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March 13<sup>th</sup>, 2015

**Joint Submission to the Productivity Commission Inquiry on Workplace Relations  
From: The Work and Family Policy Roundtable & The Women + Work Research Group**

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Workplace Relations Inquiry  
Productivity Commission  
GPO Box 1428  
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The Work and Family Policy Roundtable (W+FPR) and Women and Work Research Group are pleased to make a joint submission to the current Inquiry into the Workplace Relations Framework.

The W+FPR and Women and Work Research Group have a significant interest in workplace relations. The regulation of workplace relations is critical to the wellbeing of women and men and, beyond work, to children and the nature and health of our communities. It is also critical to labour supply, fairness and the productivity of our workplaces and economy.

The attached submission draws on our collective research expertise in the area of workplace relations. We would be happy to expand upon our submission at a public hearing.

Yours sincerely,

Professor Barbara Pocock

Dr Elizabeth Hill  
Co-convenors W+FPR

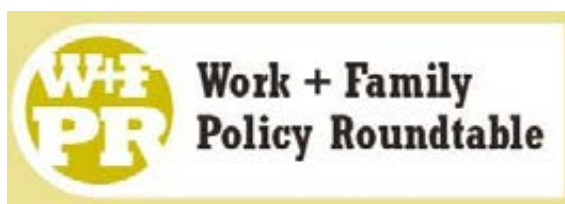
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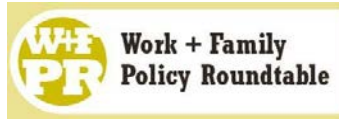
## **What is the Australian Work + Family Policy Roundtable?**

The Roundtable is made up of researchers with expertise on work and family policy. Its goal is to propose, comment upon, collect and disseminate research to inform good evidence-based public policy in Australia.

The W+FPR held its first meeting in 2004. Since then the W+FPR has actively participated in public debate about work and family policy in Australia providing research-based submissions to relevant public inquiries, disseminating current research through publications for public commentary and through the media.

The Roundtable is a network of 28 academics from 16 universities and research institutions with expertise on work, care and family policy.

A/Prof Siobhan Austen, Curtin University  
Prof Marian Baird, University of Sydney  
Prof Rowena Barrett, Queensland University of Technology  
Dr Dina Bowman, Brotherhood of St Laurence & University of Melbourne  
Dr Wendy Boyd, Southern Cross University  
Prof Deborah Brennan, University of NSW  
Prof Bettina Cass, University of NSW  
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A/Prof Belinda Smith, University of Sydney  
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Prof Trish Todd, University of Western Australia  
Prof Gillian Whitehouse, University of Queensland



## **Key Principles of the W+FPR**

The W+FPR has 12 key guiding principles to inform its work and comment. We believe that in principle, work and family policy proposals should:

1. Recognise that good management of the work-life interface is a key characteristic of good labour law and social policy.
2. Adopt a life-cycle approach to facilitating good work-family interaction.
3. Support women and men to be workers as well as mothers, fathers and carers, and actively encourage fathers as carers.
4. Facilitate employee voice and influence over work arrangements.
5. Ensure sustainable workplaces and workers (e.g. through 'do-able', quality jobs and appropriate staffing levels).
6. Ensure gender equality, including pay equity.
7. Protect the well-being of children and other dependants.
8. Ensure predictable hours, earnings and job security.
9. Promote social justice and the fair distribution of social risk.
10. Treat individuals fairly, regardless of their household circumstances.
11. Ensure flexible working rights are practically available to all workers through effective regulation, education and enforcement.
12. Adopt policy and action based on rigorous, independent evidence.

See <http://www.workandfamilypolicyroundtable.org> for details of the W+FPR and its activities.



## **The Women and Work Research Group**

The Women and Work Research Group's members comprise staff and students from the University of Sydney. We have extensive engagement with the policymaker and business community in New South Wales and nationally. We provide a bridge between academic research and policy making in the public and private sectors facilitating evidence informed policy development.

In recent years, WWRG's work has covered parental, maternity and paternity leave, flexible working and carers issues, migrant women and work, childcare, pay equity, equal opportunity for women in the workplace and women's health issues at work - including the impact of domestic violence.

### **Aims of the WWRG**

- To provide a scholarly environment in which a community of enquiry on all aspects of women, work, employment, family and community is created.
- To provide the bridge between academic work and policy work to provide the research for the development of evidence informed policy in matters pertaining to women, work and family.
- To provide a focal point for collaboration with established and emerging scholars in the field, and with research centres with similar interests in Australia and internationally.

