

The Work and Family Collision:

Opening address to the Australian Industrial Relations Commission Family Provisions case

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Introduction

This case isn't about harmony and balance. It isn't about occasional trips to the zoo, and it isn't about long weekends, and it isn't about idealised notions of workers beavering away productively with their son on their knee.

It's about resolving, as best we can, the inevitable conflict that arises when a worker is simultaneously expected to be available to their employer, and available to their family.

The central people are those who do the caring every day, who are routinely responsible for the care of others.

The main issue is the need for working arrangements that support and enhance their ability to provide care and support of others while entering and remaining in the labour force with some hope of equal opportunity and equal treatment.

It's about the pointy end of what Barbara Pocock has called the work and life collision.

Barb Pocock's metaphor is apt.

When someone has responsibility to support people who depend on them for routine care, and, at the same time, they have responsibilities to their employer this can result in pressure, stress and strain.

The extent of the friction will depend on the nature and extent of the contact or overlap, and how hard they are pressed together.

When roles conflict, and when the times conflict, then work and family can be said to have collided.

The impact of this collision is often severe, and too often it is workers and their families who absorb the impact of the work-life collision.

This case is, in part, about adjusting the safety net to provide some accident prevention, and crash protection tools.

The ACTU applications in this case seek to amend the safety net where the risk of a work and care collision is predictable.

They are focused upon the collision where the likely impact is traumatic.

In effect, the ACTU applications are focused upon the black spot areas.

This Commission has a responsibility to assist employees to avoid or lessen the impact of the collision. The Commission is the body that the Parliament has vested with the authority, and indeed the responsibility to do this.

The Commission is, under section 93A, obliged to assist employees reconcile their conflicting responsibilities. By placing section 93A in Part VI of the Act the Parliament has determined that this should be done using the Commission's conciliation and arbitration powers, through the award safety net.

Simply, our applications seek:

- An increase from 1 week to 8 weeks in the amount of the parental leave that can be taken simultaneously at the birth of a child.
- An extension of the total amount of parental leave available to families from 1 year to 2. This could be extended by agreement.
- A right for parents returning from parental leave to return to their job return part time up until their child reaches school age.
- A right for employees to request to change their working hours or place of work to meet their caring responsibilities and a corresponding obligation upon employers to try to accommodate requests.
- A right for employees to request up to 6 weeks unpaid leave, which may be accompanied by a wages averaging system, and a corresponding obligation on employers to consider to unreasonably refuse these requests.
- And, in the applications that we have settled with the employers, access to paid and unpaid family emergency leave.

Our applications are designed to find a balance between rights and obligations, and to focus rights where the caring need is greatest.

Our applications are based upon two parallel continuums.

One continuum is related to the intensity of care.

The other is a continuum between employee rights at one end, and mutual agreement at the other.

As the intensity of care increases, or the unavailability of caring responsibility increases the employers' obligation to accommodate the employees caring responsibilities increases. It moves from an obligation to give fair consideration to a duty to accommodate.

And we take a life-course approach.

That is, that during a persons life there are predictable events that trigger labour market transitions.

The first transition is the school to work transition, often in combination with further study. The last is retirement. And that in between those two a number of other transitions can be anticipated.

This case focuses on those transitions that occur when a worker assumes responsibility for the care of a dependent.

The events during a persons life that may entail a change in labour market status are the birth of a child, the return to work after the birth of a child, working while responsible for the care of infants and toddlers, raising young children, and negotiating the labour market while responsible for the ongoing care of dependents.

At each transition there are risks- risk of labour market separation; risk of loss of job quality, or risks of significant stress, pressure and strain.

Our applications are designed to minimise those risks.

Simply- if parents and carers can maintain contact with the labour market, if they can keep their own jobs, and the conditions of employment that go with them, throughout these periods then we can minimise the risks.

And, because overwhelmingly the parents and carers who make adjustments are women, we can promote real equality of opportunity and treatment for men and women workers.

Where the caring need is intense, the level of dependency high then the applications invoke rights for employees

Eight weeks to care and support newborns and their mothers.

Longer leave to care for infants and toddlers.

Time off for family emergencies.

The time of the birth of a child and during the first few years of a child's life caring is most intense. Time pressure is most acute. Employed parents cannot avoid a work and care collision.

These are the times when the impact of the collision is keenly felt.

Annette Rowlands and Helen Walker left their jobs because they were unable to arrange care to match the requirements of their jobs. Tracey Bastin would have withdrawn from the labour force if she had not been able to get a part time teaching appointment. Their evidence illustrates that these are the times when out-moded ways of arranging work that assume employees can offer their employer virtually unlimited availability are barriers to entering and remaining in employment.

The applications for more time together for parents in the first few weeks after the birth of a child, extended parental leave and part time employment for parents of preschoolers provide, in effect, a detour around the collision black spots.

They allow parents, especially mothers, to avoid the inevitable head-on.

By keeping those mothers attached to the labour force and in their pre-maternity jobs they assist in ensuring that her labour market trajectory is not diverted so far off-course, nor slowed to such an extent, that regaining the momentum becomes impossible.

The award variations we seek provide families with a greater range of options: longer leave and the option for reduced hours of work to ease the care-to-work transition, to facilitate a gradual return to work as the intensity of the care work lifts.

This isn't about imposing a new social norm.

It is about providing greater choice.

When we look later at the material by Glezer and Wolcott and Thornthwaite it is evident that granting the applications will provide more opportunity for parents to more closely align their stated labour market preferences with what they do.

Of course ILO 156 is not concerned only with the family responsibilities of parents of young children, and neither are the ACTU applications. Older children, people with a disability or the frail elderly require routine care and support. Illness and emergencies occur unexpectedly and require workers to provide short-term care and support. .

The applications for carer's leave and emergency leave, which we have agreed with the employers provide employees the right to be absent from work to deal with illness and emergencies.

They are the emergency brake that prevents the collision. They let you stop short just before impact.

Where the responsibility to provide care and support is more routine but less intense, then the balance shifts from employee rights to an obligation for fair consideration, for reasonable balance.

The ACTU applications for flexible work hours and location and up to 6 weeks purchased leave provide a potential cushion or buffer against the impact of the collision. The degree of protection and its availability is a matter of balancing the intensity of the caring need with the needs of the workplace.

If granted our applications would oblige employers, where compatible with the needs of the business, to accommodate an employees' family responsibilities when arranging the working day, the working week or working year.

Taken together the applications provide a stronger and more effective safety net while balancing the needs of workplaces.

The imperative to grant our applications is in part due to the increased momentum driving the collision.

There are some key trends that can be considered to be the forces driving the work and family collision. Dr Campbell will give evidence about a number of these this afternoon.

We say these are:

- An increase in the labour force participation of women, particularly women who are also carers;
- Fundamental changes in the way that families and households are organised, with more sole parent families and dual income families;
- A rise the numbers of, and proportion of the population who are disabled and dependent upon family for care;

These three trends have increased the sheer numbers affected.

- A trend for mothers of very young children to be in paid work, and for primary carer-givers to the disabled to be employed;

- Coupled with policies of de-institutionalisation of care for the disabled, and a gap in the availability of child care and
- Changes in the organisation of work that are antithetical to meeting caring needs.

These three have increased the intensity of the conflict and collision between family responsibilities and workers obligations to their employers.

But the evidence is that one cost of this social change, particularly when combined with increased competitiveness and labour market flexibility, is being declining satisfaction with work-family balance.

Ten years of employee surveys, conducted by a range of researchers in different fields (from AWIRS in 1995, to the AIFS in 1999, the OEA in 2001, and Saulwick in 2003) reveal a consistent if not declining level of satisfaction in balancing work and family responsibilities. Consistent evidence of the collision.

The AIFS study is particularly interesting because it looked at whether there were reciprocal effects – that is it asked “how does work impact on your family life, and how does your family life impact on your work?”

Glezer and Wollcott report that more than 40% of parents working full time indicated work interfered with their home lives, only 10% of employees felt their family responsibilities impinged their work. [Glezer and Wollcott ACTU II page 35]

This evidence supports the proposition that when work and family collide, it is family, not work, that bears the brunt of the collision.

Campbell and Charlesworth caution against placing too high weight on these data. But it is their evidence that they do provide rudimentary evidence of increasing feelings of dissatisfaction.

In part this case is about whether it is appropriate that that price of care should be borne by individual compromise, or whether it is possible to spread the risk more generally to achieve a better balance between productive and competitive workplaces and financially secure, satisfying, caring family lives.

In balancing these competing objectives of course the Commission is obliged to take into account not only its obligation under s93A, but also whether the safety net remains fair in the context of living standards generally, the impact upon the economy and the needs of the low paid.

