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R/c 13/8/04  
CC/B 13/8/04

**Australian Government**

**Department of Employment and  
Workplace Relations**

## Facsimile

GPO Box 9879 CANBERRA ACT 2601

<b>To:</b> The President	
<b>Organisation:</b> Australian Industrial Relations Commission	
<b>Fax:</b> 03 9655 0401	
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<b>Date:</b> Friday, 13 August 2004	<b>No. pages:</b> 11 (Including this one)

## Message

*Re: C2003/4198 and others – Family Provisions Case*

Please find following the Commonwealth's contentions in response to the Women's Electoral Lobby's contentions in accordance with the directions of the Commission of 20 July, 2004.

Helen Innes  
A/Director  
Workplace Flexibility Section  
Workplace Relations Policy Group

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**Australian Government**  
**Department of Employment and  
Workplace Relations**

**National Office**

GPO Box 9879 CANBERRA ACT 2601

The Hon Justice Giudice  
President  
Australian Industrial Relations Commission  
80 Collins Street  
MELBOURNE VIC 3000

Dear Justice Giudice

*Re: C2003/4198 and others – Family Provisions Case*

Please find attached the Commonwealth's contentions in response to the contentions of the Women's Electoral Lobby dated 30 July 2004 in the above case. These contentions are made in accordance with the directions of the Commission of 20 July 2004.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Louise McDonough'.

*for* Louise McDonough  
A/g Assistant Secretary  
Wages and Conditions Policy Branch  
Workplace Relations Policy Group  
13 August 2004



**Australian Government**

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## **FAMILY PROVISIONS CASE 2004**

### **CONTENTIONS IN RESPONSE TO THE WOMEN'S ELECTORAL LOBBY CONTENTIONS**

**13 August 2004**

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## 1. Introduction

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- 1.1 The Commonwealth contentions in response to the Women's Electoral Lobby (WEL) contentions dated 30 July 2004 in the Family Provisions Case (the Case) – C No 2003/4198 and others - are submitted in accordance with the directions issued by the Australian Industrial Relations Commission (the Commission) on 20 July 2004.
- 1.2 The Commonwealth contends that many of the arguments outlined by WEL in its submission are flawed and therefore detract from WEL's position in support of the Australian Council of Trade Unions (ACTU). WEL appears to have not fully understood the parties' claims and has taken a number of issues out of context in its contentions.
- 1.3 Moreover, the Commonwealth notes that, rather than focussing on the merits of the claims of the parties in the Case, WEL's contentions appear to be directed, to a considerable extent, simply at criticising the policies of the Australian Government. The Government rejects such criticisms, but for its part directs its contentions in response to the issues raised by the claims before the Commission.

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## 2. Contesting WEL's main arguments

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### Effectiveness of Agreement Making

- 1.4 Throughout its contentions WEL makes a number of inaccurate statements about the effect of agreement-making, including that:
  - a workplace relations system that promotes individual contract and decentralised bargaining disadvantages most women workers;<sup>1</sup> and

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<sup>1</sup> WEL, *First Submission of the Women's Electoral Lobby*, July 2004, p. 4, paragraph 7.

- there is continuing evidence of inequitable outcomes of agreement-making.<sup>2</sup>
- 1.5 The Commonwealth reiterates its contentions of 14 May and 2 July 2004 that agreement-making provides the appropriate avenue to introduce workplace flexibilities that enable employees to balance their work and family responsibilities.
- 1.6 The Commonwealth refutes the contention that agreement-making disadvantages women. DEWR's Workplace Agreements Database (WAD)<sup>3</sup> data show that:
- wage outcomes for women in female-dominated<sup>4</sup> federal certified agreements (CAs) during the period 2002-2003 were similar to those in male-dominated CAs, with an average annual wage increase of 3.7% per employee for female-dominated CAs and 3.8% for male-dominated CAs;
  - women are more likely to be covered by almost all of the main employment provisions than their male counterparts. For example, 96 per cent of women covered by federal agreements are covered by type of employment provisions compared to 90 per cent of men, 91 per cent of women compared to 90 per cent of men have access to hours of work provisions and 91 per cent of women compared to 89 per cent of men have access to training provisions; and
  - women are 10 percentage points more likely to be covered by superannuation and equity provisions than men. On the other hand, men are more likely to be covered by occupational health and safety and consultative provisions than women.

<sup>2</sup> WEL, *First Submission of the Women's Electoral Lobby*, July 2004, p. 7, paragraph 17.

<sup>3</sup> The Workplace Agreements Database is a census database which contains information on all known federal enterprise agreements that have been certified or approved by the Australian Industrial Relations Commission since 1991.

<sup>4</sup> Female dominated agreements are federal certified agreements in which women represent 60 per cent or more of the employees covered by each agreement (equivalent definition for male dominated agreements).