For more information, please see <http://sydney.edu.au/business/research/wwrp>

**Director:** Dr Marian Baird, Professor of Employment Relations

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## Introduction

Australia is in the midst of profound demographic and workplace change, with more women in the paid workforce and an aging population, both of which create significant national challenges to the framework of workplace relations (Australian Government 2015).

A more feminised workforce, with higher rates of female labour market participation, means more workers have caring responsibilities and face the challenge of combining them with paid work. Dual earner households, where children are present, are profoundly different from the sole-earner/breadwinner household dominant in the post-war decades 1950-1980. These shifts bring changes for both women and men, and for children and other dependents and the broader community. An older population means providing more care to older citizens and requires changes to workplace and caring arrangements to suit changing needs.

The daily life of Australian families has fundamentally changed. The majority of Australian women with young children are now engaged in paid work. The 2011 Census shows that around 45% of all mothers return to work when their youngest child is less than 1 year old, and about 58% when their youngest child is under 2 years old (Megalogenis and Gosper 2012). In addition, 4.1 million employees in 2009 – both men and women – were either parents of a child under 15 years or had responsibility to care for a person with a disability, chronic illness or frailty due to old age. This means almost 40% of the workforce has significant caring responsibilities they must combine with their working lives (AHRC 2013). These social realities make the development of a rational and equitable workplace relations regime an urgent matter which is essential to Australia's future well-being, economic productivity and social inclusion.

Better work, family and care outcomes in Australian workplaces rely on more positive workplace regulation, leadership and culture. This is especially significant in small firms, which make up the majority of all Australian workplaces. Initiatives to increase workplace productivity or leadership should give a high priority to work, care and family issues, given the role that positive policy and action can make to productivity, participation and well-being.

Existing research suggests that first line supervision and organisational norms and practices shape access to key supports like flexibility and leave (Pocock et al. 2012). First-line supervision and workplace cultures that are less supportive of the reconciliation of work and family are associated with higher levels of negative work-life and work-family interference (Skinner and Pocock 2008). Poorly designed jobs and work overload can inhibit access to leave, including annual leave – with more than half of Australian workers not using their paid holiday leave in the year in which it accumulates – with negative consequences for reconciling work and family (Pocock et al. 2010).

Effective workplace regulation, which is widely understood and properly enforced, is critical to outcomes in this area. For example existing research shows that many workers who are not content with their current work arrangements do not make use of the existing NES right to request flexibility at work because they do not know about this right, or the right is not crafted in a way that gives them redress if they are unreasonably refused, or because their jobs are insecure and they believe their supervisors will view their flexibility requests negatively, or there is no history of flexible work in their workplace (Pocock et al. 2012). An appropriate workplace relations framework can change these important conditions, widening access to an important work-family

support in a fair and effective way. Such a framework can help change workplace cultures and leadership with important practical effects on productivity, participation and wellbeing.

Important workplace culture and leadership issues such as sexual harassment and discrimination against pregnant workers, working carers, older employees, and those affected by domestic violence are of growing significance in a workforce that is increasingly female, responsible for the care of others, and aging.

### **Recent reforms and public discussion**

Recent years have seen some important work, care and family policy reforms, including paid parental leave, childcare reform, and the right to request flexibility in the National Employment Standards. However, more change in the regulation and management of workplace relations is needed to ensure a good society that enables workforce participation while supporting social and family relations, where work and care can easily be combined with positive benefits for all. In the long run, productivity is dependent upon social reproduction before all else, making the successful combination of work, care and family an ongoing economic, as well as social, goal.

Work, care and family issues are vital issues of public importance. They were key areas of electoral interest in the last five national elections in 2001, 2004, 2007, 2010 and 2013. In each of these elections, the Work and Family Policy Roundtable proposed a set of benchmarks against which election policies for improving paid work, care and family outcomes in Australia were assessed. The Benchmarks are in keeping with the Roundtable's goals of contributing to the development of evidence-based policy, producing clear policy guidelines and evaluating policy proposals.

The workplace relations framework (WRF) is critical to work and family outcomes in Australia, and to the productivity, wellbeing and reproduction of the Australian community. It profoundly shapes fairness for individuals and families. Reflecting this, workplace relations, regulation and management issues are reflected in the majority of the guiding principles for our research Roundtable, as set out above. We welcome the opportunity to contribute to this Inquiry, and in particular welcome its emphasis upon evidence-based discussion, and a long term perspective.

