers) return to quality jobs, with regular and predictable hours, pro-rata employment conditions, and access to seniority based training and career progression. This would ameliorate some of the penalty associated with child-birth. [See: OECD ACTU I p 189-321 at p 260-276 and 238-240, Bittman et al (2004) ACTU II p 299-509 at p 357-361 and Thornthwaite (2002) ACTU II at p 232-278, 243-250 and Gray (2001) ACTU I at p 508-515].

5.18 Mothers of young children in Australia show a strong take-up of part time employment. Mothers with young children working part time hours are more satisfied with their work family balance, and with their hours of work than part time men or full time employees.

5.19 Mothers in full time work express a preference for part time hours. [See Glezer and Wolcott (1979) ACTU II p 280-283 and Thornthwaite (2002) ACTU II p 232-278, p 243-250, OECD (2002) ACTU I at p 189-321 and 228-237].

5.20 Mothers not currently in the labour force who would prefer to be in paid employment also express a desire for part-time employment. This is true of parents from low-income families who are currently out of paid employment. [See Glezer and Wolcott (1997) ACTU II at p 280-282, Gregory et al (2003) ACTU II at p 285-297 at p 294, Thornthwaite (2002) ACTU II at p 232-278 and

Witness statement of Esther Konings].

5.21 The time use data shows that the imposition of a requirement of full time employment constitutes a significant disadvantage to mothers of young

children and is barrier to return to work. [See Bittman and Rice (2002) ACTU I at p 495-506, Craig ACTU II at p 81-94, OECD (2003) ACTU I at p 189-321 at 244-246, Campbell and Charlesworth ACTU I at p 58-188 at 119-121].

- 5.22 Granting the ACTU Application for part-time work after parental leave would assist parents, particularly mothers, return to quality jobs. In the *Parental Leave Test Case* (Print J3596) the Commission recognised the importance of regular and predictable hours of work, pro-rata employment conditions and access to training and career progression in ensuring equity in the return to employment after the birth of the child. [See Witness statement of Sally Kellett, Catherine McAnda, Kathleen Drayton, Samantha Weiland, Tracey Bastin, Robyn Fortescue, Jacqueline Luttick, Susan Bennett, Carol Ellison, Lea Formigoni] .

Granting the claim

- 5.23 The Commission recognised the importance of part time employment for parents of very young children in its *Parental Leave Test Case*. Although the provisions facilitating part time employment until the child's second birthday were removed from the majority of awards following the *Supplementary Award Simplification Decision* (15 September 1998 Full Bench Print Q5596), the standard remains in force via legislation or awards applying in the States and Territories. Granting the claim would build upon the standard. [See WRA, Schedule 1A, Part 5, sections 41-53, Parental Leave (Private Sector) Employees Act 1992 (ACT), Industrial Relations Act 1996 (NSW) Part 5 Industrial and Employee Relations Act 1994 (SA) Schedule 5 Section 9, Model Parental Leave Clause For Private Sector Awards T3077 of 1991, The Qld Parental Leave Award – State Re Australian Workers Union, Qld and Ors, 149 QGIG 598].
- 5.24 If the Commission grants the claim, consequential amendments to the notice requirements contained in awards to include notice of the employee's intention to exercise this right are proposed.

Flexible work

- 5.25 The ACTU Application for flexible work would apply to all parents and carers, not only those with primary responsibility of pre-school children. Employees who rely upon others to care for their dependents during working hours need predictable and regular hours of work, so that as far as possible the care can be matched to those hours. [See Campbell and Charlesworth (2004) ACTU I p59-188 at 100-104], Thornthwaite (2002) ACTU II p 233-278 at 250-262].
- 5.26 Where there are difficulties, employees need flexibility to negotiate the usual arrangement of these hours around the availability of alternative care. They need flexibility to vary these hours in response to unpredicted contingencies. The ACTU claim for a right to request changes in hours or location of work, and unpaid leave address this need. They encourage employers and employees to negotiate the length of the working day, week or year. They encourage planning around the needs of the employers business and the predictable demands of dependents. The emergency leave claim provides a safety net around unpredictable demands. [See Campbell and Charlesworth (2004) ACTU I, p 59-188 at 100-107].

Hours of Work

- 5.27 The negotiated hours may involve a reduction or a re-arrangement in hours or place of work. Studies show that the most important element of family friendly work is flexible scheduling - giving employees control over when and where they perform work. [See DEWR (1998) ACTU II at 511-516, DTI (2001) ACTU III, at p 537-538, Bittman et al (2004) ACTU II p 299-509 at 361-363, Thornthwaite (2002) ACTU II p 250-262, Campbell and Charlesworth ACTU I p 59-188 at p95-115, Witness statements of Esther Konings, Sonia Tatchell, Michael Carydakis, Bri-anne Keen, Theresa Martin, Graeme Pearce, Margaret Thompson, Patricia Jack, Kathleen Smalley, Daniel Dalladay, Peter Gough.]
- 5.28 Where available, workers' practices reveal a high uptake of flexible working hours arrangements. Survey data also shows the form of working

arrangement most commonly required by employees is flexible working hours. Research confirms that employees value control over their hours of work more highly than any other flexibility. Both men and women support a right to flexible hours of work, and express the view that they would use flexible hours of work if the right were available. [See Gray and Tudball (2002) ACTU III, p 611, Thornthwaite (2002) ACTU II, p 233-278 at p 250-259, Bittman et al (2004) ACTU II, p 300-509 at 361].

