

# **‘The regulation of women’s employment in Australia: What lessons for China?’**

Professor Barbara Pocock

Director, Centre for Work + Life, University of South Australia, Australia

Email: [Barbara.pocock@unisa.edu.au](mailto:Barbara.pocock@unisa.edu.au); Web: <http://www.barbarapocock.com.au>  
Centre for Work + Life: <http://www.unisa.edu.au/hawkeinstitute/cwl/default.asp>

Women’s Labour Rights Workshop,  
Fuzhou, Fujian Province,  
20-23 November 2007.

*A Women’s Labour Rights Workshop held by the Human Rights and Equal Opportunity Commission (HREOC) in cooperation with the All-China Women’s Federation (ACWF).*

It is a great honour to meet with you and discuss the important question of improving employment rights and outcomes for women at work. This question has been my research concern in Australia for 27 years and I have often wondered what is happening for women at work in China, especially since the late 1980s with so much change. My reading tells me that working conditions in China and women’s role in paid work have been changing dramatically, and that many have been working actively to improve women’s status and conditions. It is a great privilege to meet with Chinese women directly to discuss these important matters.

-----

Australia, like China, is a unique country. Our workplace arrangements – like our geography and animals - are especially unusual. They arise from complex history. However, there are some important lessons to be learned from Australian experience about how women’s situation can be improved through work arrangements and law. Many of these lessons are reinforced by experience in other places. The key role of comprehensive, enforced, minimum work standards, for example, is illustrated in several countries.

One of the most distinctive changes in the Australian labour market and society over the past 30 years, is the increasing participation of women in paid work. In the latest census of all Australians conducted in 2006, women made up 46.1% of all workers (up from 44.1% ten years ago in 1996). Studies show that the general health and well-being of Australian men and women who work is better than those who are unemployed, and a majority of Australian women get considerable enjoyment from their paid work, with more than half saying they would go to work even if they did not need the money<sup>1</sup>.

Women’s employment situation is shaped by many forces. Labour law is one important element. However, women’s experiences are also affected by other significant factors, including whether law is enforced, how it is complemented by other laws (for example, anti-discrimination law) and how it fits with other social and household practices, policies and services, especially unpaid household work and care for children and the aged.

---

<sup>1</sup> Pocock, B (2006) *The labour market at my babies; Work, children and a sustainable future*. Federation Press, Sydney.

Because formal labour law is only part of the picture, it is important to consider the larger social context of law.

In this paper, I give an overview of what I personally view as the most important lessons for women's employment out of Australian experience, having lived through this experience myself as a researcher, policy maker, worker, manager, unionist and mother. I stress that other Australian academics and policy makers would perhaps highlight other issues, and this is an overview paper that I have tried to put in non-academic language.

I address fourteen issues that I see as important to women's employment situation in Australia. Before I do so, it helps to understand three important features of Australia's employment arrangements.

## **1. Independent Industrial Tribunals.**

For over a century, Australian employment arrangements have been mostly determined by independent industrial tribunals rather than directly by governments or employers. This arrangement reflects constitutional limitations on direct government regulation of employment, and grew out of bitter strikes in the 1890s after which employers, unions and governments agreed on formal independent conciliation and arbitration of disputes and working conditions – rather than allowing them to be settled through bitter struggles that divided Australia. This arrangement recognized that workers and employers had uneven bargaining power, with individual workers generally less powerful than employers. It recognized a basic principle that is also at the core of the International Labor Organisation's (ILO) mission: that unlike steel or coal or wheat, *labour* is not a commodity.

Australia has just celebrated the 100 year anniversary of the national tribunal's first major decision which established a minimum wage for men on 12<sup>th</sup> November 1907. (Women had to wait much longer). The national tribunal is now called The Australian Industrial Relations Commission (AIRC)<sup>2</sup>. The AIRC deals with employment issues including:

- industrial dispute resolution
- unfair and unlawful dismissal
- industrial action and
- 'awards' that set minimum working conditions (explained below).

The tribunal system in Australia has provided a very important, accessible, non-legalistic and cheap form of dispute regulation and wage setting for Australia. Its dispute resolution mechanisms have been especially important to the timely and efficient resolution of disputes.

The role of the AIRC has changed significantly in recent years as employment law has changed under new governments, and as global pressures for more flexibility in the system have grown.

## **2. Awards and agreements**

These are enforceable laws, made by tribunals like the AIRC. Traditionally, **awards** have set comprehensive minimum conditions for whole occupational groups of workers on a

---

<sup>2</sup> The AIRC is a tribunal, not a court, although it acts judicially and its proceedings are often held in courtrooms. It may be constituted by a single member or three or more members known as a Full Bench which makes significant national decisions. Most members come from employer organizations or unions and have extensive practical employment experience.

state or national basis, covering wages, hours, leave, and all aspects of work. They have been very important in ensuring that women's work is underpinned by national or state minimum standards. Recent changes in law mean that awards are much more limited in the conditions they specify.

Since the late 1980s, **enterprise agreements** have also come into existence and these are negotiated at the enterprise level, to cover all or most workers in a business, and once again they cover many aspects of work. Mostly they are negotiated between a union and employer on a collective basis and they generally set higher wages than awards and, when in place, take precedence over an award.