Below we highlight our initial responses to several key questions posed in the Inquiry Issues Papers. We will provide further evidence about specific topics upon the Commission's request. Firstly, however, we outline our concerns about the failure of the Inquiry Terms of Reference to address contemporary issues of central relevance to any inquiry into the workplace relations framework in Australia

### **The failure of the Inquiry Terms of Reference to address contemporary issues**

Issues Paper 1 (p10) asks whether the 'current system is well suited to contemporary (and evolving) workplace needs?'

Sadly, rather than responding to the 21<sup>st</sup> Century workplace challenges arising from demographic and workplace participation change clearly outlined above, the Terms of Reference (TOR) for this Inquiry are focussed upon the dominant themes of the last century (for example, bargaining, conflict and industrial action). In contrast, a number of urgent work-related issues arising in the *current century* which have dominated the last five national elections – such as support for working carers, flexibility to combine work and care, the pressures of working life upon individuals and communities, are simply

ignored. There have been several major national inquiries into each of these issues conducted by key statutory authorities and parliamentary committees, and the significant outcomes, findings and recommendations in this vital area, seem also to have been ignored. As a result, the TOR are also quite lopsided, focusing overwhelmingly on business and employer concerns, rather than on workers and the communities in which they live.

There is no recognition in these TOR of the profound changes in the nature of the Australian worker, the household out of which they work, or the gender differences, inequalities and challenges that exist in our labour market. Work, care and family issues, similarly, simply do not figure in the Treasurer's TOR. These are terms of reference for another, older time. They take too little account of the contemporary needs of the worker, their diverse circumstances, their caring and broader life context, their gender, their needs for flexibility, the barriers they face to participation, and the need for an appropriately responsive and inclusive workplace regulation framework.

Similarly, the workplace relations system itself is not well suited to contemporary challenges and needs. A minority of Australian workers today are preoccupied with bargaining, conflict or industrial action. Instead, many are concerned about the security of their job; the quantum, configuration and predictability of their working hours and their fit with family and community life; their pay and its fairness relative to other similar workers; whether their voice, preferences and flexibility matter at work; and whether their job security and capacity to progress in careers is put at risk by their work-family responsibilities.

For the growing proportion of women at work the issue of persistent, wide and increasing gender pay inequities is of growing importance, as well as issues of discrimination at work including pregnancy discrimination, care-giver discrimination and the threat of sexual harassment. Workplaces can be powerfully protective in the event of domestic violence. They can help identify and prevent mental and physical illness. These important and growing 21<sup>st</sup> century workplace challenges should form an important aspect of any serious workplace relations reform.

Instead, the current Inquiry's TORs are backward-looking. They represent a missed opportunity to respond to a number of pressing workplace challenges that will characterise coming decades and the experience of managers, small business, workers as well as the macroeconomic and social outcomes of productivity, participation and national wellbeing.

## **1. The long run: gender, care, time, wellbeing**

We endorse the Productivity Commission's interest – reflected in the Issues Papers - in long run shifts in labour markets and institutions (Issues Paper (IP) 1, p 4). However, the identified set of long-run shifts makes *no reference* to the changing gendered nature of the labour market, the changing care responsibilities of workers, or the changing time and place boundaries around work. These deficiencies mean that important aspects of workplace relations, like gender pay inequity, changing leave requirements, and management of long hours, job insecurity and work from home – to name a few – are completely under-attended to in the Issues Papers. All of these issues need to be better addressed in a workplace relations framework relevant in the 21<sup>st</sup> Century. Indeed, addressing the Productivity Commission's mission of maximising the wellbeing of the community as a whole (IP 1, p 15) should make these issues a central feature of the Inquiry.

## **2. Objectives of the system**

We endorse the maintenance of system objectives that include delivering outcomes that are ‘fair, flexible, co-operative, productive, relevant, enforceable, non-discriminatory, accessible, simple and clear’ (FWA, quoted in IP 1, p 7). It is essential that the workplace relations system continues to aspire to meet multiple, complex objectives. The changing gender composition of the labour force and care responsibilities of workers lead us to suggest that the objectives of the system be amended in two ways:

- Firstly, to more directly aim to assist employees and employers to ‘better reconcile work with family and community life’; and
- Secondly, to ‘narrow the gap between the earnings and employment conditions of men and women’.