- 5.29 While men are significantly less likely than women to take up family friendly working arrangements, men are more likely to use flexible working arrangements than any other measures (except paid leave). [See Campbell and Charlesworth (2004) ACTU I, p 59-188 at 178-180].
- 5.30 The qualitative data confirms this preference. In studies involving older children, parent's valued small-scale adjustments to working hours. Rearranging hours of work was particularly attractive to fathers, who stated that the provision that they do use are flexible start and finish times, work from home, and leave for family emergencies. [See Tudball, Lewis and Hand (2002) ACTU II, p 69-74, Hand and Lewis (2002) ACTU II, p 76-79, Bittman et al (2004) ACTU II, p 299-509 at p 485, DEWR (1998) ACTU I, 511-516].

Location of work

- 5.31 Re-arranging the location of work is helpful to employees. In 2002, 9 per cent of fathers and 18 per cent of mothers said they work from home. Work from home is a common flexibility employed over school holidays. For other employees a change in the location of work can assist with the management of childcare and school opening hours. Travel time and cost can be a barrier to employment. The ACTU claims for change in the location of work is not confined to home based work, but also envisages employees transferring to other work-sites operated by their employer. [See Qu, (2003) ACTU I, p 563-566, Gregory et al (2003) ACTU II, p 285-297 at p 294, Witness statement of Patricia Jack].

Granting the claim

- 5.32 The Commission has accepted that long hours of work can be bad for families, mean that parents rush their children, can give rise to difficulties for adolescent children, are bad for couples' relationships, and can force parents to choose between work and family. The Commission also accepted that long hours workers believe that the solution requires a legal standard.
- 5.33 The claim seeks to build upon the Commission's decision about the allocation of hours, but goes beyond long hours to the arrangement of hours. [See Working Hours Case July 2002 Full Bench PR 072002 p 56].
- 5.34 The ACTU Application proposes that employees and employers can agree new working arrangements that are consistent with the existing safety net applicable to that workplace or industry. This approach is consistent with the Commission's views on facilitation, and consistent with the scheme of the WRA, which provides for external scrutiny against a no disadvantage test of individual or collective agreements that seek to vary the safety net. [See Third Safety Net Adjustment & Section 150A Review Decision 9 October 1995 Full Bench Print M5600, Hospitality Award Simplification Decision 23 December 1997 Full Bench P7500, Metal Industry Award Simplification Case 11 March 1998 SDP Marsh Print P9311].

Infrequent or unplanned caring responsibilities

- 5.35 The remainder of the ACTU Applications deal with infrequent or unplanned and generally short term family responsibilities: birth of a child; illness or injury of a family member, breakdown in care, including the requirement to attend at school, curriculum days and death of a relative.
- 5.36 The ACTU Application for emergency leave would, if granted, provide a right to be absent from work to provide care and support to a family member for employees who have otherwise not applied for leave due to:

- Being ineligible for paid leave (engaged on a casual basis);
- Having insufficient accrual of paid leave;
- Having exhausted their accrued leave; and
- Having not applied for paid leave.

[See Campbell and Charlesworth (2004) ACTU I, p 59-188 at p 107-108, Gray (2001) ACTU I, p 508-515].

The ACTU claim recognises that family emergencies arise without regard to an employees' employment status or their duration of employment. Employees with family care responsibilities are disproportionately engaged on a casual basis or have been engaged for less than 12 months.

- 5.37 The Commission's obligation to assist employees balance their work and family obligations, arising under s93A, and derived from ILO 156 applies to "all branches of the economy and all categories of workers".
- 5.38 The ACTU claim is for such reasonable period of leave as may be necessary to meet the caring need. This recognises that the needs of families will vary depending on the nature of the caring need, the availability of alternative caregivers, and the degree of dependency. The exposure of employers is limited by the requirement that the employee may only take leave to do such things as are necessary to meet the caring need, and the time away must be reasonable.

Assistance on the birth of a child

- 5.39 The Commission has recognised that fathers should be able to provide assistance at the time of the birth of their child. This recognised the emerging role that fathers play at the time of the birth. In the 1960s fathers attended only 25 per cent of births, today the father is present at 80 per cent. [See Parental Leave Test Case 26 July 1990, Full Bench J3596 and Bittman et al (2004), ACTU II, p 300-509, p 315]

- 5.40 Since that time the growth in male job mobility and male casual employment has denied many new fathers short-term paternity leave. At a minimum fathers should be entitled to attend the birth of their child.
- 5.41 Existing parental leave standards fail to recognise the role of other family members in supporting a mother at the time of the birth of a child. Other relatives need to take leave to care for older siblings while the mother and father are at the delivery, yet this falls outside the scope of existing personal leave. Single mothers, widows, and separated mothers who account for around 13 per cent of births will rely on other relatives for support during delivery. [See Witness statement of Annette Rowlands].