### **3. The Workplace Relations Act 1996 and *WorkChoices***

In 1996, a new conservative national Government adopted a new industrial relations law, the *Workplace Relations Act 1996*. It started operation on 1 January 1997. This law introduced Australian Workplace Agreements (AWAs) which are a form of individual agreement between a single employee and their employer and can override collective agreements. The new law also reduced the scope of awards (to 20 'allowable issues') and restricted union activity.

After the 2004 election, when the conservative Howard Government won a fourth victory, industrial law was further amended with *WorkChoices*, the most comprehensive reform to industrial relations in Australia for almost a century. These amendments weakened protection from unfair dismissal, established a new body to set minimum wages (instead of the AIRC) and narrowed the range of issues to be considered when setting minimum wages (focusing on economic effects rather than fairness). The amendments further reduced the scope of issues which could be covered by awards, and set just five minimum workplace conditions including:

1. minimum rates of pay (and casual loadings for temporary workers);
2. hours of work (38 a week, which can be averaged over a year with reasonable additional hours);
3. four weeks paid holiday leave per year;
4. ten days paid sick/carer's leave a year and two days paid compassionate leave;
5. 12 months unpaid parental leave<sup>3</sup>.

These changes also made industrial action and union recruitment of workers more difficult. Further amendments in 2007 attempt to ensure through a new 'Fairness test' that employees receive fair compensation for award conditions lost if they move from an award to an AWA.

These changes have proved very controversial. They are a key issue in the election which is being held on Saturday 24<sup>th</sup> November.

### **Thirteen lessons from Australian Experience**

#### **1. Effective anti-discrimination and equal opportunity laws**

In Australia, over the past century, women faced many forms of discrimination in the workforce, forced to resign when they married, or became pregnant or refused promotion on the basis of their sex. For example, in 1981 I assisted a group of women working in a lock-making factory in a large Australian industrial city who were laid off before any men, because it was assumed that men needed their wages more than women:

---

<sup>3</sup> <http://www.oea.gov.au/graphics.asp?showdoc=/employers/fairpaystandard.asp>

it did not matter that these women were single parents or in households that depended on their pay. This was not uncommon in Australia in the early 1980s. These women won their anti-discrimination case, with the assistance of government legal services. Cases like this, and others in the steel industry, helped spread knowledge about new discrimination laws.

Sex discrimination law has been effective in reducing direct discrimination of this kind, though it continues at some level, sometimes taking the form of sexual harassment, pregnancy discrimination and indirect discriminatory practices such as the requirement that workers work long hours. Sex discrimination and equal opportunity law has been very important for women in Australia.

However, these laws have limitations. They have not removed indirect discrimination, and they rely on individual complaints. While it is important to help individuals, this kind of action does not stop ongoing or systemic discrimination against others. Such 'complaint-based' laws are sometimes called 'passive legislation' because an employer only becomes liable if someone makes a complaint to the relevant equal opportunity commission or tribunal<sup>4</sup>. Successful actions often require a high level of resources – time, money and personal support – which make individual action of this kind out of reach of low paid women or those who lack resources or job security. (I do not go into anti-discrimination law here, because a complementary presentation will cover this issue).

It is true to say, however, that most Australian employers and employees now understand – 26 years after I met those women in that lock factory - that it is illegal to discriminate on the basis of sex in employment (including in relation to layoffs, recruitment, training, promotion, dismissal, pregnancy, harassment and so on). I believe that the lessons of Australian experience on equal opportunity and anti-discrimination law suggest that three ingredients are essential to success:

1. first, comprehensive law that is easily understood and offers significant remedies;
2. second, law that is backed up by wide publicity about the law to employers and employees;
3. thirdly, government-funded support to complainants and processes to enact the law.

Without these measures, equal opportunity and anti-discrimination law is ineffective.

### **But equal opportunity and anti-discrimination cannot address indirect discrimination**

Passive complaint-based legislation like equal opportunity law is weak in the face of indirect discrimination, for example practices that subtly exclude women from promotion or training. Although Australia has had reasonably good equal opportunity law for over 20 years, women make up only a quarter of senior positions in most organisations (for example, 24% of managers and administrators), less than a third of all parliaments<sup>5</sup>, and about 10% of private company boards and senior university staff (associate professors and above)<sup>6</sup>. Women face many forms of indirect discrimination at work in Australia, especially related to their responsibility for housework and care. The gaps between women's and men's earnings, for example, widen quickly when women enter childbearing years.

---

<sup>4</sup> Balnave, N and Brown, J and Maconachie, G J and Stone, (2007) *Employment Relations in Australia*. John Wiley & Sons: p 226.

<sup>5</sup> <http://www.aph.gov.au/library/intguide/pol/currentwomen.pdf>

<sup>6</sup> Balnave et al. 2007: p 226.

## 2. Minimum wages

From 1907, Australia's industrial tribunals established a 'living wage': that is, a 'fair' minimum wage which allowed a worker and his family to live reasonably in view of living costs. Australia's traditional system of comprehensive awards which set wages and conditions on an occupational state or national level has protected workers with little bargaining power. This has especially assisted women.

