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Title: Women Work and Industrial Relations in 2012

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Women, Work and Industrial Relations in 2012

Abstract

2012 saw a number of initiatives and debates around measures that have potential to directly and indirectly affect women’s working conditions. This article first considers the extent and basis of women’s workforce participation, an issue that has informed both policy debates and legislative changes over the last year. It then briefly assesses the potential of the ‘mainstream’ Fair Work Act Review and the review of modern awards to improve women’s working conditions before turning to action on a number of fronts, including on pregnancy discrimination, sexual harassment and pay equity. Pregnancy discrimination and sexual harassment have remained a constant in Australian anti-discrimination jurisdictions for many years. However, in 2012 there was strong enforcement action by the Fair Work Ombudsman in cases of pregnancy discrimination, the second phase of the Review into the Treatment of Women in Defence and a new sexual harassment prevalence survey. While the community sector equal pay case was finalised by Fair Work Australia in February 2012, action ‘outside’ formal equal pay provisions also saw important gains for the predominantly female and low-paid workforces in aged care and child care.

Key words: gender equality, participation, pay equity, pregnancy discrimination, sexual harassment, right to request, paid parental leave.
Women, Work and Industrial Relations in 2012

Introduction

By any account 2012 has been a fascinating year for policy and legislative developments around women and work. Calls to encourage women’s increased participation in employment (Daley et al 2012) and a rush of legislation towards the end of the year were punctuated by Prime Minister Julie Gillard’s ‘misogyny speech’ in October (ABC 2012a). The media and public reaction to the latter highlighted political differences over understandings of gender (in)equality and more generally foregrounded Australian political gender culture as an issue in its own right. The contestation over whether the current Government or Opposition appeals more to women has remained a media touchstone with political polling closely tracking how the Prime Minister is faring in terms of men’s support and the Opposition Leader, Tony Abbott, in support from women voters. While the key issue for the media is the extent to which the main political parties and their policies could be said to ‘women-friendly’ rather than ‘gender-equality friendly’, we have seen a welcome shift from assumptions in earlier policy debates that confined the issue of gender equality to that of ‘work and family’. For example, in the debate surrounding the passage of the Workplace Gender Equality Act 2012 (WGE Act), both government and opposition MPs insisted that gender equality is a legitimate goal while differing over the mechanisms to advance this objective. At the same time, however, the gender equality implications of calls for greater market flexibility and of the responses to these calls have been largely invisible.

The review of policy and legislative action around women and work in 2012 outlined in this paper is viewed through a gender equality lens. One useful definition of gender equality is set out by the International Labour Organization:

In the context of decent work, gender equality embraces equality of opportunity and treatment, equality of remuneration and access to safe and healthy working environments, equality in association and collective bargaining, equality in obtaining meaningful career development, maternity protection, and a balance between work and home life that is fair to both men and women. (ILO 2007, 92)

While focused on employment, this understanding of gender equality places paid work squarely in its social context and makes clear the crucial link between paid and unpaid work (Owens 2002), thus challenging the practical and symbolic dominance of a male breadwinner framing of the ‘ideal worker’ (see Baird et al 2011). It thus differs from policy approaches that aim to accommodate women undertaking both paid and unpaid domestic/ care work, rather emphasising a more transformative redistribution of work and care between women and men (Walby 2005). Institutional, policy and legislative settings that are ‘gender-equality friendly’ enable women and men to make genuine choices about the nature and extent of their workforce participation and enable a more gender equal sharing of work and care (Rubery 2011).

This review sets the scene by considering one of the dominant policy issues in 2012 - that of increasing women’s labour force participation. The extent to which the operation of ‘mainstream’ industrial relations framework currently supports more gender-equality-friendly regulation is also briefly canvassed. The review then looks as action in 2012 around the persistent gender (in)equality issues of pay equity, sexual harassment and pregnancy discrimination, before turning to the operation of the Paid Parental Leave scheme and the important enactment of the WGE Act at years end. Two key issues not considered here are the policy debate on the adequacy and