Breakdown in the usual care arrangements for an employees immediate family or member of the employees household

- 5.42 It is anomalous that personal leave is available to cover the illness of a family member, but not available to cover the breakdown of care, which places the equivalent caring demand upon employees.
- 5.43 Parents, particularly parents of children under two years of age, rely on relatives and others to provide informal care,. When these relatives are themselves unavailable, parents may have no alternative care. The costs of in-home occasional care is prohibitive.
- 5.44 Employees with disabled relatives rely upon other family members to care for those relatives. This places enormous pressure on the primary care-givers, who report that they have no back up. Awarding the claim would enable employees to take leave to step into the breach when the usual care-giver is themselves unable to provide care. [See AIHW (2003) ACTU I, p 422-483 at p 438-444, ABS (2001) ACTU I, p 485-492].

5.45 ABS data suggests that the breakdown of care accounts for a small proportion of the total days taken already. [See Selected Data Exhibit, Witness statement of Leonie Grant].

Death of a family member

5.46 It is 40 years since the Commission recognised that employees should be able to take leave from their work when there has been a death in the family. Since that time casual employment trends have excluded a significant section of employees from eligibility for bereavement leave.

5.47 Under Queensland legislation long term casuals have access to bereavement leave, and under Western Australian legislation all employees are entitled to leave.

5.48 Awards vary in their treatment of bereavement leave, with some capping the entitlement. Providing a right to unpaid bereavement leave to all employees who are ineligible for paid leave is consistent with the compassionate purpose of the leave. [See Industrial Relations Act 1999 (Qld), Minimum Conditions of Employment Act 1993 (WA)].

Granting the claim

5.49 The ACTU Application for emergency leave builds on the existing safety net, which already recognises that births, family illnesses and deaths are events in an employee's life where the demands of an employee's family outweigh other considerations. Granting the claim recognises that casualisation and changes to job tenure mean that more than a quarter of employees (and up to 40 per cent of working mothers of children under 12) are denied the benefit of such leave. [See Witness statement of Leonie Grant]

5.50 Carers have no choice as to whether they attend to such family emergencies, and their ability to do so should not be subject to their job tenure, or to employer good will.

Extension of 8 weeks simultaneous parental leave

5.51 The time of the birth of a child is a time of significant strain on families. The ACTU Applications seek an extension of the period of leave available to eligible fathers to provide support and care to their partner at this time.

5.52 Mothers need significant support during the first two months of their babies' life. Some of the factors that need to be considered are:

- The role of fathers has changed, with more fathers seeking involvement in the raising of their children.
- Granting the claim would promote better child and maternal health outcomes, and encourage paternal/child bonding. The physical recovery from childbirth takes longer than 1 week. Most of the physically disabling conditions associated with birth start to resolve around 8 weeks after the birth. The discomfort associated with breastfeeding and maternal anxiety are also reduced at around that time. [See Thompson (2002) ACTU II, p 15-17 at p 11-13, Binns and Davidson ACTU II, p 532-569]
- In the 15 years since one week (three weeks for adoptive parents) concurrent parental leave was granted there have been increases in the rates of caesarean delivery and multiple births, coupled with shorter hospital stays. These factors necessitate greater support to mothers on their discharge from hospital. [See AIHW (2000) ACTU III, p 20-21, AIHW (2002) ACTU II, p 518-530].
- Support for the mother is recognised as protective against post natal depression and failure to breastfeed. The risks to the public health of failure to breastfeed are significant. The NH&MRC recommend exclusive breastfeeding to 6 months. Breastfeeding new-born babies is time-consuming, involving 8-12 hours feeding time for each 24 hours. During this time mothers find it difficult to care for other children in the household.

The number and duration of feeds tends to reduce at around 2 months. [See Binns and Davidson ACTU II, p 531-569 at p 559].

- The uptake is not expected to be high, as fathers have low uptake of unpaid leave. However it would provide a right to leave for those 30 per cent of fathers who have no control over the timing of their annual leave.
- Mothers can no longer look to their mothers, sisters and neighbours for support, as these women are now more likely to be employed. Child and maternal support services are more targeted and general access services have declined. [See Witness statement of Catherine McAnda, Annette Rowlands, Leonie Grant, Campbell and Charlesworth (2004) ACTU I, p 59-188 at p 150].

Other ACTU Applications

Communication during parental leave

- 5.53 It is common ground between that parties that the safety net should be adjusted to provide an obligation on employers and employees to provide each other with material information during parental leave, to assist the transition back to work. The area of difference relates to whether the safety net should oblige employers to provide an opportunity to the employee to discuss the return to work.
- 5.54 There is evidence that the return to work after parental leave is poorly managed. Failure to discuss the responsibilities has been a contributing factor in the discrimination cases involving communication during parental leave and return to work. Employers that are informed of the constraints that the parent's childcare arrangements place on the parent are less likely to act in a discriminatory manner. [See *Gibbs v Australian Wool Corporation* (1990) EOC 92-327, *Thompson v Orica Australia Pty Ltd* [2002] FCA 939, *Rispoli v Mercke, Sharpe & Dohme & Ors* [2003] FMCA 160 (3 October 2003)].