- 1.7 This shows that women are far from disadvantaged under CAs in comparison to men, and have access to some provisions to a greater extent than men.
- 1.8 WEL also alleges in its contentions that "*while those [employees] in best practice organisations may have access to a range of flexible measures, for many employees progress has stalled entirely over the last decade.*"<sup>5</sup> WEL points to no specific evidence to support this, merely relying on 'a range of research'.
- 1.9 The Commonwealth strongly refutes this contention. Since the introduction of workplace bargaining in 1991, the number of workplace agreements has continued to grow at a rapid rate. WAD data show that around 80 per cent of all agreements between 1991 and 2004 were formalised after 1997. Analysis of individual federal certified agreements indicates that they facilitate positive work and family outcomes.
- 1.10 As stated in the Commonwealth contentions of 2 July 2004, the Government has consistently supported and actively encouraged agreed measures by employers to introduce family friendly policies and practices. There is clear evidence that this is happening. WAD data shows that around 82 per cent of federal CAs, covering 91 per cent of employees under CAs, contained at least one family friendly or flexible hours provision over the period 2002-2003. The most common family friendly provisions in CAs in 2002-2003 included family/carer's leave, part-time work, access to single days annual leave and paid maternity/primary carer's leave.
- 1.11 In addition, Australian Workplace Agreements (AWAs) on average provide superior wages for employees compared to federal awards and collective agreements. Average weekly wages for workers covered by AWAs are \$1001.10. This compares to \$741.30 for workers under federal

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<sup>5</sup> WEL, *First Submission of the Women's Electoral Lobby*, July 2004, p. 5, paragraph 10.

collective agreements. In fact, AWA employees earn up to 29% more than employees under federal collective agreements, with women on AWAs earning 32% more than women on federal collective agreements<sup>6</sup>.

- 1.12 The achievements of organisations that have delivered significant family friendly flexibilities through agreement-making are showcased in the National ACCI/BCA Work and Family Awards. The Commonwealth considers that WEL's negativity about the role and achievements of the Awards is disappointing.
- 1.13 The commitment by employers to increasing the flexibility available to their employees is demonstrated by employer groups in this Case seeking to remove out of date, inflexible and process-laden award provisions which prevent the utilisation of flexible working arrangements. Employers are also seeking to remove restrictions in awards which prevent employers and employees negotiating flexible hours of work, days of work, time or patterns of work or duration of employment, an endeavour which the Commonwealth supports.
- 1.14 WEL states that "*(E)nterprise level initiatives...are too limited, piecemeal and fragmented*" and presents examples, such as "*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*".<sup>7</sup> These examples are not supported by any evidence and are not sourced. The Commonwealth refutes WEL's contentions in this respect.
- 1.15 WEL states that the ACTU claims will increase negotiation but not mandate usage.<sup>8</sup> In the Commonwealth's view, the converse is the case. The ACTU claim for part-time work on return from parental leave, for example, involves the

<sup>6</sup> ABS, unpublished data, Employee Earnings and Hours, 2002.

<sup>7</sup> WEL, *First Submission of the Women's Electoral Lobby*, July 2004, p. 20, paragraph 58.

<sup>8</sup> WEL, *First Submission of the Women's Electoral Lobby*, July 2004, p. 20, paragraph 59.

introduction of new employee rights regardless of the capacity of the employer to accommodate part-time work in this situation. This may create a disincentive for employers to employ women.

- 1.16 As the Commonwealth contended in its 2 July submission, this will potentially have a negative impact on the effective and efficient performance of the labour market and the economy. WEL's assertion demonstrates that it does not fully comprehend the ACTU claims, which impose new employee rights with little room for flexibility.
- 1.17 WEL contends that the 'no disadvantage test' (NDT) in the Workplace Relations Act (WR Act) "*has not provided effective protection of family provisions, which are vulnerable to being traded off in pay bargaining*".<sup>9</sup> WEL provides no evidence to support its view. The Commonwealth opposes WEL's view. WAD data shows that women have generally done well under enterprise bargaining, as paragraph 1.6 of these contentions shows.

### **Government support for families**

- 1.18 In its contentions WEL suggests that the Government is not doing enough to assist families.<sup>10</sup> The Commonwealth refutes this contention. The Commonwealth invites the Commission's attention again to Section 5 of its 2 July contentions which details the extensive support provided by the Australian Government for families. This assistance includes the \$19.2 billion package of assistance for families in the 2004-2005 Federal Budget, the largest package ever put in place by an Australian Government.
- 1.19 The Commonwealth also refutes WEL's comments that it is "*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*

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<sup>9</sup> WEL, *First Submission of the Women's Electoral Lobby*, July 2004, p. 7, paragraph 18.