**Women’s participation in paid work**

In 2012, the goal of increasing female workforce participation has been a focus in both broader economic policy debates and in legislative measures, both proposed and enacted. It was nominated as one of the three key priorities to increase rates of economic growth in Australia by the Grattan Institute in June 2012 (Daley et al 2012). Arguing that female labour force participation in Australia is low in OECD comparison, the Grattan Institute asserted that if Australia were to raise female participation to the levels in Canada, women’s workforce participation would increase by an additional 6 per cent, raising Australia’s GDP by about $25 billion (Daley et al 2012, 38). The main barrier to this higher female workforce participation is seen to lie in the effective marginal tax rate regime in Australia, with the cost of childcare after tax and welfare benefits acting as a powerful disincentive to many mothers. Thus the main policy mechanisms advocated are reducing high effective tax rates and the net cost of childcare so that the second income earner in a family (overwhelmingly mothers) can take home more income (Daley et al 2012, 42).

Increased female participation has also been used as a policy rationale for a number of legislative measures that impact directly on women and work. Apart from the *Workforce Gender Equality Act 2012* discussed below, a measure announced in the May 2012 budget and enacted in October saw those single parents who had been receiving Parenting Payment (PP) prior to 1 July 2006 (until their youngest child turned 16 years old) lose their entitlement. The PP entitlement of this group of sole parents had been ‘grandfathered’ when the 2006 ‘welfare to work’ policy reform of the Howard government was introduced. Despite significant lobbying from welfare groups, from 1 January 2013 the group of sole parents who had been in receipt of PP before July 2006, estimated to number around 100,000 individuals – overwhelmingly women, will be moved onto Newstart where their youngest child is 8 years or older with participation requirements from when their youngest child turns six (ACOSS 2012; DHS 2012). It has been estimated that this measure could see the income of this group of sole parents reduced by up to $140 per week (Martin and Haywood 2012). While the benefits of increased workforce participation for this group were a feature of these changes to PP eligibility, since 2007 most of the affected recipients have had to comply with the same activity requirements (to seek a part time job of at least 15 hours a week and register with employment services) - as parents with children over 5 years of age who are on Newstart (ACOSS 2012a).

In both the Grattan Institute report and in the *Social Security Amendment (Fair Incentives to Work) Act 2012*, the focus is on the goal of increasing the *quantum* of female participation. However, any attention to the *quality* of this participation is much less evident. Despite evidence of the difficulties facing single parents in securing enough hours and family friendly conditions of work (ACOSS 2012b) and the findings of the ACTU Inquiry’s Independent Inquiry into Insecure Work (see Baird et al 2012), there has been far less policy debate about the importance of decent work as a basis for women’s increased participation.

Nevertheless female labour force participation has continued its incremental upward trend and by September 2012 the female labour force participation rate was 58.8% for women compared to 71.7% for men (ABS 2012a). Women now make up 46% of all employees, 71% of part-time employees and 35% of all full-time employees. They also make up 55% of casual employees, with 28% of all female employees being employed on a casual basis (ABS 2011). Underemployment, that is the proportion of the labour force who work part time, who want to work more hours and are available to do so, also remains much higher for women (9.5%) than for men (5.5%) (ABS
Female underemployment is particularly high in accommodation and food services (18.1%), and in retail (16.0%). It is also high in the feminised occupations of sales workers (17.7%) and community and personal service workers (16.6%).

Given much of the potential for increased female participation is presumed to come from mothers of dependent children, it is important to consider the current levels of that participation. Australian Bureau of Statistics (ABS) data set out in Table 1 indicates that the participation of mothers with dependent children, particularly that of mothers with children under six years, has continued to increase.

Table 1 about here

Today well over half (55%) of mothers with children under school age are now in the labour force, as are 79% of mothers whose youngest child is aged 6-14 years. Indeed the labour force participation of this latter group of mothers is similar to that for men generally. Another striking feature is the gendered polarisation of labour force participation reflected in the data on parents with dependent children. While mothers with children under 6 years have the lowest participation rate of all groups, fathers in this category have the highest participation rate of all, some 94%.

Mothers’ increased participation remains overwhelmingly in part-time work. In 2010/11, 66.3% of employed mothers with a child aged under 6 years worked on a part-time basis. This was the case for 54.7% of employed mothers with children aged 6-15 years and for only 43.2% of all employed women aged 20-74 years (ABS 2012c). However fathers’ participation in part-time work remains very low, highlighting the challenge for policy measures in encouraging a more gender equal sharing of work and care in parenting.