Since the late 1980s, there has been a gradual shift away from a centralised award system to more enterprise-based wage bargaining (most of it collective bargaining involving unions)<sup>7</sup>. This shift was underpinned by the award system which provided a basic 'safety net' for women<sup>8</sup>. Rates of pay have usually been higher for those covered by enterprise agreements, and such agreements have been more widespread in larger and more male-dominated workplaces. Many held concerns about the shift to decentralised bargaining, given that women generally have less bargaining power than men (reflecting their lower rate of unionisation, their part-time and insecure employment, their concentration in smaller workplaces and their responsibilities for families). The international literature tells us that women generally do worse where bargaining is more decentralised and national standards are weak<sup>9</sup>.

Individual 'negotiation' is not realistic for many low paid women and men. Just under half of those now on individual contracts in Australia (AWAs), many of them women, say that they do not have the opportunity to genuinely negotiate their pay with their employer, but must accept what is offered<sup>10</sup>. This especially affects unskilled women and young workers.

However, Australia's relatively high minimum wage has protected many low paid women. Australia's minimum wage is around 52% of the net after tax average wage (although it has fallen from nearly 60% in 2000). This is much higher than in many other

---

<sup>7</sup> Whitehouse summarises the changes to Australian wage fixing over the past 100 years thus:

Early principles of wage justice manifest in a living wage for male breadwinners and comparative wage justice across different sections of the labour market have been displaced by wage-fixing principles more aligned with a perceived need to extend flexibility and market responsiveness. On the other hand, explicit discrimination against women and Indigenous workers has been largely eliminated. (Justice and equity; Women and indigenous workers, in Isaac J. and S. Macintyre (2007) (eds) *The new province for law and order. 100 years of Australian industrial conciliation and arbitration*, CUP, London, p 240)

<sup>8</sup> At present the pay and conditions for the majority of workers are set through awards (40 per cent), just over a fifth are covered by collective agreement and only 6 per cent are covered by Australian Workplace Agreements (AWAs). Another group of about a fifth are covered by common law contracts (B van Wonrooy, S Oxenbridge, J Buchanan et al. (2007) *Australia @ work. The benchmark report*. Sydney, Workplace Research Centre, p 53).

<sup>9</sup> O'Donnell, C and P Hall (1988). *Getting equal.* Sydney, Allen & Unwin;

RG Gregory, R Anstie, et al. (1989). 'Women's Pay in Australia, Great Britain, and the United States: The Role of Laws, Regulations, and Human Capital' in *Pay Equity: Empirical Inquiries*. RT Michael, HI Hartmann and B O'Farrell. (eds) Washington D.C., National Academy Press; Whitehouse, G 1992. Legislation and Labour Market Gender Inequality: an Analysis of OECD Countries, *Work, Employment and Society*, 6, 1, 65-86.

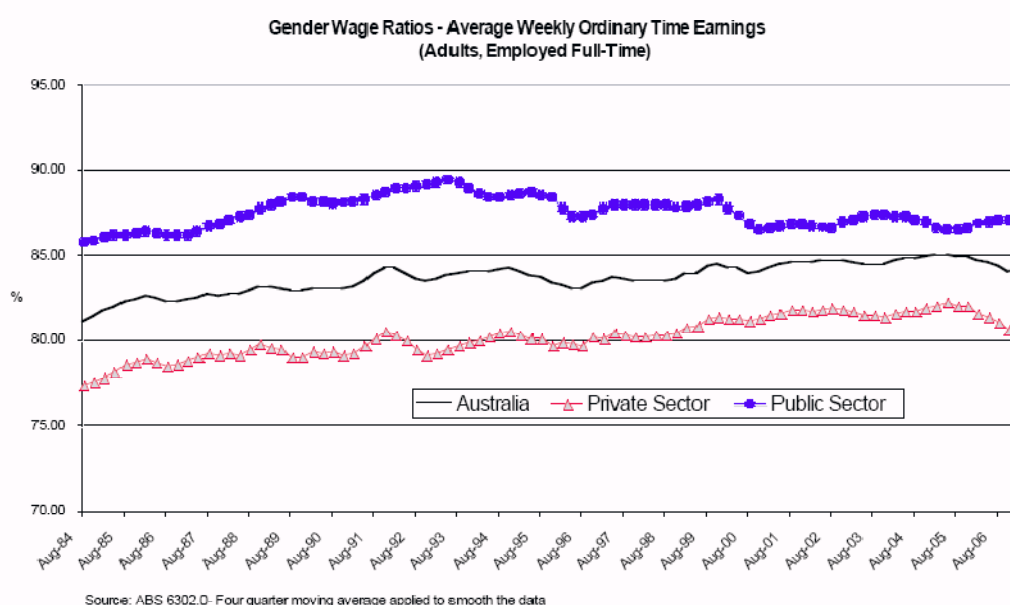
<sup>10</sup> B van Wonrooy, S Oxenbridge, et al. (2007).

OECD countries<sup>11</sup>. Minimum wage legislation – which is now common in OECD countries (21 of the 30 OECD countries have some form of minimum wage) is of great assistance to women, where it is set at a fair and reasonable level and regularly adjusted to keep pace with general wage movements and inflation. This is the Australian tradition, and as we see below it has been very important in narrowing the gap between women’s and men’s earnings<sup>12</sup>.

### 3. Equal pay for work of equal value

By international comparison Australian women enjoy a high level of wage equality. Figure 1 shows that the gender pay gap amongst full-time workers (excluding overtime earnings and young workers) has been around 84% for most of the past 25 years. It is much better than in many other countries like the US, though worse than the Nordic countries. On the negative side, it has not improved much in that period, and there are signs that it is slipping back at present.