The ACTU applications will, if granted, ensure the safety net is modernised and reflective of the enormous social change that has occurred over the past 25 years, and in particular in the fifteen years since the Commission last considered the adequacy of the safety net's support for parents.

But in light of the demographic challenges facing Australia, there are economic and social imperatives to grant our applications. If granted our applications will facilitate mothers and carers continued labour force participation.

By promoting better quality jobs for mothers and carers they provide families with insurance against relationship breakdown, which protect against family joblessness and poverty, and promote gender equality.

Professor Mc Donald's evidence is that our applications are consistent with, and supportive of, improved fertility rates.

And Professor Oberklaid's evidence is that working arrangements that support parents of preschoolers diminish the risks and promote the protective factors that are conducive to good outcomes for children. These ultimately reduce the economic and societal burdens associated with poor literacy, poor mental and physical health, and behavioural issues into adulthood.

The ACTU applications address the competing public interest imperatives generated by the ageing of the population – that is the challenge of maximising labour force participation amongst those of working age whilst ensuring that there are sufficient numbers available to provide care to those with age related disability.

- It is common ground between the parties that the proportion of the population of working age is shrinking compared to the total population. This creates an incentive to maximise labour force participation rates amongst those of working age.

At the same time the material by Hugo, and the AIHW shows that the association between ageing and disability places pressure on the future supply of carers, as the numbers of dependents in the community increases.

Part of the solution must be to facilitate the combination of paid work with caring work.

If granted our applications will remove barriers to labour market participation amongst the working age population that is currently under-represented in the workforce, which has the potential to increase aggregate labour supply, and hence employment and national incomes, and alleviate fiscal pressure.

Evidence in support

I want to turn now to certain aspects of the evidence that we say supports our applications.

I want to look firstly at the forces that have created the momentum propelling the work and family collision.

While it's a bit artificial to isolate these trends and not others, increasing numbers of women in the labour force, changes in the family and household composition and increasing levels of disability over the past three decades have increased the number of individuals who experience a work and family interface.

Within their ranks, there are workers who have very intense caring load. And for some irregular hours, long hours, and unpredictable hours of work compound the problem.

To continue the metaphor, increases in both the mass that is the numbers of people affected and the intensity or acceleration have added to the momentum driving the collision.

Women in the labour force

Drs Campbell and Charlesworth's evidence is that there has been an increase in the labour force participation of women.

The influx of women into the labour market has not been offset by significant withdrawal of men from the labour force to perform the caring work in families.

Australia's workforce today stands at about 9 and a half million people, about 3.4 million more than 25 years ago.

Back in 1978, around the time that this Commission was considering what level of job protection should be awarded to mothers on the birth of their child, just over a third (35.9%) of the workforce was female.

Today women make up just fewer than 45% of the labour force.

Women account for 60% of the increase in the paid workforce over that time.

If we take the number of employed men today, and assume the female share of the labour market had remained constant, there would be about 800,000 fewer employed Australians.

Campbell and Charlesworth's evidence is that the main source of this increase has been women in their prime childbearing years.

Go to Campbell and Charlesworth Table 1.4 ACTU I Tab 2 page 144

This table shows how women's labour force participation has grown over the past quarter of a century. There has been growth across all the ages associated with caring, including

older women. In fact in terms of the extent of change, participation rates by women 45-54 have grown from 30% in 1978 to 70% in 2003.

Go to Campbell and Charlesworth ACTU I Tab 2 Figure 1.1 Page 145

This figure shows how the female participation rate has altered over time, how the old M shape has flattened out to a plateau, and how the key child bearing and rearing years are no longer associated with a dip in female participation.

Go to OECD Chart 2.9 ACTU I Tab 3 Page 228

This chart maps the same data but by age cohort, showing the dynamic nature of the change. The propensity to leave the labour market during the childbearing years diminishes with each generation. Younger women's participation patterns now resemble young men's participation rates.

But as Campbell and Charlesworth's report indicates, looking at female participation rates doesn't give the full picture, because caring work is done in households.

Their report shows that there has been a comparatively small change in male participation rates, and that male employment is still highest during the prime years associated with family formation and family care.

And the time use data included in Campbell and Charlesworth [at Table 4.2 at ACTU I page 187] indicates that, despite the promises of the dishwasher manufacturers, the amount of unpaid work in households has not changed much over 15 or so years -in fact it has increased slightly for dual income prime age couples.

Families today

But there have been fundamental changes in the way families and households are organized and interact with the labour market, and families are much more complex than they were 25 years ago.

Campbell and Charlesworth trace a number of these trends, towards later marriage, smaller households, relationship breakdown, more single person households, geographic dispersion of families and others.

The two that I want to draw to your attention this morning are the growth in single parent families and the rise in dual income families.

Between 1976 and 1996 the number of single parents families more than threefold (from 221,500 to 673,000).

In 1974 less than 10% of families with dependent children were headed by a sole parent, today the figure is one in five. And they are overwhelmingly headed by women.

About half of these parents are also employed.

The employment rate for single parents is important for two reasons: for the half who are employed there is no other adult in the household with whom to share the unpaid caring

work. But the low rate of employment compared to partnered mothers also indicates that there are barriers to employment that are felt more keenly by single parents.

Go to Campbell and Charlesworth Table 3.10 ACTU I Tab 2 page 185

Most couple families with children are now dual income families.

Twenty-five years ago, more than half of couple families were traditional breadwinner families. In 2000 that was true for only 30%, and more recent data shows 28% of couple families with children fit this model.

In most families with children all the adults are in paid work, and families do not have a readily available person to do the caring work.

Yet the caring work in families has not disappeared. And as the employment rates of women referred to earlier show, the option to pass it off to others— grandparents, sisters, and neighbours diminishes as these women have their own paid work commitments.

More dependent people

Thirdly, there are more dependent people in our community.

At the same time that a smaller proportion of families have a full time carer in the household, the number of dependants in the community is increasing.

Go to Hugo Table 17 ACTU I at page 412.

The level of disability within the community has increased across all age groups, and on today's data now 19.5 or one in five people have a disability.

Today over just over 1 million Australian are severely disabled.

That means they have a disability that restricts their ability to perform one or more of the three core activities to such an extent that they sometimes or always need assistance with self-care, mobility or communicating.

A further 2.7 million Australians have less severe disabilities, that make it difficult for them to perform these tasks, or that restrict them in the performance of other non-core tasks.

Although it's easy to think of or assume the disabled are frail elderly people, the majority of the 3.8 million disabled living in Australia are not from the older age groups, they are aged 5-65.

But longer life expectancy and declining fertility levels have transformed the population, and will continue to do so.

As the proportion of people with a disability increases with age, more people are projected to need care in the future.

Demographers predict that the numbers of disabled will grow significantly due to a combination of both the ageing of the population and longer life expectancy.

And Hugo suggests that as the proportion over 85 increases and more and more people are 'saved' from illnesses that in the past would have killed them, the level of chronic disability will increase.

Go to AIHW Table 3.3 ACTU I page 437

Thirty years of policies of de-institutionalisation of care means that these Australians live with their families, and in the community. Only three percent of the severely disabled rely solely on formal care.

The other ninety seven percent are cared for by an estimated 2.5 million Australians, and 62% of these, or one and a quarter million people are in paid work.

Half a million carers are the primary care giver for the care recipient, of whom about 45% or 200,000 are in paid work. [AIHW ACTU I page 451].

Various State-based estimates (some of which include care for children) indicate that about 45% of employees have some caring responsibilities. [Campbell and Charlesworth ACTU I page 176, Selected data page 11.point 15].

More workers and carers: more carers are workers.

So many of our disabled rely upon a workers to meet their daily needs, and many workers have caring responsibilities for someone with disability.

Go to AIHW Figure 3.8 ACTU I page 453.

Most primary and other carers are women. Although the propensity to care increases the table also show that young people are not excused from caring, and that there is also a heavy burden on people who are also in the key childbearing years.

Go to AIHW Table 3.15 ACTU I page XXXX

For most carers there is no choice. ABS data indicates that they have little choice in undertaking their caring role. When asked why they take on their caring roles they sight family responsibilities or sense of obligation. For about a quarter no other family or friends are available. (ACTU I page 174)

But the intensity of the caring responsibility is highly variable.

The AIHW reports that primary carers of severely disabled people assist with bathing and showering, dressing, eating, toileting and incontinence management, getting in and out of bed, moving around the house, using public transport and basic communication with others.

More than three quarters of primary carers have been doing it for more than 5 years, and, while the intensity varies, for over a third it occupies more than 40 hours per week.

Margaret Thompson's evidence is that her part time work arrangement enables her to provide care to her aged mother and that had she had to work full time she would have resigned her employment.

But the one and a quarter million employed non-primary carers, and those supporting people with less severe disabilities, will have more flexibility in the timing of the care-giving. Katherine Edwards evidence illustrates the role of non-primary caregivers in providing respite.