5.55 The cost of providing an opportunity to discuss the return to work is negligible, and are exceeded by the benefits to the employee and the business. [See Witness statement of Rosemarie Gray, Helen Walker, Cynthia Tutalo, and Kathleen Smalley].

6 The Economic Impact of the Claims

- 6.1 This next Part outlines the positive impact that awarding the ACTU Applications will have upon the economy.
- 6.2 The Australian economy faces two challenges; an ageing population; and low fertility rates. These place pressure on the working age population to participate fully in the economy. Removing barriers to labour force participation by workers with family responsibilities will not only alleviate some of this pressure, but have a positive impact upon gross production, fiscal balance, risk of poverty, and return on investment in education and training.
- 6.3 There is evidence showing the benefits to business of introducing more family supportive employment conditions.

Labour market effects of an ageing population

- 6.4 Australia's population is growing, however the rate of population growth is slowing, and expected, absent significant changes in net migration patterns, to continue to slow.
- 6.5 The age structure of the population is changing, fuelled by lower birth rates, and longer life expectancy. It is expected that the proportion of disabled in the community will increase at a greater rate than the total population. The current generation of older people is likely to survive to an age when they are affected by chronic illness and disability. [See Campbell and Charlesworth (2004), ACTU I, p 59-188 at p 64-142 and p 80-84, Hugo (2001) ACTU I, p 381-420 at p 398-402, OECD (2002) ACTU I, p 190-321 at p 216-220, AIHW (2003) ACTU I, p 421-483 at p 457-461].
- 6.6 In the absence of significant shifts in the ages at which individuals enter and leave the labour force, these changes will see a decline in the labour

force:population ratio, and an increase in the dependency ratio. Maternal and carer labour force participation is one way to ameliorate the impact of an ageing society. [See Campbell and Charlesworth (2004) ACTU I, p 59-188 at p 64-75, OECD (2002) ACTU I, p 190-321 at p 195-196, Austen and Giles ACTU III, p 49-61].

Fertility levels are falling

- 6.7 Australia's fertility rate has declined over the last part of the 20th century, from a high of 3.48 babies per woman in 1960, down to 1.70 in at the beginning of this century. While determinants of fertility are complex, cross-national comparisons show that there is a relationship between higher levels of female employment and higher fertility. When women have strong economic and social commitment to employment, then policies that assist them both work and raise a family will have greater success in promoting fertility than policies aimed at labour force withdrawal. [See Castles (2002), ACTU III, p 43–48].
- 6.8 Demographers argue that, given continued access to education and control over their fertility, women will limit the size of their families. They further argue that the labour market disadvantages associated with parenting mean women will delay having children until their have established their foothold in the labour market. Given these two trends, the key to improving fertility levels is assisting women compensate for the late start, by making it easy to combine having second and subsequent children with continued employment. [See Campbell and Charlesworth (2004) ACTU I, p 59-188 at p 78-79, Mc Donald (2001) ACTU III, p 28-41 and Witness statement of Peter McDonald].
- 6.9 Not all family-friendly measures are equal. Measures that assist mothers return to work (childcare for the under three year olds and flexible working hours) have stronger associations with increases in fertility than measures that assist mothers withdraw from the labour force. [See Castles (2002) ACTU III, p 43-48].

Labour markets, labour supply and maternal/carer labour market attachment

- 6.10 Measures to improve fertility rates will not improve the dependency ratio for 20 or more years. However family-friendly work practices that encourage maternal and carer labour force participation is one way to ameliorate the impact of an ageing society by increasing the proportion of working age people in paid employment.
- 6.11 By OECD standards Australia has low levels of employment of mothers of young children, who represent a potential source of labour. [See Campbell and Charlesworth (2004) ACTU I, p 59-188, p 73-75 and p 151-152].
- 6.12 There is a gap between parents stated desire for work and their involvement in paid employment. Glezer and Wolcott (1997) suggest that 56 per cent of mothers not in paid work would prefer be employed. A 2002 survey of parents from low income families in receipt of Parenting Payments showed that two thirds of mothers surveyed who were not currently employed wanted to work. Similarly, of mothers who had left the labour force during the survey, 90per cent would have preferred to be still working. The majority of parents planned to return to work. [See Glezer and Wolcott (1997) ACTU II, p 280-283, Gregory et el, (2003) ACTU II, p 285-297 at p 294].
- 6.13 There is now government interest in measures to retain older workers in the labour force, many of whom have elder care responsibilities. According to the ABS 22 per cent of primary carers currently out of the labour force wanted to be in paid employment. Australian Institute of Health and Welfare suggest that the impact of ceasing or reducing paid employment to perform informal caring can extend well beyond the actual or intended period of caring. 47,100 of primary carers expected to face problems that would prevent their return to paid employment. Reported difficulties included making suitable care arrangements and lack of flexible work. [See AIHW, ACTU I, p.422-483 at p 466, ABS (2001) ACTU I, p 485-492 at p 488].