**Figure 1 The Gender Pay Gap, Australia, 1984-2007 (Adult ordinary full-time earnings)**



Australia’s narrow gender wage gap is a product of four factors:

1. a relatively centralised award system;
2. national equal pay decisions in the 1970s which introduced equal pay for equal work (ie when women and men are doing the same work), and then equal pay for work of equal value (ie when women are doing work that is *comparable* to that of men, even if not exactly the same);
3. a relatively high minimum wage set by independent tribunals that have traditionally been required to take fairness as well as economic impact, into account, and which in 1974 was finally set at an equal level for men and women;

<sup>11</sup> OECD *Observer* No 261, May 2007, p 1.

<sup>12</sup> The current minimum wage is \$13.74 an hour (91 China Yuan Renmimbi (CNY), or \$522 a week (3446 CNY) or \$2088 a month (13,796 CNY)).

4. a skills-based pay system that recognises and rewards higher levels of skill.

It took a long time to extend Australia's minimum wage to women, as for much of last century women were assumed to be dependent upon a man and thus in need of much lower wages than men. The idea of a 'male breadwinner' wage was finally set aside in the 1970s with the equal pay decisions. These decisions helped narrow the gender pay gap. The award system also helped by passing on these equal pay decisions to all women quickly.

These key decisions reflected Labor Government (1972-1974) decisions in the early 1970s to ratify the *International Labour Organisation's Convention 100 on Equal Remuneration*, which required equality of minimum wages, illustrating the importance of international conventions, alongside local pressures, to encourage change by government and employers.

The changes in the 1970s were also propelled by the actions of women trade unionists and civil society organisations (like the Women's Electoral Lobby (WEL)). They undertook many creative actions to draw attention to the injustice of unequal pay. At this time, unionisation was relatively high in Australia, and many women were joining unions and becoming active feminists; they were also pushing for more say for women in government. One of the first goals of women in unions was equal pay, along with action on sexual harassment, discrimination and childcare.

Equal pay laws have been very important to Australian women and a foundation of gender equity at work around the world. Key Australian decisions in 1969, 1972 and 1974 worked well for women because they were passed on to all women through national industry awards. Awards acted as powerful transmission belts for equal pay, as women's pay was adjusted on a 'whole-of-industry' basis to remove unequal pay based on sex across occupations and classifications.

This experience suggests several important lessons:

1. First, it is much harder to win equal pay on an individual or enterprise-by-enterprise basis, than on a national or regional *occupational* basis.
2. Second, 'equal pay for equal work' provides much less scope for gender pay equity than a requirement for 'equal pay for work of equal value'. The latter allows consideration of jobs that are not exactly the same, but have the same *value, judged by objective criteria*. 'Equal pay for equal work' will only give pay increases to women doing exactly the same work as men, and it requires a male wage comparator. This gives only narrow scope for improvement, given that women and men usually do not do exactly the same work.
3. Third, objective measurement systems of comparing male and female jobs (rather than just 'market value') are important in establishing that women are being underpaid.

One of the most important factors underpinning the remaining gap between men's and women's pay in Australia, lies in the under-valuation of traditionally female jobs, like nursing, childcare, aged care, and clerical work. While the 1970s equal pay decisions in theory opened the possibility of increases in pay for women's traditional jobs – and some advances have occurred - it has proved very difficult to win comparable worth cases. Instead, a relatively high minimum wage has helped women maintain their pay position, even if it has not resulted in big improvements since the 1980s. This is especially important to low paid women.

#### 4. Job security

Australian experience tells us that security of employment is vitally important to women. Without job security and protection from unilateral or unfair dismissal, women lack real negotiating power at work.

Job security is a central element of employment in Australia. This is encapsulated in the notion of 'permanency' whereby a worker is protected against the loss of their job, except in the case of misconduct or business failure<sup>13</sup>. Unfortunately over the past 30 years, much of the expansion in part-time work has occurred in the form of temporary work contracts, called 'casual' work. A quarter of Australian workers are now employed on casual terms, without job security. The majority of them are women.

Another fundamental aspect of job security is protection against unfair dismissal. Indeed it is the precondition for many of the other aspects of the employment relationship and provides an important platform for securing minimum working conditions and fair treatment. Workers who experience sexual harassment will hesitate to take action to stop it if their employment is insecure. Working mothers will not ask for changes in their hours or days of work if there is a chance their employer will react negatively and sack them where they have no job security.

In the Australian case, women's efforts to contest dismissals that are unfair often rely on support from an external party, like a community or government legal centre, a women's organisation, or a trade union. These independent organisations are, in the Australian case, essential infrastructure if women, especially poor and less powerful women, are to enact their formal legal rights. This is an important lesson from Australian employment practice, as is law that prevents extensive informal or casual employment.

Protection against unfair dismissal has existed in Australia in one form or another for around 30 years<sup>14</sup> and formally in federal industrial relations law since 1994, following the Australian Government's ratification of the *ILO Termination of Employment Convention* (ILO 158). However, *WorkChoices* dramatically alters the Australian system of unfair dismissal law. The new law removes unfair dismissal rights from employees in enterprises where there are less than 100 employees<sup>15</sup>.