The ACTU applications to assist carers reconcile their competing responsibilities are cognisant of this and we don't propose a "one size fits all " solution.

Instead our applications invoke the well-known concept of "reasonableness". Our applications would oblige an employer to balance the needs of workplace with the employees' need to provide care and support to family member. As the intensity of the caring need increases the more effort required to try to meet the employees caring responsibilities.

More young mothers in work

Fourthly the mothers of young, and now very young babies are employed.

Babies and young children are heavily dependent on their parents. But over the past 25 years more and more parents of very young children are in the labour force. Caring for pre-schoolers is no longer associated with one parent withdrawing from the labour force for a long period of time.

It is now more commonly associated with a shorter withdrawal, followed by periods of part time employment.

Go to Campbell and Charlesworth Table 1.6 ACTU I Tab 2 page 147

We looked before at employment by the mothers' age. In this table we look at it according to the child's age. There has been a dramatic shift in the age of the child at which mothers return to paid employment.

This table looks at mothers' participation by the age of the child, not the mother.

Campbell and Charlesworth's report shows that the 1979 maternity leave test case decision was irrelevant to the majority of mothers, who stayed at home until their child was school aged. In July 1985 less than a third of mothers were back at work before their child went to primary school, and fewer than half before their youngest was 10.

Today by the time the youngest is in primary school their participation rate is higher than the overall female participation rate.

Within these data there are two other stories.

Firstly, a fundamental shift has occurred over the 15 years since the Parental Leave Test Case decision in 1990 in the participation rates of mothers of very young children.

Go to Campbell and Charlesworth Table 1.7 at ACTU I tab 2 Page 148

When this Commission awarded 12 months job protection to working mothers only 16% of mothers of children under 1 were employed.

Today one third of couple mothers return to work when their child is under one, and more than half by the time the child is aged two.

In one child families even higher – Professor Mc Donald [ACTU III page 30] reports the census data showing that 39% are employed with a child under 12 months, and 57% when child is 1-2 years old.

So there is a cohort of parents in the labour force with very intense family responsibilities.

In order to manage this many mothers work part time, and in reality the full withdrawal from work has largely been replaced with a partial withdrawal from work during the intense caring years.

The table shows that mothers start working part time, and the hours of work increase with the age of the child.

Institutional milestones - the end of parental leave and starting school - are associated with increases in full time work.

The extent of part time work amongst mothers of young children is higher in Australia than most comparable nations.

This pattern of part time employment after the birth of a child indicates that women and men respond to the work/care collision in different ways.

Bittman's report indicates that men tend not to change their labour force participation rates or patterns on becoming a father.

Watson, Soniaro and Qu, Peetz, and Glezer and Wollcott's reports indicate that (particularly amongst those working long hours, irregular hours and high pressure jobs) fathers absorb the impact of the work and family collision through deteriorating satisfaction with work and family balance, feelings of time pressure, poorer relationships with their partners, and so on.

Women tend to adjust their labour force participation around the family, inoculating the family from the impact of the collision with work but losing out on the benefits of secure, high quality employment.

Glezer and Wollcott's research shows this is the over-whelming preference of mothers of preschool children.

Go to Glezer and Wollcott, ACTU II page 282

Figure 2 shows that 43% of women working full time with children under 4 would prefer part-time hours.

Figure 4 shows that 4 in 10 mothers outside the labour force wanted to be in employment overwhelmingly in part-time work.

This research indicates that there is at least some degree of mis-match between mothers actual and preferred hours of work.

The ACTU applications are not about imposing a new social norm, they are about recognising this mis-match.

Tracy Bastin, Lea Formigoni and Margaret Thompson's evidence is that without part-time work they would have resigned. Helen Walkers evidence is that her employer's decision to convert her job from part-time to full time forced her from her job.

Professor Mc Donald [ACTU III, page 32] attributes these return to work patterns in part to community attitudes regarding the care of babies and toddlers.

He points to survey results showing community approval for childcare is much higher for children after their second birthday.

More than half of parents of preschoolers think it is not acceptable for children under 2 to be in childcare.

And they are particularly disapproving of childcare for more than 20 hours per week.

Regardless of the basis of these attitudes, and despite the fact that they are unreflective of the increasing number children attending formal care, Mc Donald argues that they shape labour force decisions.

Mc Donald's conclusion (despite his low confidence in attitudinal surveys) is that this data, combined with the actual return to work pattern of Australian mothers gives strong support to his view that policy should support a gradual return to work after parental leave.

Whatever the reasons for preferring a gradual return to work, for many mothers the return to work is associated with poor quality work.

The price they pay for reduced hours of work is loss of job tenure, job security, access to paid leave and training, and predictability of hours and income. But unless mothers can return to their pre-leave job, the costs of parenthood can be high.

Beth Frere says

"I spent many sleepless nights trying to work out what was best for my family and me. If I left I would lose a job that I am good at. I would also lose long service leave (that I want to take in 2005 when my eldest daughter starts school); 900 hours of sick leave, security and I might not be able to get another position that allowed me to work 0.5 time." [witness evidence page 81].

Mothers of young children are the workers most likely to need and use family responsive working arrangements and the least likely to have them.

ABS Working arrangements data indicates that 40% of mothers of children under 12 are employed casually.

Go to Gray Figure 3 ACTU I Tab X Page 513.

Gray uses data from the Negotiating the Life Course Survey to highlight the impact of having children on women's labour market experience.

When Gray compares childless men and women who intend to have children with parents of children under 5, she finds that men who indicated that they intended to have children experienced poorer work arrangements than men with preschool children.

For men, having a baby is associated with an improvement in the quality of the employment, with access to paid sick leave, annual leave and family leave increasing.

On the other hand women who want to have babies start off with the highest level of access to these conditions, with 90% having access to sick and annual leave. But being a mother is associated with significantly lower access to paid leave with fewer than 60% of those mums with kids under 5 able to take paid leave, including carers leave.

This suggests that the cost of even temporary withdrawal from the paid work force can be high, and that the trade-off that mothers make for fewer hours of work is accepting family hostile working arrangements.

ILO 156 is concerned with ensuring effective equality of opportunity and treatment between women and men. This evidence identifies that the increase in female involvement in paid work has not delivered that ideal.

The ACTU applications for an extension to parental leave and part time employment after parental leave would help women return to their pre-maternity job, without going backwards.

They provide employment arrangements that smooth the transition back to work in accordance with the actual practices of mothers of young children.

The changes in women's paid work and households and in mothers' labour market activity I have outlined describe a period of extraordinary social change. The world is a very different place than it was 25 years ago, when the Commission first considered its role in supporting working parents. Our applications seek to modernise the safety net to reflect this extraordinary social change.

Gaps in care

Fifth, there is care gap.

Mothers' return to work patterns are also affected by the availability of childcare. And their ongoing labour market participation is vulnerable to gaps in the provision of childcare.

Pocock [ACTU II, page 9] reports HILDA data showing that over 70% of households with children under five reporting concerns with cost or availability of childcare.

Today around half of all children use some form of non-parental care. And half of these use formal care.

But the figures vary significantly with the age of the child.

Go to Selected data page 13

Very few children under 12 months use formal care – only a third of children under 1 are cared for by some one other than their parents, and a relative, usually a grandparent, cares for the majority of these.

While the use of care increases in the following year, just over a quarter of children aged 1 use formal care, with again families more likely to rely on informal care.

By the time a child is three or four there is a very high use of formal care, although it continues to be supplemented with informal care.

Now these data include all families, not just those using the childcare for work purposes. And they don't tell us for how long the child is in care each week.

But they do show the propensity to use formal care increases with the age of the child.

But there are gaps in the availability of care.

As the table below shows in 2002 106,000 pre -school children and 68,000 primary school aged children required more formal care than they obtained.

And, as the table over the page shows the highest unmet demand was for long day care.

Commonwealth Childcare Census data [at ACTU I pages 549-550] shows that in 2002 around a quarter of all long day care centres had no vacancies at all.

So despite the Commonwealth budget announcements to put more money into family day care and before and after school care this data shows that there will still be unmet demand for childcare.

The shortages are acute for children under 2 years of age.

The evidence before this Commission is that as the end of maternity leave and the child's first birthday approaches, parents are still trying to get in to childcare.

Kathleen Drayton and Beth Frere were unable to get care for their daughters, despite placing their names on waiting lists early in her pregnancies. [Page 49]

Carol Ellison and Catherine Mc Anda also say that they had not been able to find care at the end of their maternity leave.

Annette Rowland's evidence is that she had no choice but to resign from her job due to the un-availability of childcare for her 15-month-old child. [Para 4, page 277]

In these circumstances 12 months job protection is an ineffective safety net – the mothers are still falling through.