## **3. Is the current system well suited to contemporary & evolving needs?**

As argued above, the changing gendered composition of the workforce and the care responsibilities of employees makes the evolution of the workplace relations system a vital imperative. At present, work and family and gender-based research evidence reveals a system which lags behind the requirements of the changing workforce and results in unintended consequences as workers and employers attempt to ‘morph’ their arrangements around existing workplace regulation. Casual employment is a case in point: some workers (most particularly women) seek flexibility in the time, place and total hours of their employment and often find themselves in casual employment as a consequence, when in fact they are seeking part-time hours. As a result many women pay a price in terms of job security, life-time earnings, capacity to progress to more senior levels, superannuation, career paths, participation and productivity. Access to secure, flexible employment would be a more direct route to a fairer outcome for many, especially women, parents and carers.

## **4. Job security, flexibility and working time**

The provision of unpaid care – often alongside paid work - is essential to the wellbeing of our society and economy. Children, the frail aged, people with disabilities and the sick, all require care. In 2009, 12% of the population (2.6 million people) had caring responsibilities for people other than children, such as a family member or friend with a disability or illness, or suffering frailty due to old age (ABS 2012). The provision of unpaid care has a significant impact on workforce participation for those with such responsibilities, especially for women who are much more likely than men to be primary carers throughout their life-course (ABS 2012).

A range of recent disability and health care reforms are built around an increased reliance on unpaid carers (FaHCSIA 2012). At the same time, the national productivity and participation agenda calls for (and in the case of income support policy, mandates) increased labour force participation amongst women, the mature aged and those with disabilities (Daley et al. 2012; Australian Government 2010). Public policies that rely on both the provision of unpaid care and increased labour force participation are contradictory and unsustainable unless jobs are available and offer flexibility, security and predictable working time. Flexible working arrangements are central to working carers’



attempts to combine work and care, but more attention also needs to be paid to the importance of regular and predictable hours and job security as a basis from which workers can seek the flexibility they need to manage their caring responsibilities (Heron and Charlesworth 2012). This is a particularly acute issue for sole parents (most of whom are mothers), where only one adult has the responsibility for providing care. While current workplace relations settings assume that paid work can be fitted around care responsibilities, without good quality jobs that provide flexibility to meet ongoing as well as unpredictable care demands, balancing work and care will continue to be a struggle for many working carers.

Australian women often undertake part-time or casual work as a strategy to reconcile work and care, but such jobs do not have the same security and predictability as full-time employment. This is a significant issue, as 46% of female employees work part-time and 54% of all employees working part-time are employed on a casual basis (ABS 2011). Where workers are defined as 'casual' they are excluded from a number of National Employment Standards (NES) rights such as those relating to paid carers – ie: personal leave and annual leave – all of which are vital to managing work and care (Heron and Charlesworth 2012). If the NES are to support working carers, annual leave and carer's leave must be extended to all employees. The Australian Human Rights Commission (AHRC) also recommends that the NES provide a dedicated carer's leave allocation separate from personal leave and extend access to carer's leave to all employees (AHRC 2013).

Award provisions in some feminised industries allow for casual-like flexibility in the number and scheduling of part-time hours, unlike in full-time employment: this undermines part-time workers' status and rights. For example, the Social Community Home Care and Disability Services Award, which covers a rapidly increasing number of care workers, does not provide for minimum shift lengths and allows part-time workers who are asked to work beyond their agreed minimum hours to be paid for at an ordinary time rate unlike part-time workers in awards such as the General Manufacturing Award (Heron and Charlesworth 2012). This suggests that Australia may not be meeting its obligations under the ILO Part-Time Work Convention (No. 175).

The right to request (RTR) flexible working arrangements in the NES allows some workers to request changes to their working arrangements. However, this RTR lacks any practical right to appeal an employer's unreasonable refusal to consider the request and eligibility is limited to workers with 12 months service with their employer. Recent research shows that most workers (and their managers) do not know about the RTR (Skinner and Pocock, 2015; Cooper and Baird forthcoming). It also shows that men are less likely than women to make a request, and men are more likely to be refused (Skinner et al. 2012). International evidence suggests that the right could be extended to a broader population of workers without creating difficulties for business. The UK Government has extended this right to all employees, as is the case in the Netherlands and Germany. However, without meaningful redress and effective enforcement and publicity, the RTR is not an effective flexibility measure in the Australian context.