The economic impact of higher labour force participation

- 6.14 The economic benefits of maternal and carer employment include:
- (a) increased aggregate labour supply and employment, and increased national wealth; [See Gruen and Garbutt (2003) ACTU III, p 63-111]
 - (b) improved fiscal position fuelled by reduced public expenditure on income support and higher taxation. [See Gruen and Garbutt (2004) ACTU III, p 114-148 at p 138]
 - (c) return on investment in on skills, greater workforce diversity,
 - (d) more stable family incomes, and inoculation against loss of a partners' income through unemployment and family breakdown;
 - (e) reduced risk of child poverty; [See Bradbury (2003) ACTU III, p 150-229 at p 201, 213-215]; and
 - (f) improved gender equity. [See Austen and Giles (2003) ACTU III, p 50-61].
- 6.15 It is in the public interest, having particular regard to levels of employment, that barriers to maternal and female labour force participation are removed. How well the benefits are delivered, and whether there are associated costs, depend on the quality of the employment and on how well parents and carers can combine work and their caring roles.

Making work more accessible for mother and carers

- 6.16 Whether parents and carers work is determined in part by the conditions attaching to work. While other factors including demographic and personal attributes⁴, and the tax and transfer system⁵ are also relevant, the

4 See Matthew Gray, Lixia Qu, David de Vaus and Christine Millward. *Determinants of Australian mothers' employment: an analysis of lone and couple mothers* AIFS Research Paper no.26, May 2002. The paper is available in print and online in PDF.

5 For a discussion on the impact of the tax and transfer system on mothers employment see Beer, G and Toohey, M *Is it worth working now? Financial incentives for working mothers under Australia's new tax system.* Paper presented to the 2003 Australia Social policy Conference, 9 July 2003

Commission can effect labour force attachment by enhancing the attractiveness of work and removing barriers to it.

- 6.17 OECD cross-national comparisons conclude that increasing part time employment tends to increase female participation⁶. There is some international evidence that extended duration of parental leave is associated with increased likelihood of the mother's to return to work. There is also evidence that women who remain employed after the birth of their first child will remain attached after subsequent children. [See Thornthwaite (2002) ACTU II, p 233-278 at p 262-264].
- 6.18 The Australian evidence shows that workplace flexibility and the existence of multiple family friendly provisions have a positive effect on maternal employment. [See Gray and Mc Donald (2002) ACTU III, p 231-262 and Witness statement of Peter McDonald].
- 6.19 The qualitative data and witness evidence contributes insights into the decision-making involved within families and the constant re-negotiation of involvement in paid work as family circumstances change. [See Bittman et al (2004) ACTU II, p 299-509, at p 372-481, Lewis, Tudball and Hand (2001) ACTU II, p 69-74].
- 6.20 The Commission has a particular obligation to consider the impact of adjustments to the safety net on the low paid. There is evidence of polarisation of mother's employment, with lower educated mothers, those with poor English, and sole parents less likely to be in employment. These are also the workers who have lower access to work/family reconciliation provisions. Focus group research amongst mothers in low-income households confirms that a lack of carer's leave and difficulties with school holidays are deterrents to work. [See Gregory et al (2003) ACTU II, p 285-297 at p 292].

⁶ For cross national comparisons see Jaumotte, F. Female labour force participation : Past trends and main determinants in OECD countries, OECD, Paris, Economics department working papers, n° 376, December, 66 p., (2003).

Business benefits

- 6.21 The introduction of family friendly work practices has been demonstrated to improve business performance against the “bottom line”. Benefits include reduced costs of recruitment, reduced absenteeism, attraction and retention of quality staff, better morale and productivity, return on investment in training, and positive corporate image. Flexible working hours have been associated with improved productivity, organisational commitment, retention, morale, and job satisfaction. Parental leave is associated with retention and lower turnover. [See Dex and Scheibl (1999) ACTU III, p 263–279, Bittman et al (2004), ACTU II, p 299-509, at p 321, OECD (2002) ACTU I, p 190-321, at p 289, Russell and Bowman (2000) ACTU I, p 323-380 at p 357].
- 6.22 Australian employers, governments and agencies⁷ have consistently argued the business case for voluntary introduction of family friendly measures. [See State Chamber of Commerce (NSW) (2002) ACTU III, p 322-324, DEWR (2002) ACTU III, p 240-320].
- 6.23 Where measures are introduced across an economy, the competitive effects will be diminished. However UK evidence suggests that employers have continued to report advantages to their businesses despite the introduction of legislated obligations on employers. The provisions considered include emergency leave virtually identical to that claimed by the ACTU, and reduction to part-time employment generally, and specifically for parents returning from parental leave. [See DTI (2003) ACTU III, 326-342 at p 338–340].
- 6.24 Specifically, employers have reported little or no concern in complying with the legislated right to request variations in hours or place of work for parents of young children. [See Lovell’s (2003) ACTU III, p 344-369 at p 350-354].