This change casts a long shadow across the labour market especially where women are employed. This significantly affects women's pay, their willingness to speak up for themselves or colleagues, their capacity to act collectively or to involve unions, and their access to timely and clear information about rights and obligations. A recent study of how weaker dismissal law affects women shows how important this condition is<sup>16</sup>. It found that the voice of women at work, their capacity to speak up for themselves and to identify practices or behaviours that might be unsafe, illegal or wrong – through 'whistle-blowing', for example – was very negatively affected by weaker dismissal law. This

---

<sup>13</sup> Chalmers, J, I Campbell and S Charlesworth (2005) 'Part-Time Work and Caring Responsibilities In Australia: Towards an Assessment of Job Quality' *Labour & Industry* 15(3), p 41-66.

<sup>14</sup> Chapman, A. (2006) 'Unfair Dismissal law and *WorkChoices*: From Safety Net Standard to Legal Privilege', *Economic and Labour Relations Review* 16(2), p 237-264.

<sup>15</sup> Discriminatory dismissal (eg the basis of sex, pregnancy or family responsibilities) is still unlawful in all workplaces.

<sup>16</sup> Elton J. and B Pocock (2007) *Not fair, No Choice: the impact of WorkChoices on 20 South Australian workers*, Centre for work + Life, Hawke Research Institute, University of South Australia, Adelaide; see also J. Elton, et al. (2007) *Women and WorkChoices: Impacts on the Minimum Wage Sector*. Centre for Work + Life, University of South Australia.

Available from: <http://www.unisa.edu.au/hawkeinstitute/cwl/publications.asp>

imposes high costs on women and their families, affecting their labour market participation and imposing hidden health costs.

## **5. Collective bargaining rights and practices**

Collective bargaining is internationally recognised as a basic workplace right throughout the developed world and by conventions of the United Nations and the ILO<sup>17</sup>. This recognition reflects the imbalance in power that exists between individual workers and employers. Collective bargaining rights are recognised in all developed countries - with the exception of Australia since *WorkChoices* was enacted in 2006. Australian employers can now over-ride collective agreements with, in effect, unilaterally imposed individual contracts. Australia's experiment with individual bargaining for workers, through Australian Workplace Agreements, undermines the principle of collective bargaining, and has badly affected women in low paid service occupations who have little bargaining power. Recent studies show that pay for Australian workers on individual agreements in the services sector is much lower than pay for those on collective agreements<sup>18</sup>. Some women on individual agreements have experienced significant cuts in pay and loss of say over their working time, which is especially important for those with families<sup>19</sup>. This experience suggests that legal rights to collective bargaining are very important for women workers. Such rights should include a requirement on employers and employees to bargain in good faith in a timely way, recognising workers' rights to be collectively organised and represented through unions.

## **6. Paid leave**

Paid holidays and sick leave are very important to Australian workers, especially women who have caring responsibilities and need paid leave in the event of their own illness and that of their children, as well as the opportunity for a paid annual holiday to spend with family.

Permanent Australian workers have access to four weeks paid annual leave and up to ten days sick or family leave. Unfortunately, this excludes a large number of Australian workers (around a quarter) now employed on casual contracts. These workers receive a pay loading to make up for their job insecurity and to compensate them for the loss of paid holidays or sick leave. Many are low paid workers, and most are women. This loading does not adequately cover paid holidays and sick leave. As a result many go to work sick and do not have a paid holiday<sup>20</sup>. This contrasts with the situation in New Zealand where from 1 April 2007 all workers – whether permanent or temporary – get four weeks paid annual leave. In this case, New Zealand is a better model than Australia.

## **7. Work and Family**

Australia increasingly relies on the paid work of women. However, Australian women continue to undertake most unpaid domestic and caring work. The latest Census in 2006 tells us that women continue to do twice as much unpaid domestic work as men (even in the 18-25 age group).

At the beginning of the 20<sup>th</sup> Century, employment arrangements in Australia incorporated the idea of the 'male breadwinner'. Workers were assumed to be men

---

<sup>17</sup> See ILO Convention 87 *Freedom of Association and Protection of the Right to Organise* (1948) for example.

<sup>18</sup> Peetz P and A Preston (2007) *AWAs, collective agreements and earnings: beneath aggregate data*, Industrial Relations Victoria, Melbourne.

<sup>19</sup> Elton J and B Pocock (2007) *Not fair, No Choice: the impact of WorkChoices on 20 South Australian workers*, Centre for work + Life, Hawke Research Institute, University of South Australia, Adelaide.

<sup>20</sup> Pocock, B, R Prosser et al. (2004). *Only A Casual... How Casual Work Affects Employees, Households and Communities in Australia*. Adelaide, Labour Studies, University of Adelaide.

supporting a family (on average of a wife and three children) and women were assumed to be single and unlikely to work when they married. This historical belief has left a long legacy for women at work in Australia. The idea that women are 'second earners' and marginal workers who work around their parenting responsibilities helps explain women's lower pay, poorer jobs, and their concentration in more insecure part-time work.

Over the past century, the idea of the male breadwinner has slowly given way to the dual-earner family, commonly a full-time male worker with a part-time wife. However, unpaid domestic work has not been redistributed and in some important ways Australia's employment arrangements have failed to fully adapt to support workers with families.