In light of the above we recommend:

- Making the NES more inclusive by extending paid annual leave to casual employees on a pro-rata basis and providing a separate allocation of carers leave to all employees;

- Increasing job security for working carers by introducing measures to support casual workers moving to an ongoing contract after a certain period of employment;
- Establishing firm working time minima in all modern awards, including a minimum engagement of 3 hours for casual workers and requiring written agreement to a regular pattern of hours and adequate notice of changes to hours for part-time workers;
- Enhancing the operation and uptake of the NES right to request flexible work by:
  - Widening coverage to all employees regardless of caring responsibilities
  - Removing the 12 month service requirement for eligibility
  - Ensuring that employers are obligated to reasonably accommodate requests for flexible work by providing a right to appeal refusals as applies to other NES
  - Developing and disseminating detailed guidance material on the RTR and initiating a Fair Work Ombudsman campaign to raise awareness of this right; and
- Protecting workers against discrimination on the basis of their part-time status in line with Australia's international obligations under ILO Convention 175.

## 5. Penalty rates

Many Australian workers work at unsocial times. While the incidence of work at unsocial times has grown in recent years, a 24/7 working hours pattern is far from the general experience in the labour market. Work on weekends, nights and outside 8-6pm on week days is not the dominant pattern (Skinner & Pocock 2014). As a result common social time - which is critical to family life, community events, sport, cultural activities - remains important to most Australians.

Penalty rates reflect the premium that citizens place upon weekend, night and evening time. Working early mornings, evenings or nights presents challenges to biological functions such as sleep and is often incompatible with the rhythms and schedules of social, family and community activities. Recent research shows that frequently working a combination of weekends and nights, or just evenings/nights, is associated with the highest work-life interference amongst a large group of Australian workers (Skinner and Pocock 2014). Further, evening/night work is associated with the greatest negative impact on women's work-life outcomes. Working combinations of evenings/nights and weekends has the worst impact on men's work-life interference and regularly (often/almost always) working Sundays is clearly associated with higher work-life interference, whether combined with regular Saturday work or not.

It also seems that a significant proportion of employees who work unsocial hours are not directly paid penalty rates (Daly 2015, p 13). While some workers may in fact not be entitled to penalty rates when their work overflows into evenings and weekends, the non payment of penalty rates also raises concerns about enforcement of award and agreement penalty rate arrangements. Of those who are paid penalty rates, this pay forms an important element of their budget (especially for women and low income workers (Daly 2015, p 14) and many would choose not to work unsocial hours if their rate of penalties

was cut (Daly 2015, p 14-19). This raises important issues about labour supply, should penalty rates be reduced.

Existing evidence suggests that working at unsocial hours is associated with worse work-life interference, that common family and community time remains highly valued in the Australian community, that reductions in penalty rates will have uneven effects in the Australian labour market especially affecting women and lower paid workers, and that labour supply at unsocial hours may well be significantly affected by reductions in penalty rates.

It is clear that many workers with low workplace power (including women) are affected by penalty rates. Making penalty rates a matter of individual bargaining will mean significant losses for such workers, and this policy direction (discussed in IP 2, p 15) should be strenuously resisted because, among other things, of the extremely gendered negative outcomes it would produce.

## **6. Productivity clauses in bargaining; Individual bargaining**

The Commission specifically invites comment upon productivity clauses in bargaining. Productivity increase is a function of many factors: management decision, investment, cyclical patterns of investment and production, as well as forms of employment, labour deployment and training, and workplace relations arrangements. The expectation that workplace relations alone can give rise to higher productivity is misplaced and places too great a weight upon such relations to the exclusion of factors that are often more important. The notion of encouraging a once-every-three-years focus on productivity also runs counter to developing a workplace culture where management and employees work continuously to improve productivity. As has been long recognised many other workplace factors, beyond industrial regulation are drivers for productivity, including the competence of managers and the training and development available for employees and their supervisors (Karpin 1995). Further, creating bargaining requirements in favour of productivity clauses is particularly pernicious in many feminised occupations in the service sector, where so-called productivity improvements can only be achieved through further intensification of work, cutting service quality or reducing working conditions. This is likely to be particularly detrimental to many women and working carers, including those working in the care sectors such as in aged, disability and childcare services.

The same concern arises in relation to individual bargaining and individual agreements. Past research highlights the negative consequences of individual bargaining for workers with low workplace power, such as women, working carers, part-time and casual workers (Elton, J. 2008). Such bargaining is likely to create greater unfairness in the system and disadvantage women and working carers in particular.