Interestingly, given the emphasis on the increased participation of mothers, underemployment is major issue for mothers of dependent children. In 2011-12, the underemployment rate for women with a child under six years was 8.8% and 11.2% for women whose youngest child is aged 6-14 years. Both these rates are far higher than for comparable groups of fathers (3.2% and 3.5% respectively) (ABS 2012d). These data highlight the importance of quality part-time jobs for mothers, particularly those that provide enough hours as well as both the predictability and the security of hours to manage both paid and unpaid work.

Women, work and the Fair Work Act

The main focus in Australian policy debates around women and work has been on specific policy and legislative provisions that support women accommodate both paid work and unpaid care responsibilities, such as the right to request flexible work arrangements (RTR), one of the 10 National Employment Standards (NES). However mainstream labour protections, including those in the NES and in individual modern awards, which together form the safety net in the Fair Work Act 2009 (FW Act), are crucial for women, both as an underpinning for decent work and gender equality as well as a basis for employee-orientated flexibility where required (Heron and Charlesworth 2012). While unions and advocacy groups have lobbied for a broader and more effective RTR, little attention has been paid to the role of a set of NES that would cover all workers and minimum award entitlements that might provide the scaffolding of regular and
predictable hours from which workers can ask for adjustments to meet both short and longer-term caring requirements.

In May 2012, the ACTU Independent Inquiry into Insecure recommended a more inclusive and expanded set of NES, which would include casual workers (ACTU 2012a), who are currently excluded from the NES on annual leave, paid carers/personal leave, compassionate leave and community service leave. Also recommended was an expanded and enforceable RTR that would apply to all workers and additional NES, including a right to refuse overtime and a right to consultation about work to be performed and changes to that work. The Inquiry also recommended that casual work be limited to work that is genuinely irregular and intermittent and that after a certain period of time casual jobs be ‘deemed’ to be ongoing with the relevant rights and benefits that adhere to that status. While these recommendations were broadly endorsed by the ACTU Congress, it is unclear the extent to which they might form part of the ACTU’s pre-election campaign, apart from a more effective RTR outlined below.

The FW Act Review, which reported in June 2012, considered a number of specific aspects of the operation of the NES including the RTR and aligning the service requirements of the Paid Parental Leave scheme with the NES on unpaid parental leave (DEEWR 2012). While the Inquiry panel concluded that most of the NES appear to be operating as intended (DEEWR 2012, 104), it did not consider the limited coverage by the NES of casual workers so vital to decent work and to managing work and care.

In the current Modern Award Review employer applications in many feminised modern awards has been focused on making working time arrangements in certain awards more ‘flexible’. For example, in its application to vary the General Retail Industry Award 2010, the Australian Retailers Association wants employers to be able to amend part time hours where peaks and troughs in trade occur and to part-time employees to have the ‘opportunity to compete for additional hours, and therefore additional income’ through removing the requirement for written agreement to any variation in hours (ARA 2012, 12). In a feminised industry where underemployment is a feature, such a variation, if granted, would provide employers with casual-like flexibility while paying staff at ordinary time rates. Unions on the other hand have pushed for some improvements in working time arrangements in awards such as through casual conversion clauses, making work on public holidays voluntary and setting limits around what constitute ‘ordinary’ working hours. Until the Modern Award Review is completed in 2013, it is unclear the extent to which employer/union applications will succeed in reducing or improving working time and other minima in awards.

**Right to request**

The FWA Review rejected calls for a grievance mechanism for the current RTR but recommended the RTR could be expanded to include a wider range of caring and other circumstances, and to require that the employee and the employer hold a meeting to discuss the request, unless the employer has agreed to the request (DEEWR 2012, 94). An amendment to the RTR was introduced by Greens MP, Adam Bandt, in the *Fair Work Amendment (Better Work/Life Balance) Bill 2012*. It proposed to make the existing right available to all employees and provide an appeal mechanism with a tougher obligation placed on employers where an employee seeks the flexible work arrangements for caring responsibilities (see Heron and Charlesworth 2012, 220). The Bill
was not supported by a House of Representatives Inquiry, which reported in October 2012, while the Greens unsuccessfully moved a similar amendment to the Fair Work Amendment Bill 2012 in November (Workforce Express 2012b).