Where parents do get a place in a centre it is often only part time.

In 2002, 42% of private sector LDC had only part time vacancies. [Commonwealth Census ACTU I, page 549]

Catherine Mc Anda's evidence is that after 14 months maternity leave finally got one day per week childcare for her baby in December 2002. In April 2004 (14 months later) still on the waiting list for a second day. [Page 128].

Jacqueline Luttick's evidence is that the incompatibility between available days and her roster forced her to resign. [Page 118]

Helen Walker's evidence is that she was having difficulty getting care as her return to work date approached. The decision by her employer to change her job from a part time job to a full time job effectively forced her out of her job.

That employers can insist upon full time return to work when only part time care is available is a significant gap in the award safety net.

And, the operating hours of childcare centres necessarily restrict the hours that parents' can be available to their employers.

Brianne Keen and Greame Pearce's evidence is that their morning timetable are so tightly scheduled that a temper tantrum or toilet stop causes them to be a few minutes late for work. Greame Pearce's evidence illustrates how beneficial being able to negotiate slight adjustments to start and finish times would be to working parents.

Places in centres don't come up evenly throughout the year.

Beth Frere's statement illustrates the lack of integration between the return from parental leave and the availability of care. With her first child the place became available before the scheduled return to work and she had to pay to keep a place open that she wasn't using. Worse, with her second child, there was no care available for the first month of her return to work. She describes this period as stressful on her family and prompted her to consider leaving her job – foregoing not only her job security and accumulated LSL, but also her labour market position.

The conclusion that this evidence invites is that the existing award minimum represents a very blunt and arbitrary cut off for parents who are unable to obtain appropriate care for their child.

The safety net already accommodates circumstances in which employed carer-givers are unable to arrange adequate appropriate alternative care for their dependents. Award based carers' leave is an example of this, providing relief when sickness prohibits the use of the usual caregiver.

But short-term emergencies are the tip of the iceberg.

De Vaus and Millward, [ACTU I page 558] and Qu [ACTU I page 562] show that in rare circumstances parents transfer the risk to kids.

More frequently it is mothers who adjust their working arrangements to accommodate this care gap.

As Beth Frere, Cyththia Tutalo [Witnesses page 358] and Jacqueline Luttick's [Witnesses page 118] statements illustrate when care arrangements fail there is significant cost to the family, often placing other members of the family, especially grandparents, under enormous strain to meet the care gap.

As Helen Walker and Annette Rowland's statements show the primary carer is forced to change jobs or leave the labour force.

And as Joanne Dennington's evidence shows, the problem continues beyond the preschool years, and without the ability to manager her hours around the gaps in her care, she would have no choice but to resign.

Family-hostile work patterns

Sixth – some of the changes in the way work is organised are antithetical to meeting caring commitments – some aspects of work are becoming family-hostile.

Contrary to the assertions of the employers the ACTU is not seeking to revisit the hours of work care through our applications in this case.

But the findings of fact made by the Full Bench in that case noted the deregulation of hours of work, including longer hours, unpredictable hours and irregular hours were disproportionately associated with deteriorating work and family balance.

In combination these 6 trends – increased female labour force participation, changes in household composition, increased dependency, increased intensity of care, gaps in the market provision of care and the emergence of family hostile working arrangements indicate that the momentum towards the collision is powerful.

And that it is simply unsustainable to continue to organise work with the underpinning assumption of the ideal worker who is freely available to their employer over whatever time spans over which they can be scheduled or expected to work.

It is not a sound foundation upon which to base the organisation of work, and the work needs to be re-engineered to reflect these realities.

That is certainly the view of employees. Simply, workers tells us that managing their work and family responsibilities is bloody hard.

They tell us they are often or always tired, constantly feel rushed and don't feel they have enough time to spend with their families.

They tell us that work has a negative impact on their family life.

Increasing numbers of employees are reporting greater difficulty in balancing their family responsibilities with their work responsibilities. The surveys consistently show between 25-40% of employees feeling work has a detrimental impact on their family life.

The 1995 AWIRS survey showed that satisfaction with work and family life had decreased for a quarter of all employees, and for a third of women and men with caring roles.

In 1999 Glezer and Wollcott's [ACTU II, page 32] reported that more than four in ten working mothers working full time and nearly half of all fathers said work had a negative impact upon their family life.

Feelings of a negative contribution were reported by those in their prime years, and was more prevalent amongst long-hours workers.

In 2001 an OEA survey of 1000 employees 41% said the balance had deteriorated compared to only 18% saying it was easier. [Campbell and Charlesworth ACTU I, page 121].

And in a 2003 Saulwick poll more than half of all employees said work sometimes or always unreasonably interfered with time for friends and family, made people too tired to enjoy time with friends and family, made workers irritable or short tempered with family. [Saulwick Job Futures No 9 2003, not in evidence].

Dr Lyndall Strazdins witness evidence is that managing the work life interface can be stressful for workers.

High levels of work-family conflict result in increased stress, depression, poorer health, and increased absenteeism.

The working conditions that Dr Stranzdins associates with low stress, with good parental mental health and with high quality family relationships are

- secure employment,
- challenging/complex jobs,
- control over workloads and decision- making, and
- importantly
- predictable schedules, and working hours that are compatible with family routines.

The conditions of work associated with work family conflict and stress are long hours, unpredictable schedules, night work, low control and high-pressure work.

In Glezer and Wollcott' study those working full time (or longer) were more likely to feel rushed, particularly when trying to cope with the demands of young children. Peter Gough, Sonia Tatchell and Susanne Bennett's evidence highlight the impact of the role overload.

Workers reported constantly feeling stressed and tired, and constantly feeling rushed. These were positively correlated with feeling that work interfered with family. [Glezer and Wolcott 1999ACTU II 32].

David Peetz and others' study of 15 Queensland workplaces [ACTU II Page 39] confirmed the association between full time hours and work and family dissatisfaction. Importantly for the ACTU's application for part time work from parents of preschool children Peetz survey confirmed findings from previous surveys that found that women working part time were less dissatisfied than other employees.

Go to Peetz Table 3 ACTU II Tab X page 44

Dissatisfaction with family balance is associated with high pressure, stressful work, longer hours, and increasing hours of work. Working weekends for full time employees and night time work was associated with work and family imbalance. Unpredictability of start and finish times is associated with higher levels of dissatisfaction, both amongst workers and their partners.

The ACTU application to ensure that employers, upon the request of their employees take into account the employees caring responsibilities in the rostering of work would provide an avenue to ameliorate some of this dissatisfaction where practicable.

There are certain stages of the life-course during which these pressures are felt most keenly, which justify targeting the safety net to address these periods of acute work-life collision- the birth of a child, caring for infants and toddlers and the raising of pre-schoolers impose additional strain on families, and point to the need for a stronger net, and more extensive net at this time.

It is not surprising. As Craig says children are hugely time consuming. [ACTU II page 82].

Craig illustrates the impact of children on the way time is used within households.

Go to Craig Figure 1 on ACTU II page 82

Having a baby increases the amount of unpaid work in households by up to 6.5 hours per day – from about six hours to 12.5 hours.

While life never returns to “normal”, by the time the child or children are in primary school this has dropped away, to only about 2 additional hours for most families.

The impact of children is felt differently within families.

Figure 2 on page 84 and Table 2

Having a child adds about 1.5 - 2 hours to men’s unpaid work per day, falling to an hour once the children reach primary school.

For women, having a baby or toddler adds about 5 hours unpaid labour, taking the total daily hours of unpaid work to up to 9 hours per day.

Craig reports that these patterns hold across families with different educational levels and labour force participation patterns.

How do women return to work, especially full time, when they have this unpaid workload?

Craig finds that even when they use formal childcare they do not transfer this unpaid work to childcare providers.

Mothers of preschool children who are employed full time “compensate” for time spent in childcare during working hours by starting their childcare activities earlier and finishing them later in the day than mothers not in the labour force.

That is employed mothers re-schedule active childcare.

Go to Craig Table 6 page 90

While employed mothers cut back on housework and shopping, and on personal care (eating, drinking, bathing, grooming and dressing), the most dramatic illustration of the time pressure faced by mothers of preschoolers working full time is illustrated by the finding that on average working mothers of children under 5 appear to have no child-free recreation at all.

Bearing in mind these are averages, fathers have, on average about 72 minutes child free leisure per day, mothers who are not working enjoy only 24 minutes, and mothers employed full time have on average .006 of a minute – that’s about a third of a second!

That’s not indicative of a minor collision.

That’s a head-on at full speed.

A business case for change

In light of the evidence of the impact on families it's a legitimate industrial pursuit for unions to try to alleviate this stress, strain and pressure, to try to cushion the impact of the work and care collision.