## **7. Gender Pay Equity**

The gender wage gap (GWG) deserves specific, higher level attention by the Inquiry as the main legal mechanism designed to address it lies within the workplace relations legal framework.

The GWG for full-time ordinary earnings is widening in Australia, and it currently sits at a twenty year high. The Australian Bureau of Statistics confirmed in March 2015 that the Australian gender pay gap has reached 18.8%. In August 1994, the GWG was 15.9% and in November 2011 it was 17.4% (equal to \$247.90 per week). The GWG is wider for full-

time total earnings (20.8%) and wider again for average total earnings of full-time and part-time employees (35.3%). Significant deterioration since May 2008 is of considerable concern and we now have the widest GWG in nearly two decades (Todd and Preston 2012). The most recent data show the gap continues to widen and the GWG in Australia is now wider than the US, the UK, New Zealand, Mexico and the OECD average.

The national GWG masks differences between states and industries. The widest gaps are in health care and financial services (Todd and Preston 2012). Women in the private sector have experienced slower wage growth between 2006–11, relative both to male private sector employees, and to female and male employees in the public sector (Jefferson and Preston 2012). Clearly this has contributed to the overall deterioration in the GWG. There is also growing evidence of gender inequity in the remuneration of female graduates, even as they leave university, suggesting a need for strategies to reduce the pay gap amongst graduates, as well as across the broader occupational spectrum (Coates and Edwards 2009).

More broadly, Australia has slipped down gender equality rankings across a range of economic and social measures. For example in March 2015 Australia dropped six places to 15th position in the international PwC Women in Work Index that ranks female economic empowerment. This was the largest drop amongst 27 OECD countries. Most of the explanation for this drop lay with the widening GWG, but it is widely recognized that women are under-represented in leadership in many spheres of public life in Australia and has made only slow progress in recent years despite much discussion.

**Why does such wide gender inequality – much of it located in our workplace relations practices and outcomes - merit so little attention in the TOR and Issues Papers – and more importantly, why does the existing system appear so ineffective in narrowing gender-based inequality?**

Gender pay inequality has been a source of some workplace relations action historically – unfortunately with too little effect. For example, on the positive side, the 2012 Equal Remuneration Case gave a significant pay increase to a majority of the 150,000 workers in the community services industry. Unfortunately new reporting requirements for employers in the *Workplace Gender Equality Act 2012* which had the potential to improve pay equity, have recently been weakened by the Abbott Government. However, the Equal Remuneration Case also highlights the need for further changes as recommended by the House of Representatives 2009 *Making it Fair* report.

The setting of an appropriate minimum wage is of critical importance to lower paid workers, especially those with limited workplace power including insecure workers, women, working carers and part-time workers. In this light it is vital that Australia maintain a strong and regularly updated minimum wage system that ensures that award rates and minimum wages retain and increase their purchasing power. It is highly likely that a lower minimum wage – which while it directly affects a minority of workers casts a long shadow across the wider wage system - will have the effect of widening the gender pay gap, and in this light, should be avoided. We recommend an evidence-based approach to minimum wage setting which relies on the decision of an expert panel and avoids a more politicised process, or one that is more likely to suppress minimum wage movements. In light of the above we recommend:

- Support for a wage system that fairly rewards work while removing tax and benefit arrangements that penalise second income earners (usually women).
- The Inquiry directly address and make specific recommendations to address the wide gender pay gap in Australia including ensuring the effective application of

the equal remuneration principles in the *Fair Work Act 2009* to address systemic inequalities in modern awards and to reduce differences between male-dominated and female-dominated awards in such areas as the definition of ordinary hours and the payment of penalty rates.

## **8. Work and care in an ageing population**

The aging of the Australian population has created new workplace and labour market challenges. Older workers are being encouraged to work for longer in a bid to boost productivity and sustain living standards. This requires workplaces to meet the changing health needs of a mature-aged workforce and provide support for workers as carers of the frail aged. As workers and carers, mature-aged employees may need to alter their work hours. As recommended above a meaningful, effective right to request flexibility should be available to all workers, including the mature aged and those caring for the frail aged.

Most unpaid care falls to women, making a flexible and sustainable aged care system critical to women's labour force participation during periods of intensive care responsibility. We recommend the Inquiry consider:

- Introducing a new paid leave provision for employees who provide palliative care for a family member or other dependant to the NES.