Within the federal Government there appears to be recognition about the importance of extending the RTR to those caring for older Australians and people with a serious long-term illness or disability (Australian Government 2011). There is also growing support for a grievance mechanism in the RTR limited to parents with children under school age - essentially similar to the award condition won in the 2005 Family Provisions Test Case and lost under WorkChoices. In December 2012, the ACTU Executive resolved to seek the extension of the RTR to workers who care for children, elderly parents or incapacitated partners with the right to appeal an employer’s unreasonably refusal to a request and to seek arbitration if necessary (Workforce Express 2012a).

One cause for concern about the current operation of the RTR is the lack of awareness about its existence. In the 2012 Australian Work and Life Index (AWALI) survey only 30% of respondents were aware of the RTR (and only 1/4 of mothers and 1/3 of fathers of children under school age to whom the right specifically applies) (Skinner et al 2012). AWALI 2012 also indicated a low and gendered take up of the RTR. Only 21% of respondents indicated that they had requested flexibility, with an approval rate of 62%. Men were less likely to make a request (17% compared to 24% for women) and more likely to be refused or than women (17% compared to 10%). Men’s poorer access to and much lower uptake of carer-friendly flexibility has direct implications for gender equality. The relatively low take up by eligible men and women also suggests that the RTR on its own cannot provide the solid basis needed to manage work and care.

**Pay equity**

Pay equity is a key gender equality indicator. Measuring the gender wage gap in terms of full-time ordinary time earnings hides more than it reveals (Todd and Preston 2012). However it is the benchmark most used in Australian policy debates, despite almost half of female employees working on a part-time basis. In Australia the full-time ordinary time gender pay gap was 17.5% in May 2012, considerably larger than the 14.9% full time pay gap of August 2004 (ABS 2012d).

The equal pay case for most of those covered by the Social Community Home Care and Disability Services Award 2010 (the SACS case) and its outcomes have been well documented (Baird et al 2012; Cortis and Meagher 2012; Todd and Preston 2012). However there are some concerns about its implementation over the phase-in period of 8 years prescribed by FWA. The federal government has allocated $2.8 billion to supplement the higher wages for those affected by the 2012 FWA decision and by the end of 2012 most state governments had agreed to provide additional funding. However, the adequacy of these funding commitments remains unclear and there are concerns that there is a significant and unquantified gap in funding to cover the higher wages (ACOSS 2012c). A recent article also highlighted issues with the sustainability of wage increases won through pay equity cases in Australia (Connolly et al 2012). While that analysis addressed the implementation of the 2009 Queensland Industrial Relations Commission SACS decision, overtaken by the federal award modernisation process in 2010, it suggests that steps will need to be taken to ensure that the wage gains in the FWA decision are not eroded over time and that they are integrated in and supported by developments in relevant modern awards (Connolly et al 2012, 128).
The resource intensive nature of the SACS case, its specific features in attempting a comparison between similar work performed by government and community sector employees, rather than the gendered valuation of the work performed per se, and the fact that no equal remuneration principles were handed down by FWA, also leave a number of issues unresolved about the operation of the equal remuneration provisions. One key issue is the conceptual and evidentiary basis for demonstrating gender-based undervaluation (Smith 2012).

In 2012, there have also been some pay equity ‘wins’ outside the FW Act’s equal remuneration provisions. The fact that one of the express objectives of the new WGE Act is to progress ‘equal remuneration between women and men’, the Workforce Compact being negotiated in aged care and the recent Victorian child care sectoral enterprise agreement all highlight the importance of alternative mechanisms in addressing the gender pay gap in specific industry sectors.

As part of its aged care reform package announced in April, the federal government announced a Workforce Compact that will provide ‘additional funding to aged care providers who take steps to improve the terms and conditions of their workers’ (DoHA 2012). The Government has committed $1.2 billion to implement the Compact over four years from July 2013 to improve the capacity of the aged care sector to attract and retain staff. Measures include higher wages, improved career structures, enhancing training and education opportunities, improved career development and workforce planning, and better work practices (DoHA 2012). An independent Advisory Group will oversight the development of the Compact in close consultation with the government, aged care sector and unions. The potential of the Compact to address not only wages but improved working conditions for low paid aged care workers is significant; going well beyond what is possible under the FWA equal remuneration provisions or what has been secured to date in the award modernisation and review process of the Aged Care Award 2010.