While Australian women are increasingly participating in paid work, the rate of workforce participation amongst prime aged women (25-50 years of age) is well below that in many other developed countries; it is especially low amongst women with children. This is a real concern to policy makers, who are concerned about future labour supply shortages. A lack of childcare, lack of access to paid leave (for example maternity leave) and tax and welfare payments that discriminate against 'second earners' (most of whom are women) are barriers to women's employment<sup>21</sup>.

Australia has to adapt employment conditions so that women can be both carers and workers. This requires recognition of the physical female acts of pregnancy, birth and breast-feeding, along with women's social contributions to caring.

Work is about more than production: it is also about reproduction. Protecting and supporting workers with caring responsibilities relies, in the Australian experience, on appropriate employment law, workplace policies and action, government and social policies (including quality public childcare) and household changes (like the fairer distribution of housework).

Australia's regime of employment law has been slow to adapt to the increasing share of paid work done by carers<sup>22</sup>, most of whom are women, despite Australian Government agreement to be bound by a number of international human rights treaties which protect workers with families responsibilities including the *Convention Concerning Equal Opportunities and Equal Treatment for Men and Women Workers with Family Responsibilities* (ILO 156) and the *UN Convention on the Elimination of all forms of Discrimination against Women* (CEDAW).

The Australian Human Rights and Equal Opportunity Commission (HREOC) has, through its Sex Discrimination Commissioner, argued for stronger legal protections around family responsibilities, pressing for a national Family Responsibilities and Carers' Rights Act 'to provide protection from discrimination for employees with family and carer responsibilities and a right to request flexible work arrangements'<sup>23</sup>.

---

<sup>21</sup> Jaumotte, F (2004). *Female Labour Force Participation: Past Trends and Main Determinants in OECD Countries*. Geneva, OECD Economics Department.

<sup>22</sup> As numerous Australian reports note. See, for example, Charlesworth S, I Campbell, B Probert, J Allan, and L Morgan (2002) 'Balancing Work and Family Responsibilities: Policy Implementation Options' A Report for the Victorian Department of Premier and Cabinet & Department of Innovation, Industry and Regional Development. Centre for Applied Social Research, RMIT University, Melbourne; and Pocock, B. (2003) *The work/life collision*, Allen & Unwin, Sydney.

<sup>23</sup> Human Rights and Equal Opportunity Commission (HREOC) (2007) *It's about time, Women, men, work and family*, HREOC, Sydney, p 59.

## 8. Women and Men: The Same or Different?

One of the controversies in relation to women's employment in Australia and internationally revolves around whether women should be treated the same as men, or differently from them<sup>24</sup>. Employment law specialists have long struggled with this dilemma.

There is strong tension between the desire to treat women the same as men (and therefore avoid creating any incentive to discriminate against women because of their differences from men and the cost of these to employers) and the desire to recognise and respond appropriately to women's differences from men around reproduction in particular.

It has proved very important – and successful - in the Australian context to remove any so-called 'protective' legislation based on women's physical differences (for example in relation to menstruation, lifting, height, hours of work). Limits on weights lifted by women applied to factory workers in Australia until the 1980s. Such laws excluded women from heavy manufacturing industry and protected men's jobs from intrusion by women. These limits did not even apply to areas where women were no threat to men's employment, like nursing. The discriminatory nature of such 'protections' led to their removal in the 1980s in favour of gender-neutral occupational and safety laws that protect *all* workers from hazardous conditions, and created a 'duty of care' for employers rather than inflexible, gender-specific rules.

## 9. Parental, maternity and paternity leave

The Australian approach to 'same-or-different' dilemmas that arise from care responsibilities has been to attempt to *neutralise the differences between women and men* by couching care rights (like the right to parental leave) in gender-neutral language that refers to *carers or parents*, not mothers or fathers or women and men. For example, all permanent Australian workers (and some casual workers who have ongoing employment) are entitled to up to a year of unpaid *parental* leave, which they can share with their partners.

Unnecessarily inflexible, costly and arbitrary laws that imply women are *different* (therefore *more costly*), encourage discrimination against women. However, in the case of pregnancy, childbirth and breast feeding, it is important to recognise and respond to women's difference from men. This means that paid maternity leave is an important right for mothers, and one that distinguishes them from fathers in view of the physicality of pregnancy, birth, and breast-feeding. Australian experience suggests that on such an issue it is important to recognise women's difference from men, or heavy costs fall upon women when they are pregnant, giving birth or mothering new-borns. In recognising gender difference, however, it is important to avoid creating barriers to women's employment and their fair treatment at work by adopting wherever possible gender neutral policies and law. Rights to parental leave, family friendly flexibilities like part-time work, the right to request to work part-time and so on, are important employment rights that should be available to both women and men without any reference to gender.

One aspect of Australian employment law that does not provide positive lessons – is that of paid maternity leave. At present in Australia only 37% working mothers have practical

---

<sup>24</sup> This issue has been explored in many countries including China and Australia (Bacchi (1990) *Same Difference: feminism and sexual difference*. Allen & Unwin, 1990 and Charles J. Ogletree and Rangita de Silva-de Alwis (2002) 'When gender differences become a trap: The impact of China's labor law on women', *Yale Journal of Law and Feminism*, vol 14, p 69.

access to paid maternity leave<sup>26</sup>. Most of these are in public sector employment and large companies: universities, banks and government departments. This leave is provided at the enterprise level by employers through agreements and arrangements. Most low paid women in private companies have no access to paid maternity leave and no national system exists. There is a cash payment to families on the birth of a new child. However, this does not recognise women's labour market attachment or relate to employment and it does not provide paid time off work when a baby arrives.