⁷ For examples see Commonwealth Government -Why Family Friendly Policies are Good for Business at <http://www.workplace.gov.au/Workplace/WPDisplay/>
Queensland -Balancing work and Family at <http://www.ir.qld.gov.au/work&family/balancew&f.pdf>
South Australia – Balancing Work and Family Life http://www.eric.sa.gov.au/uploaded_files/wf_booklet.pdf

6.25 In contrast the cost to employers and the economy are negligible. [See ACTU Estimated Cost of Claim].

7 Family Responsibilities and Women's Workplace Disadvantage

7.1 The disadvantages that women face in the labour market which arise from their role in the birth and rearing of children include:

- (a) Interrupted labour force attachment, and consequent loss of job seniority, status, access to conditions;
- (b) Lower average rates of pay
- (c) Lower lifetime earnings, including lower retirement incomes;
- (d) Less job security;
- (e) Greater likelihood of reliance of government income support; and
- (f) Loss of financial independence, and exposure to the risks of relationship breakdown.

7.2 Work plays a critical role in building resilience for women with family responsibilities across the life course. Aside from the general benefits, being employed is important for women's economic independence, and is the best insurance women have against family break-down.

7.3 Family responsibilities fall most heavily on women, and women's increased role in paid work has not led to any significant reduction in their role as carers. [See Bittman and Rice (2002) ACTU I, p 495-506].

7.4 The evidence suggests differences in the way women and men manage their work and family conflict. Men tend to fit family around work, often to the detriment of family relationships. Women tend to fit their work around their caring roles, to the detriment of their work. [See Bitman et el (2004) ACTU II, p 299-509 at p 345-363, Campbell and Charlesworth (2004) ACTU I, p 59-188 at p 112-114, Gray ACTU I, p 508-515].

7.5 The cost to women of these labour market transitions is loss of job security, loss of pro rata entitlements, loss of control over their working hours and loss

of seniority and service based benefits of employment. It also affects women's lifetime earnings, and consequently reduces their retirement incomes.

7.6 Two recent studies^{8,9} have reviewed the effect of children on mothers' lifetime earnings. Although they differ in their conclusions about the extent of the impact of children at different educational levels, both conclude that mothers forego up to a third of their otherwise predicted income on the birth of one child. The authors diverge more on the impact of second and subsequent children. However they agree that there has been a reduction of the extent of foregone income over the past 20 years, which corresponds to the period during which women have remained in employment whilst caring for young children.

7.7 Time out of the labour force is not the only cause of women's lower lifetime earnings, which is also associated with the quality of the jobs to which they return. Mothers' are concentrated in lower paying occupations and have less secure employment than women without children. [See OECD (2002) ACTU I, p 190-321 at p 247-250].

7.8 By removing barriers to labour force participation by workers with family responsibilities, and by easing the transitions between paid work and caring, women will have more opportunity to remain employed in quality jobs across all industries. The consequences will be improvements in gender pay and conditions differentials, female lifetime earnings, and women's position in the labour force generally.

8 Breusch, T and Gray, E A re-estimation of mothers' foregone earnings using Negotiating the Life Course (NLC) data. Negotiating the Life Course Discussion Paper Series Discussion Paper DP 017 October 2003.

9 Chapman, B., Dunlop, Y., Gray, M., Liu, A. and Mitchell, D. (1999) The foregone earnings from child rearing revisited. Technical Report Discussion Paper no.407, CEPR, RSSS, ANU

Anti Discrimination Cases

- 7.9 There is a body of case law developing around indirect sex discrimination, and direct discrimination on family responsibilities grounds, which support the granting of the ACTU Applications.
- 7.10 A number of cases have held that requiring a mother returning from maternity leave to work full-time is a requirement with which it is more difficult for women to comply than men. If the requirement is also unreasonable it is unlawful indirect sex discrimination. In *Mayer's Case*, where it was held that it was reasonable for the employer to insist upon the applicant's previous job being full time, the employer was held to have discriminated against the applicant by unreasonably refusing alternative part time employment. [See *Hickie v Hunt & Hunt* [1998] HREOCA 8, *Bogle v Metropolitan Health Services Board Equal Opportunity tribunal of Western Australia* (2000) EOC 93-069 (7 January 2000), *Escobar v Rainbow Printing Pty Ltd, (No 2)* [2002] FMCA 122, *Mayer v Australian Nuclear Science and Technology Organisation* [2003] FMCA 209, (but note *Kelly v TPG Internet Pty Ltd* [2003] FMCA 584 (15 December 2003)].
- 7.11 A second group of cases deal with a requirement imposed upon mothers of young children to attend at a particular place of work. They similarly conclude that a requirement to attend at a particular place will be a condition that parents and carers are less able to comply with and if unreasonable, does constitute unlawful discrimination. In *Schou's Case* the tribunal eventually held that it was unreasonable discrimination to require full time attendance at the workplace. In *Gardiner's Case* the Tribunal held that the employer had acted reasonably in all the circumstances, including having provided the employee with the opportunity to limit her hours at the distant location. [See *Deborah Schou v State of Victoria* (2000) EOC 93-100, *State of Victoria v Schou* [2001] VSC 3121 (31 August 2001), *Schou v State of Victoria Melbourne (Department of Parliamentary Debates)* [2002] VCAT 375 (24 May 2002), *Gardiner v NSW WorkCover Authority* (Unreported, NSWADT 021126)]