Despite the arguably disappointing outcomes in the first FWA low paid bargaining stream application (see Cooper 2011), United Voice has been successful in securing a sectoral childcare enterprise bargaining agreement that covers one third of Victorian not-for-profit childcare, including around 90 Victorian childcare centres and over 1700 childcare educators. The agreement provides child care educators with a total 8% wage increase backdated to August 1 2012 through to July 1 2013. In addition the agreement provides an updated classification structure and five days bereavement leave (Workforce Express 2012c).

**Sexual harassment**

Sexual harassment in the workplace has remained a persistent ground of complaint in all Australia anti-discrimination jurisdictions over many years, with formal complaints of sexual harassment making up 52% of all complaints lodged in 2011/12 under the Sex Discrimination Act 1984 (AHRC 2012a). The short-term and long term scarring effects of sexual harassment, including in terms of employment over the life course, raised consistently by gender equality advocates and agencies. Yet apart from arguably atypical high profile cases in the media such as the Kristy Fraser-Kirk case against David Jones and James Ashby’s claim against the now former Speaker of the House of Representatives, Peter Slipper, there is relatively little community awareness of the ‘everyday’ experience of sexual harassment.
The Australian Human Rights Commission (AHRC) launched the results of its 2012 sexual harassment prevalence survey in October 2012 (AHRC 2012b). This is the third such prevalence survey, which provide valuable data about the extent and nature of sexual harassment in Australian workplaces and of changes over time. The 2012 survey identified that 21% of Australians (25% of women and 16% of men) have experienced workplace sexual harassment over the last five years. However awareness of sexual harassment remains limited with almost one in five respondents indicating that they had not been sexually harassed when read the legal definition of sexual harassment, but who also reported that they had experienced behaviours likely to constitute unlawful sexual harassment (AHRC 2012b, 18). Despite dominant media framings of sexual harassment as involving harassment of a particular individual by an employer or manager/supervisor (McDonald and Charlesworth forthcoming), the AHRC survey indicated that more than half of the harassers identified by survey respondents were co-workers (AHRC 2012b, 35).

Phase 2 of the Review into the Treatment of Women the Australian Defence Force was completed in August 2012 (AHRC 2012c). The Review is just one of five separate inquiries into the Australian Defence Force (ADF), all initiated by the Minister for Defence after the infamous ‘skype incident’ at the Australian Defence Force Academy (Baird et al 2012, 333). In the Phase 2 Review, which examined the ADF culture and the dominant experience of and attitudes towards women, there was specific focus on sexual harassment and sexual abuse. Sexual harassment was experienced by one in four women and one in ten men in the ADF, with the highest rates for both women and men in the Navy (AHRC 2012c, 259). The Review found that under-reporting of sexual harassment and sexual abuse was significant with only 21 percent of women and 9 percent of men who had experienced sexual harassment in the last five years making a formal complaint of any sort (AHRC 2012c, 260). The Sex Discrimination Commissioner reported that the reasons that ADF members did not report were because ‘they feared that they’d be victimised, that their career would be jeopardised, that they’d not be believed or they would be subjected to a sometimes unresponsive chain of command investigation’ (ABC 2012b).

This significant review of sexual harassment and other forms of gendered discrimination within the ADF is welcome. Importantly, it places the issue of sexual harassment and prevention and response strategies firmly within the context of the gendered culture within the ADF, illustrated vividly by findings that there has only been a one per cent increase in the recruitment of women to the ADF over the past decade, that fewer than five percent of senior officers are women and that "pockets of poor leadership" have allowed the culture to exist (ABC 2012b). While unfortunately such an extensive and resource intensive review of other large employers is unlikely, the ADF Review provides a vivid demonstration of the importance of framing sexual harassment not just as an issue of an aberrant individual behaving badly but as systemic sex discrimination (MacDonald and Charlesworth forthcoming).

**Pregnancy discrimination**

Pregnancy discrimination is proscribed in state, territory and federal AD laws and in the FW Act, both under the NES and adverse action provisions. For those eligible, the unpaid parental leave NES provides a return to work guarantee, and a right to transfer to a safe job in appropriate cases, or to take paid ‘no safe job leave’. However little is known about the extent to which these provisions are compiled with. Pregnancy discrimination remains a significant ground of
discrimination in formal complaints in AD jurisdictions. However formal complaints only present the tip of the iceberg and little is known about the prevalence of pregnancy discrimination in Australian workplaces, despite the recommendations of a 1998/9 HREOC inquiry that better data be gathered on its incidence (HREOC 1999).