## **9. Paid parental leave and protections for pregnant workers**

Since January 2011, the Australian Government has provided 18 weeks Parental Leave Pay (PLP) indexed at the national minimum wage. This leave scheme acknowledges the contribution of working mothers to the workforce and the need to support parents on the arrival of a new baby. The main objectives of PLP are: to provide financial support to primary carers (mainly mothers) of newborn and newly adopted children, allowing them to take time off work to care for their child; to enhance the health and development of mothers and children; to encourage women to continue to participate in the workforce; and to promote gender equality.

Evaluations of the scheme are positive. PPL appears to be meeting its objectives of providing financial support for mothers and supporting their return to work. In June 2014 the first review of the PPL by the Department of Social Services (DSS) reported that the PPL had 'a clear effect on delaying mothers' return to work to up to about 6 months after the birth of their baby, and slightly increased their probability of returning to work before the baby's first birthday' (DSS, 2014: 2). The effect on delaying return to work was pronounced for self-employed mothers and for other mothers who were less likely to have had access to an employer PPL scheme. The scheme has also been important for those for whom the PPL income replacement rate is higher than their pre parental leave earnings, including women on lower incomes and women in casual jobs (DSS, 2014: 3).

The findings of the Phase 4 PPL Evaluation Report (Martin et al 2014) show that 'PPL also affected the characteristics of the jobs mothers took when they returned to work'. In particular access to PPL resulted in an increase in the already high proportion of mothers who returned to the same job as they had before the birth, when they first went back to work, and that these effects on retention rates were concentrated amongst mothers

without a tertiary qualification. This suggests that PPL assists women in maintaining stable employment and the accrued benefits.

There is a good case for increasing the participation of men in the longer term care of young children. This is essential if we are to encourage more women, especially mothers, into the paid workforce. As a first step to address this, Dad and Partner Pay (DaPP) of 2 weeks at the national minimum wage is now available (since 1 January 2012) on a ‘use it or lose it’ basis. This has been relatively successful, but take-up rates could be improved. According to the PPL Evaluation, just 36 per cent of eligible fathers chose to take DaPP (Martin et al 2014, p.11). Furthermore, employer knowledge of and provision of ‘top-up’ payments to match weekly pay is very low (Martin et al 2014 p178). Yet this is essential to encourage and facilitate fathers taking the leave.

There is also a good case for increasing the period of DaPP and PLP, and the rate of payment in relation to the recipient’s regular rate of pay. Other forms of leave are paid at replacement earnings and many OECD countries provide more than 18 weeks PLP leave.

There is an urgent need to address the mismatch in eligibility for unpaid parental leave under the National Employment Standard (NES) and eligibility for the PLP. Recent evidence suggests that 5% of mothers (and 12% of single mothers) eligible for the PLP were *not* eligible for statutory unpaid parental leave under the NES, on the basis of their work history (Martin et al. 2012). For these women, the PLP provides vital financial support, but they have no right to return to work after time off. In addition, the right to return to work guarantee in the NES must be better enforced and pregnant women should be entitled to be safe at work regardless of their length of service.

The failure to ensure superannuation contributions are made during paid parental leave remains a weakness in the scheme, with long term negative consequences for women’s retirement savings. This embeds lower lifetime earnings and retirement income, especially for women who take the majority of parental leave. This runs counter to recommendations of the Productivity Commission.

The prevalence survey undertaken as part of the Australian Human Rights Commission Pregnancy and Return to Work National Review shows that pregnancy-related discrimination remains widespread in Australian workplaces with nearly one in two women reporting such discrimination (AHRC, 2014). A wide range of discriminatory treatment was reported including in relation to: pay, conditions and duties; worker health and safety; and job loss. Nearly a fifth of respondents reported job loss at some time during pregnancy, parental leave or on attempting to return to work. The AHRC survey indicates that the reported discrimination not only had a significant impact on mothers’ health, finances, career and job opportunities, and their families, but also on their engagement in and attachment to the workforce

In light of the above we recommend that the Inquiry:

- Encourage the Australian Government continue to review the length of PLP with a view to gradually increasing it to the best international standard of 52 weeks.
- Encourage the Australian Government continue to review the length of DaPP with a view to gradually increasing it to the best international standard of 12 weeks.
- Recommend that the Australian Government encourage employers to ‘top up’ the Australian Government funded PLP and DaPP to full replacement earnings

(as some already do), consistent with payment rates applying to other forms of paid leave;

- Remove the mismatch in eligibility in the NES to allow employees who have not been employed with the same organisation for more than 12 months to have access to unpaid leave for the purposes of receiving PLP and/or DaPP;
- More effectively enforce the 'return to work' guarantee in the NES unpaid parental leave provisions and, where a pregnant worker loses her job, introduce a presumption of discrimination unless demonstrated otherwise by the employer;
- Ensure that PLP and DaPP include superannuation contributions.
- Implement the recommendations of the AHRC Pregnancy and Return to Work National Review, including regulatory amendments to strengthen legal protections by imposing a positive duty on employers to reasonably accommodate pregnant workers or those with family responsibilities.