But of course in weighing the evidence the Commission must also have regard to the impact that awarding our applications would have on business.

I find it curious that the employers and the Commonwealth are contesting our contention that there is a business case for the awarding of the ACTU applications.

It is curious because our evidence is almost entirely based on the testimonials of Australian business itself, including testimonial by ACCI and its members.

The ACTU acknowledges that there are not many robust models that assist an individual company make an accurate "before the fact" calculation of the predicted savings arising from particular leave provisions, maternal retention programs or hours flexibility measures.

And Professor Mitchell complains of the lack of data with which to calculate with finite precision the impact of the claims at the macro level.

But there are sufficient "before and after" case studies to indicate that the benefits to business include reduced absenteeism, retention of labour and lower job turnover, and improved morale and productivity. [Dex and Scheibl ACTU III, 263]

The assessment of business after they have introduced a range of measures, including those proposed by the ACTU, is that they have seen improvements against a range of HR and other measures.

We are not the only party to have filed material in this vein.

A number of exhibits filed by the employers and the Commonwealth Government supports the ACTU in this area.

There are a few surveys of Australian employers included in the exhibits. We have included one by the ACCI's NSW affiliate, not because we have any confidence that it is methodologically robust, but because it is evidence of what they say the benefits are.

And the AiG have filed a survey conducted by the BCA, which also extols the benefits to business of flexible working hours including flexible start and finish times, part-time work after parental leave, school term only work arrangements, arrangement of hours in consideration of school childcare and pick up times. The BCA survey says "many companies reported improved retention rates, higher productivity, strengthen loyalty and morale and improved job satisfaction." [AiG Volume 1, page 193]

The State Chamber of Commerce New South Wales reports, both the perception amongst business is that family friendly practices do help retain staff. Of the employers who provided flexible hours of work 82% agreed that staff retention had improved.

But neither of these surveys is as robust as the UK Employer surveys.

The UK evidence is relevant because the UK government has, over recent years, introduced or improved its paid and unpaid maternity leave provision, introduced short paid paternity leave, provided for reasonable unpaid time off to care for dependents in

emergencies, legislated for 13 weeks per parent per child parental leave available in the child's preschool years, and introduced a right for parents of children under 6 (and disabled children under 16) to request flexible work to enable them to care for their child.

The UK material is useful because of the very transparent process of decision making which accompanied the introduction of these measures. The UK government undertook benchmarking surveys to enable it to evaluate with some precision the impact of the new measures.

Not all of the UK material is in evidence, but the second major survey of British employers conducted in 2002 [ACTU III, page 330] (which was before the introduction of the Flexible work for parents legislation, but after the introduction of extended parental leave, emergency leave and improved maternity, paternity and adoption leave) commences with the statement:

"Despite some concerns about staff shortages, the majority of employers that provided flexible working practices and leave arrangements found them to be cost effective, with a positive impact on labour turnover, motivation and commitment and employee relations."
[ACTU III page 330]

The Lovell's study of employers conducted 6 months after the introduction of the UK's Flexible Work for Parents legislation showed that although employers were divided about whether there had been clear benefits to business, 68% of employers said that the opportunity to work flexibly had had a positive effect on employee attitudes and morale.

Most employers (76%) said the impact on their organisation has been negligible, and 90% reported no significant problems in compliance.

Cost was rarely cited as a reason for refusing requests.

And although any employee whose request is refused can bring a complaint, only 1% of employers who had turned down a request had been the subject of tribunal complaint. [Lovells ACTU III page 358]

So the UK evidence is that there are noticeable benefits to business, and minimal costs.

The DTI employee survey conducted to assess the first 12 months of the flexible work legislation is evidence that it has been largely successful in providing employees with better balance. Almost a quarter of eligible parents or 1 million employees made an application for flexible work, nearly 90% of these were granted in part or in full. The DTI report (AiG Volume 3, page 116) indicates that only 11 % of flexible working requests were declined. This represented a halving of the refusal rate by employers since the introduction of the new laws. The author suggest that the legislative right to request has increased significantly the employers willingness to seriously consider employees requests.

Now we don't simply say that because something was done in the UK it should be done here.

The international evidence it is presented simply to show that the applications that we are prosecuting are not out of step with the rest of the developed world.

Dr Jill Murray's evidence [ACTU III page 371] is that there has been internationally a trend towards legal intervention in the labour market to achieve resolution of work and family life. The interventions include significant extensions to the period of parental leave, ie the period during which a job is held open after the birth of a child to enable parents to care for the

child, some new entitlements to emergency leave, and various degrees of rights to alter hours, or right to request and obligations on business to accommodate requests to accommodate caring responsibilities.

Her evidence supports our contention that the applications we have made are practical and responsible, and not out of step with the informed labour market policies of comparable jurisdictions in meeting their international obligations and assisting employees reconcile their work and family responsibilities.

The Public Interest Considerations

Of course in setting a fair minimum safety net of conditions, the Commission is obliged to take into account not only its obligation under s93A, but also to consider but also whether the safety net remains fair in the context of living standards generally, the impact upon the economy and the needs of the low paid. (section 88B(2)). And it must consider the public interest more generally (section 90).

As the OECD note the reason why so many governments are now interested in getting the work and family balance right is because they hope it will promote all other sorts of goals of society including

Increased aggregate labour supply and employment (so increasing national income), families with more stable and secure sources of income; families better able to stand the strains of modern life, and if relationships do break down better able to move on in their lives, better child development outcomes; less public expenditures, higher fertility (or at least enabling families to have their desired number of children) and more gender equity are all often primary governmental objectives.

OECD ACTU I page 195.

The future supply of labour

In the short to medium term slower population growth and structural ageing of the population pose significant challenges for the economy in particular labour supply.

In the context of a decline in the working age population as a proportion of the total population, there is pressure to maximize employment rates amongst those of working age.

In the Intergenerational Report (AiG Volume 1, page 1) Treasury estimates that proportion of the population in employment will stagnate over the coming few years. Longer term it predicts a decline from the current 64% of those over 15 to only about 56% by the second half of the 2030's. This places pressure on government finances.

However demographic predictions are not demographic fate.

That is that if we can remove barriers to employment, and enhance the labour market participation amongst the currently under-utilised labour supply a more optimistic output and fiscal position is possible.

Go to Campbell and Charlesworth Table 1.10 ACTU page 151

Campbell and Charlesworth include Tables 1.10 and 1.11 on pages 151 and 152 of ACTU I, which show that Australia has, in OECD terms, comparably low levels of maternal and carer employment.

Although our female labour force participation rates are relatively high, we have very low rates of employment of mothers of children under 6. Of 16 nations with comparable data, Australia ranks 13th.

Go to Campbell and Charlesworth Table 1.11 ACTU I page 152.

Australia's comparatively high female labour force participation rates mask low participation by prime age women. Australia ranks 18th of 23 nations for all women aged 25-54, fourth last when one child is present, third last when 2 children are present. Campbell and Charlesworth's evidence is that motherhood appears to have a bigger impact in impeding employment in Australia than it does in other comparable nations.

The Commonwealth Treasurer's paper, Australia's Demographic Challenges, says "that the best approach is to look for ways to increase the size of the economy so we all have higher incomes and are better able to meet the costs associated with our ageing population...the key ways to improve economic growth are through increases in labour participation and productivity." [Commonwealth reply documents]

Gruen and Garbutt [at ACTU III Tab 36, page 62] benchmark Australia's participation rates against the 80th percentile of 24 relevant OECD comparator nations.

Their model forecasts an alternative future, where improved participation rates add about 9% to the growth over that projected in the Intergenerational report.

About a quarter of the improved output they forecast would be attributable to increased participation by people over aged 65.

The remainder is attributable to improving participation amongst people in the current working age, including but not limited to mothers and carers.

Clearly on their own the ACTU applications to adjust the safety net won't turn around the population predictions but the adjustments to the safety net that we are seeking will play a part in facilitating mothers and carers continued involvement in paid work.

While the current public debate is around encouraging older workers to stay in the labour market the evidence of Austin and Giles is that women represent a greater source of untapped labour than older workers.

Table 8 in Austen and Giles at ACTU III page 55

Women in the prime caring years account for just under a quarter of non-employed labour or under employed labour, compared to older workers who account for only 10% of the non-employed labour.

Austin and Giles argument is that this potential source of labour will only become a reality if the supply side aspects of women's participation and hours of work decisions are conducive to their increase labour force participation.

The evidence of Glezer and Wolcott is that many mothers and carers would be willing recruits.

Glezer and Wolcott 1997 [Table 4 ACTU II, page 282] found that 56% of mothers with dependent children who were outside the labour force wanted to work, with four in ten preferring part time work.