However there are some recent indications of the possible extent of the problem. A recent ABS survey indicates that of birth mothers of at least one child under two years of age living with them in November 2011 and who had been employed while they were pregnant, around 61,100 (17%) reported experiencing some level of discrimination directly associated with pregnancy (ABS 2012e). The most common forms of discrimination reported included missing out on promotion, missing out on training and development opportunities and receiving inappropriate or negative comments from their manager/supervisor. The ABS data also suggest that many women lose attachment to their job while they are pregnant. Of those who had been in a job when they were pregnant, 29% permanently left the job they had while they pregnant. While the most common reason given by 49% of this group was to care for their child, 13,500 women (13%) indicated that the main reason they had left work was they had unsatisfactory conditions of employment, they had been retrenched or dismissed or that they felt obliged to leave (ABS 2012e) The loss of a job has a direct flow on to eligibility for PPL if the mother leaves before she has completed the service criteria. The ACTU Executive’s recent call for a federal government inquiry into discrimination against pregnant employee and those seeking to return from parental leave (Workforce Express 2012a) is therefore very timely.

While there are limits to individual redress under anti-discrimination laws, not least as a woman who is pregnant or has recently had a child is unlikely to pursue her rights in a formal complaint, over the last two years the Fair Work Ombudsman (FWO) has targeted pregnancy discrimination as a workplace issue. In 2010, the FWO ran a large scale awareness campaign and since then has vigorously pursued a number of complaints through to well-publicised enforceable understandings and prosecution, which, while based on individual complaints, send a strong deterrence message to other employers. For example in 2011/2012 the FWO secured two successful prosecutions of pregnancy discrimination, one of which led to over $25,000 of fines and compensation imposed on the employer (FWO 2012,45).

Legislative change and reviews

Workplace Gender Equality Act 2012

On 22 November 2012, the Workplace Gender Equality Act 2012 (WGE Act) was finally passed by federal parliament. First mooted in 2010 following a 2009 review of the Equal Opportunity for Women in the Workplace Act 1999 (KPMG 2009), the Act introduces new gender equality reporting obligations for employers of over 100 employees and establishes the Workplace Gender Equality Agency (WGEA), replacing the current Agency established under the former Equal Opportunity for Women in the Workplace Act 1998. The purpose of the new regulation is two-fold: to support and help drive improved gender equality outcomes in Australian workplaces; and to improve workforce participation and workforce flexibility (Collins 2012), with both policy aims reflected in the objects of the WGE Act.
While originally conceived of ‘affirmative action for women’ in the *Affirmative Action for Women in the Workplace Act 1986*, (AA Act), the WGE Act’s provisions explicitly extend coverage to men, particularly in respect of caring responsibilities. The new Act replaces the current reporting requirements, which focused on the development of workplace programs, with requirements to report against a series of gender equality indicators focused on outcomes to be set by the Minister for the Status of Women (WGEA 2012). All non-public sector employers with more than 100 employees are to lodge annual reports and report against a standardised set of gender equality indicators (GEIs), set out in the WGE Act, which include:

- the gender composition of the workforce
- the gender composition of governing bodies of relevant employers
- equal remuneration between women and men
- availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities
- consultation with employees on issues concerning gender equality in the workplace and
- any other matters specified by the Minister (WGEA 2012)

While significantly, progress towards equal remuneration between men as women is a principal object of the Act as well as a GEI, there is currently no GEI on preventing and better responding to sexual harassment where it occurs. This is surprising as the GEIs were developed to address ‘the most pressing contemporary gender equality challenges’ (WGEA 2012) and the 2009 Review of the EOWW Act identified sexual harassment as a key barrier to achieving gender equality for women and men (KPMG 2010).