In order to ensure that access to paid maternity leave does not encourage employers to discriminate against women, Australian advocates of a new national system of paid maternity leave tend to favour a *government-funded* national scheme of paid leave, so that employers are not given a financial reason to discriminate against women, and employers who employ large numbers of women are not disadvantaged by heavy financial costs<sup>27</sup>.

## **10. Australia's labour market is very segmented by sex – and it is hard to change**

Australia's labour market is highly segmented by occupation and industry, with women concentrated in particular industries, in part-time work, and in low paid and lower level jobs. This segmentation is sometimes explained by invisible 'glass ceilings' which prevent women from moving up) and 'glass walls' which confine women to a narrow range of areas of work (for example, human resources management rather than financial management). These glass barriers are made up of various combinations of outright sexism, deep masculine cultures and practices (for example, male managers playing golf with other male managers), company policies and practices that, for example, prevent part-time work, and household practices that mean women face a 'double day' of paid work and housework.

In 2004 women made up 79% of health and community service workers, 68% of education workers, 58% of accommodation, cafes and restaurant workers and more than half of retail workers. Women are especially missing from senior management levels throughout Australian organisations, with less than half of Australia's top 200 companies having a woman in an executive management role<sup>28</sup>. Women still make up only a small percentage of apprentices and workers in traditionally male-dominated occupations like building, electronics, mining, engineering and manufacturing. Campaigns to increase women's share of these higher paid, skilled jobs have often met with very strong resistance from men. Women often face harassment, isolation and resistance when entering male-dominated jobs<sup>29</sup>. While mentoring and a 'critical mass' of women in any group of workers (for example, more than 10% or five women) have been strategies that help, Australia's experience suggests that employment programs to help women enter occupations that are long male-dominated have limited success. We have had more success in encouraging women to enter new and emerging areas of employment – like computing – and into more senior levels of feminised industries and occupations, than increasing their share of traditionally male jobs.

## **11. Working Hours**

In the past 30 years the pattern of working hours in Australia has changed significantly, with a move away from a standard working week of around 40 hours a week. There has

---

<sup>26</sup> Pocock B. (2007) *A time to act: paid maternity leave for all South Australian women* Supplementary submission to the Select Committee on Balancing Work and Life Responsibilities, August 2007, Centre for Work + Life Discussion Paper No 4/07. <http://www.unisa.edu.au/hawkeinstitute/cwl/publications.asp>

<sup>27</sup> see for example, Pocock B. (2007).

<sup>28</sup> Balnave et al. 2007: p 227.

<sup>29</sup> Reskin B and I Padavic (1994) *Women and men at work*. Pine Forge Press, London., Pocock B. (1988) *Demanding skill: Women and technical education in Australia*, Allen & Unwin, Sydney.

been growth in both shorter hours (mostly amongst women) and longer hours (mostly men). Many Australian women work part-time (44% compared to the OECD average of 26%)<sup>30</sup>. Part-time work is a common response by women trying to reconcile work and family. Unfortunately, for many women it means less job security, low pay, poor quality jobs and low retirement earnings. This has led some governments to encourage quality part-time work to assist workers to balance work and family commitments<sup>31</sup>.

In November 2006, 36.8% of Australian workers worked overtime (40.8% of men and 32.5% of women), and almost half of these (48.0%) were not paid for these hours<sup>32</sup>. Many Australian men work very long hours, with high costs to their personal health and well-being as well as that of their families, as international research confirms<sup>33</sup>. I would strongly recommend firmer controls on long hours of work, beginning with examples like the European Working Time Directive<sup>34</sup>.

Research suggests that workers who have a good match between the hours they have to work and the hours they would prefer to work have better work and family outcomes<sup>35</sup>. Employee say over working time is a key element of 'decent work'<sup>36</sup>. Indeed some countries, including Australia, have taken steps to make this better match possible for workers through a right to request a change in hours of work to suit family needs. The Australian Industrial Relations Commission took a step in this direction in a 2005 case. Unfortunately, this has since been removed as a general right through *Workchoices* changes to federal labour law.

## 12. Unions and employee voice

The right to join and be represented by a union has been an important right in Australia for over a century, and unions have made very important contributions to employment arrangements in Australia. Unions have not always been reliable friends of women workers: for example, early equal pay decisions were sometimes supported by male unionists to keep women out of men's jobs. However, women have influenced unions in Australia and often worked through them to win significant gains in pay, equality and social benefits.

Union density has fallen rapidly in Australia in the past 30 years reflecting changes in the composition of the workforce, the size of enterprises and low union recruitment amongst younger workers in particular. Twenty per cent of Australian workers currently

---

<sup>30</sup> In Australia, part-time work is generally defined as work of less than 35 hours a week.

<sup>31</sup> The Victorian Government's Quality Part-Time Work Project provides guidance to employers on how they might improve the quality of the part-time work they provide to workers with family responsibilities. Outcomes to date have included a 2005 report 'Quality Part-Time Work' and industry guidelines on how to improve the quality of part-time work in retail, hospitality, local government, law and health ([http://www.business.vic.gov.au/BUSVIC/STANDARD//pc=pc=pc=PC\\_60956.html](http://www.business.vic.gov.au/BUSVIC/STANDARD//pc=pc=pc=PC_60956.html))

<sup>32</sup> ABS Cat. No. 6342.0, *Working time arrangements, Australia*. November 2006.