Gregory, Ganley and Mostafa's more recent survey of low-income families in receipt of parenting payment found two thirds of parents not in the labour force wanted paid employment.

This suggests that if the right policies are put in place, Australian mothers and carers, can be encouraged to remain employed and contribute to industry, productivity and growth.

While the determinants of maternal and carer labour force participation are complex, one factor that must be associated with labour force attachment is the conditions at the workplace.

When Peter McDonald who will give evidence later this week, and Edith Gray's [ACTU III, page 230] looked at the workplace attributes associated with mothers return to work they found that having family responsive working conditions at the workplace where the mother worked before she had her child was positively associated with employment of those mothers after the birth of a child. Using longitudinal data they found that those women who had greater access to family friendly conditions at Wave 1 were more likely to be employed at Wave 2.

It is common ground between the parties that Australia will benefit from encouraging higher labour force participation rates. It is our argument that our applications will assist parents and carers stay attached to the labour force, while ensuring they can provide appropriate care to their dependents.

The projected stagnation in the growth of the labour force over the coming thirty years need not be our fate.

Australia's fertility levels

It is also common ground between the parties that the structural ageing of the population is partly caused by a decline in Australia's fertility levels.

All three demographers [Hugo, Mc Donald and Castles] relied upon by the ACTU argue that a key to addressing lower fertility levels is making it easier for women to continue to work while having and raising children. Otherwise, when faced with the choice, more women will chose to have fewer children.

Castles Table X ACTU III page 46,47]

Contrary to what might be the intuitive view ie, that participation in paid employment limits the number of children women will have, the evidence is that the opposite is true.

Castles argues that the traditional link between high fertility and policies strongly supportive of breadwinner families is no longer true.

His cross-national comparisons indicate that fertility is highest in those nations where women's labour force participation is greatest.

Only 25 years ago, high fertility was associated in cross national comparisons with religious adherence, low divorce rates, smaller service sectors, lower levels of female employment, education, labour force participation, and higher female unemployment. By 1998 all those relationships had reversed, and higher fertility was associated with high levels of female employment .

Mc Donald agrees. His argument is that while most western nations are experiencing lower fertility rates, high female labour force participation is associated with a relatively stronger fertility picture than lower employment levels.

His evidence is that childlessness does not account for the difference between low and very low fertility countries.

Mc Donald [ACTU X page x] notes that in both low and high fertility nations about the same proportion of women (20-25%) have no children.

Nor does delayed child-bearing account for the difference between nations with this being common across the western nations.

Mc Donald's evidence is that the difference between very low and tolerably low fertility Western nations is the rate at which later starters compensate for their late start by having second and subsequent children.

Both Castles and McDonald agree that low fertility rates are associated with poor support for the combination of work and child raising.

Castles tests for associations between various work and family measures and higher fertility levels.

He finds that the stronger and statistically significant correlations are with those policies that support ongoing work with raising children. Childcare for younger children, and the proportion of employees working flexitime were positively associated with higher fertility, compared to social expenditure on families, and payments for maternity leave. (this is not to say these are not important supports for families, but that they aren't necessarily associated with higher fertility rates).

Castles concludes that policies supporting women to stay in the labour force when they have children are the policies most conducive to maintaining levels of fertility at or near the replacement level. [ACTU III page 48]

In the Australian context Mc Donald notes that women with one child return to work when their child is quite young, and increase their employment as their children get older. [ACTU III page 30]. He also points to community attitudes to childcare for young children, which display a preference for home based care of infants, and part time childcare for children under 5. It is his evidence that from a fertility perspective, policies that will work in the Australian context are those that support a gradual return to work for mothers of pre school children.

The ACTU does not say - grant our applications and women will rush to have babies. But the evidence is the granting of our applications would make it easier for parents to keep working and raise their children and that these policies are more likely to be supportive of improved fertility levels than policies which support women taking very long periods out of the labour force to raise children.

Gender equity

The ACTU applications are supportive of men and women in their work and caring roles. Bittman identifies the cultural and workforce pressures that prevent men from taking a greater role in the care of their families and in accessing family friendly working arrangements.

The ACTU applications are focused on those employees who bear primary responsibility for the care of their dependents as Graeme Pearce illustrates a single father of a young child experiences the same difficulties as the mothers who give evidence in this case.

But because of women's share of the caring work in families it is women who are likely to benefit from the granting of the applications.

It is clear from the evidence already alluded to that parenthood has very different impact on men's and women's employment. If women can return to their pre-maternity jobs there is less risk of loss of income, seniority, access to training and career development that has been associated with motherhood in the past.

Childhood development

The last public interest that I want to touch on today is the issue of early childhood development. The OECD list of possible benefits includes better child development outcomes.

There are compelling arguments emerging from the early childhood research community about the need to intervene in a range of policy areas to re-orient our focus towards supporting children.

And, the most critical focus of support for children is support for parents in their parenting role.

Altruism aside, there are strong social and economic imperatives to intervene in a range of settings that influence the developmental outcomes for children, and which affect their longer term prospects as adults.

Australia's children are falling behind on a range of measures.

The early childhood experts tell us that strategies to eliminate or reduce known risks to early childhood development, and to extend and promote the protective factors are, in the medium to long term, a sound investment.

Professor Oberklaid's evidence is that, by reducing childhood exposure to these risks and by promoting the protective factors we can reduce the public cost (in dollars and social costs) of poor mental health, adult onset illnesses such as diabetes and cardiovascular disease, of increasing rates of youth suicide, of juvenile involvement in the justice system and so forth.

Researchers in the field often use the analogy – it is better to put the fence at the top of the cliff than keep sending the ambulances to the bottom.

Most of these policy interventions advocated by the early childhood experts are unrelated to the workplace, and far beyond the scope of this Test Case.

But one leg of a comprehensive framework involves ensuring that working arrangements are responsive to the crucial role that parents need to play in creating a nurturing environment for their children.

The early childhood evidence is that parental stress is one of the known risk factors, and parents' access to supportive workplace arrangements is a known protective factor.

As Professor Oberklaid says in his statement not every child whose parents are stressed will do badly.

But risk factors are cumulative. Measures at the workplace which support parents and reduce the spill over to children have their place in an effective early years intervention program.

The report by Mc Cain and Mustard gives us the science behind Oberklaid's evidence. [ACTU II page 123] It brings together evidence from a range of disciplines, including sociology, neuroscience, paediatrics, epidemiology and developmental psychology and outlines the relatively recent discoveries about how a child's environment affects not only its emotional and psychological development, but also the physical development of the brain.

As the ACTU understands the literature, advances in MRI and other technology over the past 15 or so years have allowed neuro-scientists to take pictures of how the brain develops.

These pictures tells scientists that their old understanding that the architecture of the brain was set at birth is incorrect, and that the brain develops physically over the first few years of life.

The nurturing a child receives in the first three years in particular will affect the child's brain development, and in turn will affect the adult that child will become.

The experiences and the stimuli (both positive and negative) to which a child is exposed will affect the "hard wiring" of the neurons (nerve cells) and the neural pathways of the brain.

As The ACTU understands the evidence the development of these wires, or synapses which connect the neurons, is intensive during a child's first three years, and continues until the child is about 10.

The extent of positive stimulation affects the rate of growth of the synapses, and whether they are stimulated to sufficient extent to become immune from pruning.

Go To Mc Cain and Mustard ACTU XX, Tab XX Page 133

There are critical times for the development of certain parts of functions of the brain. These are windows of opportunity for the development of certain functions.

The evidence is that some areas remain more plastic over the lifetime, but for others these critical periods are very important, and may not be able to be recovered later in life.

There is a very strong relationship between the conditions of early childhood and later health, including mental health, and also some chronic diseases including high blood pressure, diabetes, and cardio-vascular diseases.

The quality of the sensory stimulation in early life shapes the brains coping area – the endocrine and immune pathways, and these in turn affect adult learning skills, coping skills, behaviour and disease risks. (Mc Cain and Mustard ACTU II page 134).

The evidence is that the years from conception to age 6 have the most important influence of any time during a person's life on their brain development, subsequent learning, behaviour and health.

To be relevant to these proceedings the ACTU acknowledges that we have to establish the connection between the applications before you and this research.

Mc Cain and Mustard set out a framework for early childhood development and parenthood support, which is focused upon parents in the first instance and becoming more child oriented as the child gets older. [Figure 6.1 ACTU II at 214]

Most of the recommendations that Mc Cain and Mustard made to the Canadian authorities involved early childhood settings, not workplaces.

But as part of the framework of support for the early years [ACTU II page 226] they recommend that Ontario promote longer parental leave (admittedly off a lower base of 35 weeks) part time work, flexible hours, priority for day shifts, opportunities to work from home, paid leave for care of sick children, and other parent support measures.