## **10. Research and Evidence**

Australia is a wealthy country and well placed to become a global leader in the area of work, care and family policy as reflected in our workplace relations framework. The importance of good data for policy design, development and evaluation must not be underestimated. Good research, thorough cost-benefit analysis, continuous evaluation, piloting and an ongoing program of policy development are critical to cost-effective change.

In light of the above we recommend that the Inquiry propose:

- The Australian Government fund systematic research about work, care and family policy challenges facing Australia; and that funding is provided to maintain existing surveys and data sets and research capacity to investigate changes at work and in Australian households.
- A national longitudinal survey of workers, linked to workplaces, be created and appropriately funded, so that a better evidence base is available to inform future discussions and change to our workplace relations framework.

## Summary of Recommendations

1. The objectives of the workplace relations system be amended to:
  - more directly aim to assist employees and employers better reconcile work with family and community life.
  - narrow the gap between the earnings and employment conditions of men and women.
2. Make the NES more inclusive by extending paid annual leave to casual employees on a pro-rata basis and providing a separate allocation of carers leave to all employees.
3. Increase job security for working carers by introducing measures to support casual workers moving to an ongoing contract after a certain period of employment.
4. Establish firm working time minima in all modern awards, including a minimum engagement of 3 hours for casual workers and requiring written agreement to a regular pattern of hours and adequate notice of changes to hours for part-time workers.
5. Enhance the operation and uptake of the NES right to request flexible work by:
  - Widening coverage to all employees regardless of caring responsibilities
  - Removing the 12 month service requirement for eligibility
  - Ensuring that employers are obligated to reasonably accommodate requests for flexible work by providing a right to appeal refusals as applies to other NES
  - Developing and disseminating detailed guidance material on the RTR and initiating a Fair Work Ombudsman campaign to raise awareness of this right.
6. Protect workers against discrimination on the basis of their part-time status in line with Australia's international law obligations under ILO Convention 175.
7. Support for a wage system that fairly rewards work while removing tax and benefit arrangements that penalise second income earners (usually women).
8. The Inquiry directly address and make specific recommendations to address the wide gender pay gap in Australia including ensuring the effective application of the equal remuneration principles in the *Fair Work Act 2009* to address systemic inequalities in modern awards and to reduce differences between male-dominated and female-dominated awards in such areas as the definition of ordinary hours and the payment of penalty rates.
9. Consider introducing a new paid leave provision for employees who provide palliative care for a family member or other dependant in the NES.
10. Encourage the Australian Government continue to review the length of PLP with a view to gradually increasing it to the best international standard of 52 weeks.
11. Encourage the Australian Government continue to review the length of DaPP with a view to gradually increasing it to the best international standard of 12 weeks.



12. Recommend that the Australian Government encourage employers to ‘top up’ the Australian Government funded PLP and DaPP to full replacement earnings (as some already do), consistent with payment rates applying to other forms of paid leave.
13. Remove the mismatch in eligibility in the NES to allow employees who have not been employed with the same organisation for more than 12 months to have access to unpaid leave for the purposes of receiving PLP and/or DaPP.
14. More effectively enforce the ‘return to work’ guarantee in the NES unpaid parental leave provisions and, where a pregnant worker loses her job, introduce a presumption of discrimination unless demonstrated otherwise by the employer.
15. Ensure that PLP and DaPP include superannuation contributions.
16. Implement the recommendations of the AHRC Pregnancy and Return to Work National Review, including regulatory amendments to strengthen legal protections by imposing a positive duty on employers to reasonably accommodate pregnant workers or those with family responsibilities.
17. The Australian Government fund systematic research about work, care and family policy challenges facing Australia; and that funding is provided to maintain existing surveys and data sets and research capacity to investigate changes at work and in Australian households.
18. A national longitudinal survey of workers, linked to workplaces, be created and appropriately funded, so that a better evidence base is available to inform future discussions and change to our workplace relations framework.

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