<sup>33</sup> Spurgeon, A (2003). *Working Time: Its Impact on Safety and Health* Seoul, ILO and Korean Occupational Safety and Health Research Institute; Pocock, B. (2003). *The Work/Life Collision. What Work is Doing to Australians and What to do About it*. Sydney, Federation Press.

<sup>34</sup> <http://www.incomesdata.co.uk/information/worktimedirective.htm>

<sup>35</sup> Fagan, C and B J Burchell (2002). *Gender, Jobs and Working Conditions in the European Union*. Dublin, European Foundation for the Improvement of Living and Working Conditions; Pocock B, P Williams and N Skinner (2007) *The Australian Work and Life Index (AWALI): Concepts, Methodology & Rationale* (<http://www.unisa.edu.au/hawkeinstitute/cwl/publications.asp>); Pocock, Skinner and Williams (2007) *Work, Time and Life, the Australian Work and Life Index*, Centre for work + Life, Hawke Research Institute, University of South Australia, Adelaide; Messenger, J. C., Ed. (2004). *Working time and workers' preferences in industrialized countries*. London, Routledge.

<sup>36</sup> Messenger, J C, Ed. (2004)..

belong to unions. However, historically high rates of union membership have meant that unions have been an important part of workplace life. They have led improvements in working conditions and have played an important role in enforcing legal standards through the action of members in the workplace.

Australian experience suggests that independent active trade unions are very important to women workers. However, it is vital that women are well represented in the leadership of unions (and other parts of civil society) or the activities of unions tend to reflect the interests of men<sup>38</sup>.

Australian experience also tells us that union representation that treats all workers as equal is very important. When unions have been divided along skill, gender or ethnic lines, they have been weak and ineffective. A powerful lesson learned from Australian unionism is to avoid division on ethnic or immigrant lines. One early example occurred around Chinese workers and the 'White Australia' policy (prior to the 1960s) when many Australian unions were opposed to the union membership of Chinese immigrants. Recent decades have seen strong unionism built on multi-cultural membership in many workplaces.

### **13. Enforcement and advisory services for women**

Australian experience shows that enforcement is an important aspect of employment law with important implications for women. Good enforcement relies on adequately funded state bodies with easy access to workplaces and records, backed by legal penalties that are significant. Unions have often assisted in adequate enforcement in Australia.

Australian experience also reinforces the importance of legal and advisory services, like Working Women's Centres, in assisting women to realise their employment rights. Many low paid women rely on advice and support from such non-government and government bodies and they are very important in enforcing rights. Simple, widely understood labour standards and laws are also very desirable. Complex labour law works against the effective enforcement of rights, given that knowledge is the first step to the exercise of rights.

### **14. Other critical social policies**

The situation of women at work in Australia relies on much more than comprehensive law that is properly enforced. It also requires action in the workplace, especially properly trained managers and supervisors who understand the work and family challenges facing women and how to avoid discriminatory behaviour.

Alongside this, social supports like access to education, and to quality, affordable, childcare are important. Australia has made some significant advances in terms of publicly provided childcare but for many families childcare is, at present, expensive or hard to find. There is evidence that this is affecting women's participation in paid work. There is also increasing international evidence that quality childcare is vital for the long term well-being of children<sup>39</sup>. Building national prosperity on poor care regimes for children and the aged is neither fair nor sustainable. Australia will need to ensure that it continues to develop its public childcare system if it is to support more women in paid work.

---

<sup>38</sup> Pocock B. (ed) (1987) *Strife: Sex and politics in labour unions*. Allen & Unwin, Sydney.

<sup>39</sup> Hill, Pocock and Elliot (2007) (eds), *Kids count. Better early childhood education and care in Australia*. Sydney University Press, Sydney.

Similarly, there is a need to support men to become more involved in the care of children (and other dependents) and to take up their fair share of unpaid housework. Finally, Australian experience tells us that a tax and welfare payment system that is neutral in its effect on different kinds of households, and does not discriminate against second earners, is important to fair employment outcomes for women.

Australia is a rich, happy nation enjoying an exceptional economic boom – underpinned by its resource exports to China. This boom is partly built on increasing labour market participation of women. Building national prosperity on women’s labour is only sustainable if women are treated fairly at work and their social roles as carers are supported. Poor work and care arrangements, that leave children or the aged at risk, or overwork women through a double day without men’s help, are a recipe for an unequal and unhappy society with low levels of social and household cohesion. Australia – like China - will need to keep improving employment laws and outcomes that support women, men and children and assist them to better reconcile rising rates of labour participation with social sustainability<sup>40</sup>.

Australia’s employment regime has many positive aspects, but it lags behind other developed countries in some significant ways. These are likely to remain pressing social policy issues into the future. I hope that this contribution helps you navigate your own path to sustainable and fair work arrangements for women in China. In a globally connected labour market, we know that developments in China – such a globally important country - will also shape what is possible for women and men in Australia.

-----

---

<sup>40</sup> See The Work + family policy roundtable (2007) *Benchmarks for the 2007 election*, Work and family policy roundtable, [www.workfamilyroundtable.com.au](http://www.workfamilyroundtable.com.au) for some ideas of policy ideas for the future.