The NSW and Queensland Commissioners' for Children and Young People make similar recommendations. They call for a three-pronged approach to supporting parents' choice in their parenting and work roles; supporting parents in their roles as parents, workforce development and industrial awards that foster flexible working arrangements, increasing the available childcare, preschool and after school care [ACTU II page 109].

The reason why these reports include working arrangements is two-fold.

Firstly, joblessness is associated with childhood poverty which as Professor Oberklaid says is a known risk factor, not due to the material deprivation but due to the associated stress and family tension.

Secondly, exposure to parental stress is a risk factor.

Dr Strazdins is a Research fellow at the National Centre for Epidemiology and Population Health at ANU. She is a named investigator on an NH&MRC funded grant on parental work conditions and child health.

Her work involves testing the levels of cortisol (a markers of stress) and Saliva Im-un-o-glob-u-lin (a marker of immune function) of parents employed in the retail industry and their children to assess the impact of a range of working conditions on parent and child health and wellbeing.

Her research is exploring whether there is a statistically proven association between the parents' work and children's stress.

Her evidence is that aspects of work, including job insecurity, poor control and evening/night work affect parents' mental health and wellbeing. And there is a link between parental stress and child stress.

Parents know this.

Patricia Jack's evidence is that the time she spends after school with her son gives her some comfort that he won't misbehave as a teenager. Carol Ellison's evidence is that multiple care arrangements have led to a range of behavioural issues with her son.

Beth Frere, TAFE Teacher says "her youngest child bursts into tears when I get dressed, put on makeup or pick up my brief case. "...

I am disappointed that the employers have chosen not to cross examine Dr Dissanakye and Professor Oberklaid, both of whom provide expert testimony on the importance of ensuring that the ways in which we organise work eliminate or minimize risks to children, and are supportive of the important role of parents during the early years.

I assume that it is a strategic litigation decision.

Why let the ACTU grab some moral high ground by talking about the little kiddies?

Don't highlight the issue.

It would be like cross-examining Santa Claus.

That's understandable.

But don't fall for it.

There is widespread agreement across a number of disciplines that building that fence at the top of the cliff is in the economic interest, as well as the social interest.

Ensuring that conditions of employment support parents in their parenting role and minimising the risks associated with parental stress is an important part of that fence.

Although you will not hear their testimony this week the evidence contained in their statements is much more relevant than the employers' lack of interest in it suggests.

The ACTU Applications

I want to be very clear about what it is that the ACTU seeks in this case, as there are so many applications before you, and they have been amended through conciliation.

There is some logic in explaining the ACTU applications in the order in which they logically might be accessed across an employees working life, rather than the order in which they appear in awards. This assists in understanding the dynamic nature of work and family reconciliation – how employees need to be able to is in part because the applications are tailored to provide employees with a "pick and pack" approach to work and family reconciliation measures, with employees relying upon the safety net at different points throughout their lives.

Stage 1 – Birth of a child

So, although not universally true, for many workers their first taste of caring responsibilities is the birth of their child. If we start with parental leave, the ACTU is seeking some improvements to parental leave.

8 weeks simultaneous leave

At the time of the birth of a child, we seek an amendment to increase the period of leave open to both parents at the time of the birth from one week (for natural parents) and three weeks (for adoptive parents). The key evidence and argument relate to the physical factors associated with post-birth recovery which is normally considered to take around six weeks, and is amplified by increases in caesarean birth rates, multiple births, shorter hospital stays and so on. So it isn't a claim based on industrial ambit, its based on the physiology of birth. It is also a claim informed by the demographic changes that I referred to earlier whereby the increase in female employment means that mothers of newborns no longer have their mothers, or sisters or neighbours available to provide them with the support they need post-natal.

Our application in no way affects the total duration of parental leave available to both parents, that is just as is currently the case, the amount of long leave available is reduced by the amount of simultaneous leave taken.

You will hear arguments about the low take up rates of parental leave by fathers, and we do not expect this application to have a significant impact upon employers. But importantly the right to take parental leave carries with it the right to access unused annual or long service leave.

A very minor technical amendment has been agreed amongst the major parties. The safety net as drafted currently requires the father taking parental leave to certify, by statutory declaration, that he will be the primary caregiver. This obligation extends to the period of simultaneous leave taken at the time of the birth, when in most circumstances the father is not the primary caregiver to the child, as both parents are not at work. The parties have agreed to exempt simultaneous leave from this requirement.

104 weeks parental leave

The second, and more significant amendment, to parental leave sought is to extend the duration of parental leave from 12 months to 24 months.

Granting this application would provide parents with greater choice around the timing of their return to work, choice which they will exercise based upon the time at which their child reaches certain developmental milestones, the availability of non-parental care, their financial circumstances, and so on. It would mean that the safety net was relevant to the majority of mothers who do now go back to work between the birth and the babies second birthday.

Replacement employees

In response to employer concerns we that there be an amendment to the replacement employee provisions related to parental leave to ensure that employees employed, promoted or transferred to cover a parental leave absence can be terminated or returned to their former position when the parental leave employee returns to work. The existing provisions probably cover it, but to avoid doubt we are comfortable with an amendment,

which makes perfectly clear that we do not seek to fit the employer up with termination costs and so on when the replacement employee is terminated to accommodate the return to work.

Communication during parental leave

We also propose that the return to work be improved by requiring, where there has been a decision to introduce significant change at the workplace that will have an impact upon the status or responsibility of the employee upon their return to work, an employer be obliged to provide the employee with this information and with the opportunity to discuss this with the employer.

We have also included within our application, and this change arose during conciliation, a reciprocal obligation on employees.

As we understood the position at the end of conciliation there was consent to almost all of this application, with the remaining matter for arbitration being whether or not the employer, as well as being obliged to provide information (which is agreed) must also provide the employee with the opportunity to discuss the matter. Some of ACCI's written material indicates a move away from this (ACCI Reply Submission, page 16-2).

Stage 2 – the care of young children

The second stage in the life-course, after the birth of the child, is of course the ongoing care on the child. Our applications that support parents of pre-school children to remain in the labour force and care for their children recognise this phase as a discrete life-course stage. The applications we have put forward constitute solutions for families and employers that recognise

- The evidence regarding the importance of the preschool years for child development;
- The time use evidence of the extreme time pressure on parents of pre-schoolers; and
- The obvious change in the childcare dynamics that accompany the commencement of school.

Part time work

This application seeks to reinstate into awards the concept approved by the Full Bench in 1990 in the Parental Leave Test Case, and subsequently removed during Award Simplification, for a gradual return to work after parental leave through the use of part time employment.

It seeks to do so in two ways- by extending the period of part time return to work from age 2 to school aged, and by providing employees who are returning from parental leave with the right to choose part time work during this key caring phase.

Now the hours of work, the arrangement of the hours and the classification of work to be performed would still need to be agreed between the employer and employee, so it is in no way providing working parents the capacity to set their own working arrangements. But it does shift the focus of those discussions from “whether” to “how”.

The ACTU also proposes consequential amendments to the parental leave notice provisions that would require employees to not only apply for leave, but also at the same

time apply for part time return to work. These amendments are designed to improve the predictability of parental leave return arrangements and allow employers to plan for the return to work.

Child rearing leave

In addition the ACTU has made application for employees to be able to extend their parental leave beyond the current 12 months or 24 months claimed, to enable an employee to apply for an extension of parental leave for a further 52 weeks at a time, up until the child school aged, and for the employer to agree to this leave. This could only be accessed with the agreement of the employer.

Stage 3 – Caring for dependents

The remaining ACTU applications are designed to assist employees who have responsibility for the care of any dependent. The first set of these deal with predictable, regular caring responsibilities which can be planned for at the workplace.

The remainder, which have been settled through conciliation, cater to unpredictable one – off circumstances.

Right to request a variation in the hours or place of work

The ACTU has made application for an employee to have a right to request a change in their hours of work or place of work, if the purpose of the change is to assist the employee provide care and support to member of their family or household.

The employer would have an obligation to consider the application and not unreasonably refuse the application.

The employer would also be obliged to consider alternatives that would allow the employee to meet their caring responsibilities.

Refusal of the application would need to be based upon the inability to rearrange work to meet both the needs of the employee and the needs of the workplace.

The ACTU application is designed to encourage, and provide a framework, for employers and employees at the workplace to explore, within the limits of the existing award, all options that meet both their needs.

It is designed to help employees with responsibilities to dependents can negotiate the predictable hours that they need to organise other care around.

It clarifies and codifies the obligations upon employers under anti discrimination laws, and it shifts the balance from employer initiated flexibility to a more mutual arrangement.