- 7.12 A third group of cases deal with the potential for discrimination when the employee's duties are altered unilaterally during parental leave. These cases identify the risks to employers in not providing an opportunity to discuss material changes in duties. [See *Thompson v Orica* [2002] FCA 939, *Rispoli V Merck Sharpe and Dohme & Ors* [2003] FMCA 160 (3 October 2003)].
- 7.13 The last case in the series involves an employer's refusal to grant an employee a break from work to transfer her child from one caregiver to another. The Federal Magistrate held that the requirement to work the employers fixed hours constituted unlawful indirect sex discrimination. [See *Song v Ainsworth Game Technology* [2002] FMCA 31.
- 7.14 The gendered nature of care, combined with the limited prohibition of family responsibilities based discrimination in the Sex Discrimination Act 1984 (Cth) means that men in identical circumstances to the applicants in these cases are unable to bring claims of indirect discrimination based on family responsibilities, while women can claim indirect sex discrimination ground. This anomaly supports the argument that the AIRC has a different and higher obligation than that imposed under the Sex Discrimination Act.
- 7.15 Granting the ACTU Applications in respect of part time employment after parental leave, flexible working hours and place of work, and the applications associated with leave for caring purposes would enshrine into awards existing obligations under the *Sex Discrimination Act 1984* and various State statutes, and provide employers with greater certainty about their responsibilities.

8 International Comparisons

8.1 The award variations sought by the ACTU are comparable to national regulations in other developed nations. In particular:

- (a) Two thirds of OECD nations provide for greater than 12 months leave associated with the birth of a child, and one third provide for longer than 2 years.
- (b) Additional extended leave associated with family care is available in Sweden (60 days per annum for sick children), Ireland (65 weeks for the care of a disabled or incapacitated dependent) and the United Kingdom (13 weeks per parent per child before a child's 6th birthday for child care, more for disabled children).
- (c) The United Kingdom, Netherlands and Germany have legislated rights to vary hours to accommodate caring needs, subject to the needs of the enterprise.
- (d) Part time work for young children/part time parental leave is available in Sweden, the Netherlands and is under consideration in Norway.
- (e) A number of jurisdictions provide temporarily leave to assist the disabled (Sweden, Denmark, the Netherlands, Ireland and Canada). [See Murray (2004) ACTU III, p 371-449 at p 407-435, Bittman et al (2004) ACTU II, p 299-509, p 328-336].

8.2 In recent years a number of nations have revised their regulatory regimes. In doing so they have been responding to international labour standards and conventions which have objects not dissimilar to the WRA. [See Murray (2004) ACTU III, p 371-449 at p 382-387].

8.3 Assessments of the impact of these regulatory regimes have been largely positive, even in jurisdictions that have traditionally eschewed regulation over market forces. [See Murray (2004) ACTU III, p 371-449 at p 436-448].

- 8.4 While the Commission must develop responses suited to the Australian context, the experience of the UK is particularly compelling due to the comparable nature of the Australian and UK economies and societies. The UK Government has undertaken significant research and policy development since its *Work and Parents: Competitiveness and Choice Green Paper* in 2000.
- 8.5 In the past 5 years the UK government has introduced: extended parental leave; improved time off for dependents; a statutory right to request changes in working hours and place of work for parents of young children, and up to 13 weeks unpaid leave (capped at 4 weeks per year) per parent to be used between the birth of the child and the child's 6th birthday, and 18 weeks for parents of children with a disability aged under 18 years. [See DTI Parental Leave A Short Guide for employers and employees, ACTU III, p 451-454, DTI Family Emergency? Your Right to Time Off ACTU III, p 455, DTI Flexible Working ACTU III, at p 461-477, DTI About Time: Flexible Working. Work and Parents Taskforce, (2001) ACTU III, p 511-592].¹⁰
- 8.6 The assessments of these schemes by employers have been largely positive. [See DTI, (2003) ACTU III, p 326-342 at p 338 –340, Lovell's (2003) ACTU III, p 344 –369 at p 350-354].

Summary

- 8.7 Granting the ACTU claims would not be inconsistent with practices in other jurisdictions. Most comparable nations provide, through national regulation, superior provisions, and many are considering further regulation to assist employees with their caring responsibilities.