<sup>10</sup> See for example WEL, *First Submission of the Women's Electoral Lobby*, July 2004, pp.10-11 paragraph 25; pp.11-12 paragraph 31.

*family...when the Commonwealth's own employment deregulation and tax policies tend explicitly to this result*'.<sup>11</sup> WEL presents no evidence to support its assertion.

1.20 WEL's argument regarding the Commonwealth's employment and tax policies also have little relevance to the claims that are before the Commission in this case. The Commonwealth notes that:

- women's labour force participation rate has increased from 53.7 per cent in March 1996 to 55.5 per cent in June 2004, a rise of 1.8 percentage points; and
- women's full-time average weekly ordinary time earnings have risen from \$587.70 in February 1996 by \$262.30 to \$850.00 in February 2004. This represents a real dollar increase of \$96 a week, or 19.4 per cent.

### **Anti-discrimination**

1.21 As stated in its 2 July 2004 submission, the Commonwealth contends that it is not appropriate that complaints made under the *Sex Discrimination Act 1984* give rise to the inclusion of substantial new rights in the award system, as proposed by the ACTU and supported by WEL. Furthermore, it is not the role of the Commission to adjust the award safety net to reflect standards that WEL ascribes to HREOC as being "foreseeable".<sup>12</sup>

1.22 WEL states that "*(I)t 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 discrimination*".<sup>13</sup> The Commonwealth reiterates its 2 July contentions and restates that anti-discrimination case law has not

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<sup>11</sup> WEL, *First Submission of the Women's Electoral Lobby*, July 2004, p. 11, paragraph 31.

<sup>12</sup> WEL, *First Submission of the Women's Electoral Lobby*, July 2004, p. 9, paragraph 23.

<sup>13</sup> WEL, *First Submission of the Women's Electoral Lobby*, July 2004, pp. 8-9, paragraph 22.

established such a principle and that each case is decided on its individual merits.<sup>14</sup>

## **WEL's support for the ACTU claims**

- 1.23 The Commonwealth makes the following observations in relation to WEL's statements in support of the ACTU's claims:
- a) in response to WEL's assertion that a doubling of parental leave would strengthen women's attachment to the labour market, the Commonwealth relies on its contentions of 2 July 2004 that the effect of longer parental leave will be the exact opposite, and indeed erode women's attachment to and participation in the labour force;<sup>15</sup>
  - b) the Commonwealth notes that WEL acknowledges that take-up of extended parental leave may be limited for the reasons advanced by the Commonwealth;<sup>16</sup>
  - c) while WEL acknowledges the importance of part-time work for women<sup>17</sup>, it also makes a series of statements about part-time work being of poor quality and argues that women are effectively forced to work part-time because of a lack of real choices. WEL offers no evidence to support these generalisations and in some cases its material is purely anecdotal. In relation to WEL's statements about part-time and casual work and preferences, the Commonwealth notes that, as outlined in its 2 July contentions:
    - (i) the role of 'non-full time work', be that part-time, job share or casual work, in balancing work and family is undeniable and foundational,
    - (ii) part-time is the primary means by which many employees, particularly women,

<sup>14</sup> Commonwealth Government, *Contentions in Response*, 2 July 2004, p. 91 paragraph 11.23.

<sup>15</sup> Commonwealth Government, *Contentions in Response*, 2 July 2004, pp. 62 - 63, paragraphs 7.21-7.28.

<sup>16</sup> WEL, *First Submission of the Women's Electoral Lobby*, July 2004, p. 12, paragraph 32.

<sup>17</sup> WEL, *First Submission of the Women's Electoral Lobby*, July 2004, p. 13, paragraphs 36 and 37.

seek to balance their work and family responsibilities,

- (iii) both part-time and casual work contribute to the overall skills base of the labour market and, through increased productivity, improve Australia's competitive economic well-being.<sup>18</sup>

### **Scope of the case**

- 1.24 The Commonwealth contends that WEL has misunderstood the nature of the Family Provisions case by advocating for paid family-related leave provisions.<sup>19</sup> This is not included in the claims of any of the parties and is clearly outside the scope of this case.
- 1.25 WEL also includes substantial discussion of pay equity and superannuation issues in its contentions. The Commonwealth contends that these issues are irrelevant to this case and outside the scope of the claims.

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## **4. Conclusion**

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- 1.26 In the Commonwealth's view, WEL's contentions, properly analysed, do not provide any real support for the ACTU's claims.

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<sup>18</sup> Commonwealth Government, *Contentions in Support*, 14 May 2004, p. 27, paragraphs 4.16 - 4.20, p. 35, paragraphs 4.37-4.38.

<sup>19</sup> WEL, *First Submission of the Women's Electoral Lobby*, July 2004, p. 6, paragraph 16.