Purchased leave

The second of our applications is for employees to be able to take up to 6 weeks unpaid leave per annum, to better balance work and caring responsibilities. The timing of the leave is to be agreed. The employer is again obliged to consider the application and to not unreasonably refuse. The grounds for refusal are limited to the inability to meet the needs of the workplace in the absence of the employee.

In addition to being able to take the leave, the employee may apply for, and the employer may agree to average the employees pay over the year to smooth the affect of the leave on take home pay.

The ACTU application reflects the considerable efforts made during conciliation to agree on the best method for pay averaging. The outcome is that the AiG and the ACTU have essentially agreed to a system of pay averaging which favours simplicity over smoothing out bumps in the weekly take home pay.

Not to mislead – no agreement over rest of clause – how it is activated or the duration of unpaid leave available and no ACCI/NFF support for the application at all.

What is agreed is that the non-regular or variable components of wages (weekend and shift penalties, overtime, disability allowances, special rates, fares and travelling time payments, bonuses and leave loading) are not included within the wages to be averaged.

What is also agreed is that periods of purchased leave will not normally be treated as service for the purpose of accrual of other forms of leave or entitlement, but shall count as service for retrenchment notice and redundancy pay and eligibility for parental leave.

There is no agreement about any other service related entitlements, nor is there agreement about the treatment of public holidays.

Emergency and Carers leave

The ACTU has also lodged applications for emergency leave, and improvements to carers leave. These applications were designed to cater to the unpredictable caring needs, sickness, breakdown of care, school based crises, and so on. In light of the settlement reached in conciliation I don't propose to address these today, unless there are questions of the ACTU about the detail of the settlement, except to say that the ACTU considers that the settlements represent an appropriate outcome, that they are consistent with the Objects of the WR Act, and with the Commission's obligations under Part V, and will assist a significant proportion of award-dependant workers employees to respond to family emergencies, without imposing any disadvantage on employers.

Counter Applications

For the sake of completeness the ACTU also has proposed three further amendments to the safety net applications that deal with predictable family care, that are put as alternative proposals to those filed by employers.

So while we don't oppose the AiG concept of additional unpaid leave adjacent to annual leave, we propose an alternative test for whether the leave is granted, which places an obligation upon the employer to give fair consideration to the application for leave.

Similarly, if you are minded to award the ACCI application for accrual of annual leave, we propose that there be a limit upon the amount that may be accrued.

Finally, as an alternative to the ACCI application to allow all annual leave days to be taken as single day absences the ACTU proposes that five out of every 20 days of annual leave could be available in single days.

I want to finish by addressing the real argument between ourselves and the employers in this case.

Fundamentally the dispute between the employers and ourselves is not about work and families. I am really confident that, after all the evidence is heard, you will find that measures we seek are appropriate, affordable, and responsible. Because there is a compelling case to introduce work and family measures. Because employers support the voluntary introduction of most of these measures.

The employers, (particularly AiG's) and Commonwealth submissions reveal some appreciation of the public interest imperatives that demand the collision be addressed.

What we are really fighting about is where the balance between rights and obligations should rest.

Where we diverge is whether these remedies should be introduced through leadership, education and incentives and persuasion, or whether, as we have constructed our applications, there is a role for rights, and at what point the balance should shift from absolute rights to fair consideration.

At what point in the work-life collision should the balance shift from absolute right to fair consideration.

The key proposition against your intervention is that workplace bargaining will deliver. I don't propose to have the theoretical argument now, but simply point to the evidence which refutes this proposition.

In 1991 Australian Parl. adopted the ILO 156, and the W&F Unit was established. 1992 saw the inaugural (then BCA now ACCI). work and family awards.

On any measure you'd have to say celebrating best practice has not led to the cultural shift that you might have hoped for.

Leaving aside totally award reliant workers, there is no credible evidence that bargaining has led to the widespread introduction of ff working arrangements.

Go to table 6A.3 ACTU I page 303.

AiG Rely on the Commonwealth data, but if you look at the table Only three of the family friendly measures they code for reach double figures using the number of agreements measure.

The thing that these three have in common is that they each have been introduced through arbitration or legislation.

Carers leave is an illustration of this.

In the ACIRRT report [ACTU III page 675] ACIRRT report an even higher incidence of carers leave in federal EBAs than does WAD.

But 36% of federal EBA's that have carers leave as part of sick leave and the majority of these provide for 5 days. That is they reflect the key provisions of the award safety net.

Mirroring the safety net in an agreement is not bargaining for family friendly workplaces.

Secondly the ACIRRT report debunks the inane argument that all hours' flexibility clauses are family-friendly.

As well as lacking any logic, Commonwealths own report at page79 shows types of flexibility counted as family friendly includes

- Provisions that are incapable of categorising one way or another – eg specified weekly hours, staggered breaks and breaks not to interrupt continuity of work
- Provision that will depend upon who has the power to initiate change – flex start and finish, averaging of hours over longer period
- And some that on their face reduce the predicability of hours of work –eg management may alter hours or management may alter breaks.

The ACIRRT report looks at hour's flexibility from a qualitative point of view.

Like the Commonwealth they find a high incidence of flexible working hours. But in their coding, although about a third of agreements allowed for hours to be changed by mutual agreement, more than one in five (21.9%) of all federal EBAs contained a clause giving the employer the discretion. In their qualitative assessment of the over 700 federal EBAs they found that flexible hours of work, in particular the capacity to alter hours of work was “often used by employers to implicitly impose changes in working hours arrangements on employees.”

This evidence supports a conclusion that the spread and incidence of family friendly agreements is poor, and that the simple counts probably overstate the extent of family friendly agreement-making.

In addition the evidence is that the agreements that do exist provide access to family friendly arrangements on a patchy inequitable basis.

Whitehouse's research is relied upon to support four propositions.

Go to Whitehouse Table 1 ACTU III, page 747

- The spread is low;
- The rate of the spread is falling;
- Certain types of workplaces are more likely to bargain for family friendly working arrangements. Whitehouse finds that work and family measures are more common in the public sector. Within the private sector they are more common in larger workplaces, and female or mixed gender workplaces. Her finding that certain male dominated industries are very unlikely to bargain for family friendly arrangements might contribute to further gender segmentation of the labour market.
- Whitehouse' research supports the proposition that the existence of family friendly provisions in agreements is not evidence the the workplace is family friendly. She found that the existence of some family friendly measures also correlated with some family unfriendly measures such as the capacity of the employer to unilaterally alter the hours of work.

The employer witness statements hint at the argument that we need to look outside formal bargaining to understand what is happening in workplaces.

Although the data is a bit old, the study by Whitehouse and Zetlin using management surveys from AWIRS data indicates that the workplaces most likely to provide family friendly working arrangements are those that employ higher paid employees, predominantly in professional and para-professional occupations.

They find some evidence of market polarisation in access to family friendly provisions, explained partly by differential assessments by employers of the business case.

Zetlin and Whitehouse also indicate that their case studies in best practice organisations revealed a view amongst employees that utilisation was less than a right, that there were career and job security risks associated with accessing provisions [ACTU III page 661].

And the AIFS study by Gray and Tudball [ACTU III, page 595] looks not only at the workplace characteristics but also the employee characteristics that are associated with access to family friendly working arrangements.

They conclude that there is a significant skew in access workers with lower levels of educational attainment, lower rates of pay, and shorter job tenure missing out, while higher paid, better educated employees have the benefits of family friendly work practices.

So in summary the evidence points to a low spread of family friendly working arrangements in formal bargaining, and that evidence probably overstates the extent to which agreements are providing improvements. Where there is bargaining, or informal arrangements, they are more likely to apply to higher paid, higher skilled employees.

Conclusion

So celebrating best practice and publishing glossy leaflets is all well and good, but there is no evidence of the cultural shift required.

In the absence of intervention, the business case will not ensure equitable access to these provisions. Low skilled, lower paid occupational groups, employees with shorter job tenure, are less likely to access family friendly working arrangements.

Professor Mitchell's evidence is that the applications are not costly.

Over the longer term, there is a business case for the introduction of these measures as they are associated with lower staff turnover, improved employee morale and productivity and reduced absenteeism.

And the subjective assessment of Australian business is that there are advantages to business.

The employers and the Commonwealth ask you to put your faith in the marketplace, that through bargaining the public interest imperatives will be met and families will be protected from the collision.

But there is a need for leadership and a place for rights.

Three decades of social change are driving workers headlong into the work and family collision.

Change in momentum requires an intervening force.

There are sound economic and public interest reasons to intervene.

This Commission is the body that is vested with the authority and indeed the responsibility to assist employees reconcile their conflicting responsibilities. By placing s93A in Part VI of the Act it has determined that this should be done using the Commission's conciliation and arbitration powers, through the award safety net.

We will elaborate upon the evidence in submissions, but in essence, we say that that it is consistent with the Commission's statutory obligations that the award system be that intervening force.