¹⁰ The history of the UK's review and all associated papers, including the full regulatory impact statements can be accessed from <http://www.dti.gov.au/>

9 The Needs of the Low Paid and the Role of the Safety Net

- 9.1 Without effective rights, the Commission will not ensure that low paid employees have access to family responsive work practices, and therefore will not have fulfilled its obligations under Section 93A.
- 9.2 Both quantitative and qualitative studies confirm that access to family-friendly conditions of employment are not spread evenly throughout the economy. Employers are most likely to offer family friendly provisions to employees with high skills or in whom the employer had invested in training. Managers, professionals and administrators more likely to have access to family friendly provisions than other occupational groups, and public sector employees more likely than those in the private sector. Low skilled, low paid employees, those with short job tenure and part time employees are least likely to have access to the provisions. There is some evidence that agreements are unlikely to contain a comprehensive range of family friendly measures. [See Gray and Tudball (2002) ACTU III, p 596-648, at p 630, Whitehouse and Zetlin (1999) ACTU III, p 650-664].
- 9.3 Workplace bargaining and informal arrangements have proved ineffective in spreading family friendly working arrangements throughout the economy. [See OECD (2002), ACTU I, p 189-321 Bosses and Babies p 291-296, Campbell and Charlesworth (2004) ACTU I, p 59-188 at p 104-107, ACIRRT (2002) ACTU III, p 666-692, Whitehouse (2001) ACTU III, p 741-761].
- 9.4 Employees with family responsibilities are concentrated in industries, occupations and modes of employment where bargaining and informal arrangements are less prevalent. Those who are most likely to need access to family friendly provisions are least likely to have access to them. [See Gray E ACTU I, p 508-515, Whitehouse (2001) ACTU III, p 741-761].

Summary

- 9.5 Business and government have promoted the voluntary adoption of family friendly workplace measures, but reliance on voluntary take-up has proven to be inequitable. Family needs arise irrespective of the job characteristics of the employee or employer, and a fair and effective safety net would ensure access to appropriate minimum conditions across the economy.

10 Conclusion

- 10.1 The Commission is obliged to ensure that the safety net is fair in the context of living standards generally prevailing in the Australian community. (Section 88B(2)(a)). Over the past three decades there have been significant changes in family formation, household arrangements, women's role in the economy, dependency levels within the community, and labour force participation rates, patterns and the organisation of work. There are new and more complex living arrangements prevailing in the community than a generation ago.
- 10.2 These shifts have resulted in strains and pressures on employees and their families, which in many instances are detrimental to workers, their dependents, and the economy. These economic, social and cultural changes experienced within the space of a generation highlight the need to review the adequacy of the safety net in supporting parents and carers in undertaking their work and caring responsibilities.
- 10.3 The ACTU Applications provide support for employees, and minimise risks to family wellbeing. They are economically responsible in the short term, and promise long term benefits in improved participation and national product, reduced reliance on government expenditure, return on national investment in skills, return to business, and greater gender equity. In combination with other measures they may prevent considerable social ills, and will promote equality of opportunity.

List of Cases

- Atlantigas-ASU Award 17 September 1999, SDP Polites, Print R9217
- Bogle v Metropolitan Health Service Board, Equal Opportunity Tribunal WA (2000) EOC 93-069 (7 January 2000).
- Deborah Schou v State of Victoria (2000) EOC ¶93-100
- Escobar v Rainbow Printing Pty Ltd (no 2) [2002] FMCA 122
- Evans v National Crime Authority [2003] FMCA 375 (5 September 2003)
- Family Leave Test Case Decision, 29 November 1994 Print L6900
- Gardiner v NSW WorkCover Authority (Unreported, NSWADT 021126)
- Gibbs v Australian Wool Corporation (1990) EOC ¶92-327.
- Gifford v Strang Patrick Stevedoring Pty Ltd [2003] HCA 33 (18 June 2003)
- Hickie v Hunt & Hunt [1998] HREOCA 8
- Hospitality Award Simplification Decision 23 December 1997 Full Bench P7500
- Kelly v TPG Internet Pty Ltd [2003] FMCA 584 (15 December 2003)
- Maternity Leave Decision, 9 March 1979, Full Bench, Print D9576
- Mayer v A.N.S.T.O. [2003] FMCA 209 (6 August 2003)
- Metal Industry Award Simplification Case 11 March 1998, SDP Marsh Print P9311
- Model Parental Leave Clause for Private Sector Awards T3077 of 1991
- Parental Leave for Casuals Decision, 31 May 2001, Full Bench PR904631
- Parental Leave Test Case 26 July 1990 Full Bench Print J3596
- Personal/Carer's Leave Test Case Stage 2, 28 November 1995 Print M6700
- Rispoli v Merck Sharpe & Dohme & Ors [2003] FMCA 160 (3 October 2003)
- Schou v State of Victoria Melbourne (Department of Parliamentary Debates) [2002] VCAT 375 (24 May 2002)
- Song v Ainsworth Game Technology [2002] FMCA 31

State of Victoria v Schou [2001] VSC 321 (31 August 2001)

Supplementary Hospitality Decision 15 September 1988, FB, Print Q5596

The Qld Parental Leave Award –State Re Australian Workers Union, Qld and Ors, 149 QGIG 598

Third Safety Net Adjustment and Section 150A Review decision, 9 October 1995, Print M5600

Thomson v Orica Australia Pty Ltd [2002] FCA 939

Waters v. Public Transport Corporation [1991] HCA 49; (1992) 173 CLR 349 FC. 91/038 (3 December 1991)

Working Hours Case, July 2002, FB, PR072002