The new WGE Act brings in new notification and access requirements that will improve transparency of the reporting process (AHRC 2012d), including having to inform employees and shareholders about the report after it has been lodged and providing an opportunity for employees and employee organisations to comment on the report to the WGEA. The latter requirement is one of the most contested features of the new Act. While the requirement to consult with employees was present in the original AA Act, this obligation was removed in the EOWWA Act after considerable employer lobbying. The WGE Act may name non-compliant employers in reports to the Minister and such employers may be unable to tender for government contracts or be ineligible for some Commonwealth grants and financial assistance. The compliance regime of the WGE Act thus remains similar to that of the EOWA Act, characterised by Marie Coleman of the National Foundation of Australian Women as akin to a ‘rather wet lettuce slap’ (Thornton 2012, 5).

There is a long phase in period for the new Act, which reflects, in some part at least, the considerable lobbying by employer groups to allow employers to prepare for the new reporting arrangements under the WGE Act (see ACCI 2012). Minimum standards to be reached in relation to each GEI will be set by the Minister after consultation with the WGEA and other stakeholders and will not apply until the 2014-2015 reporting period. However it is only from the 2016-2017 reporting period that an employer can be found to have failed to comply on the basis of failure to improve against one of the specified minimum standards (WGEA 2012). Indeed one of the crucial issues for the effectiveness of the Act in advancing gender equality within workplaces will be the
level at which these standards will be set. Only time will tell if the GEIs put in place represent a lowest common denominator approach with which all but the most recalcitrant employer can comply or if they will provide the impetus for meaningful improvements towards gender equality at the workplace level over time.

**Evaluation of the PPL scheme**

The adequacy of the current PPL scheme will be on the policy agenda in the lead up to the 2013 federal election. In June 2012, the federal government announced 2 weeks Dad and Partner pay, also paid at the national minimum wage, will be implemented from 1 January 2013 on a ‘use it or lose it basis’ to encourage men to take a more active role in caring for children. Despite rumblings from Coalition members and from business employer groups, Opposition leader, Tony Abbott, recently reaffirmed his 2010 commitment to a 26 week PPL scheme at replacement wages up to a $150,000 per annum, to be funded in part by a 1.5% levy on large enterprises. Mr Abbott linked his scheme to productivity by arguing that ‘if more women were in the workforce the economy would be more productive’ (Workforce Express 2012e). The Opposition’s scheme also includes two of the 26 weeks PPL as dedicated paternity leave to be paid at the father’s replacement wage up to $150,000 per annum, based on the rationale that ‘that caring for a newborn is a role best shared between mothers and fathers’ (Coalition 2010).

By the end of 2012, the current PPL scheme will have been in place for two years. The 2012 AWALI survey found that there was broad general awareness of the new PPL, in particular by women who had children less than 5 years of age (Skinner et al 2012). A recent overview of its operation indicates that up until March 2012, more than 150,000 individuals had received PPL (Baird and Whitehouse 2012). Of interest is the fact that half of the mothers who received PPL earned less than $43,000. The national minimum wage full-time equivalent at which payment is made means that many of these women would have received a replacement wage or even better.

The Phase 1 evaluation of PPL, released mid-2012, indicates that even before the introduction of PPL, there was an increase in the proportion of mothers who had returned to work by the time their baby was one year old (Martin et al 2012). The greatest shift however was in the proportion of mothers who had returned by the time their baby was nine months old, up from 40% in 2003/4 to 49% in 2010. (Martin et al 2012, 44). This reflects the shift in the workforce participation of mothers with young children highlighted above. In considering the gender equality implications of the PPL, the Phase 1 report notes PPL may potentially lead to greater sharing of household tasks and childcare between men and women (Martin et al 2012, 72). However, a significant shift in the gendered division of labour in Australian households is needed for this outcome to be achieved. The evaluation found that in 2010 before the introduction of PPL, women who had not yet returned to work did around 80% of total housework and child care tasks compared to around 70% of women who were working (Martin et al 2012, 77). If the Opposition wins power in 2013 and its PPL scheme is implemented it will be of interest to see what effect replacement earnings might have on shifting this unequal sharing of work and care.

**Conclusion**

The focus in this paper has been on policy debate and action on key women and work issues in 2012. Whether current policy settings and infrastructure, such as the PPL scheme, and mainstream labour regulation enable all workers to access both decent work and gender equality
is still uncertain. However there is some evidence of growing commitment to action around the gender pay gap at the sectoral level and to both better preventing and addressing pregnancy discrimination and sexual harassment where it occurs.

Two key themes emerge from this review. Firstly, there is an unresolved tension between the widely shared policy goal of increasing women’s workforce participation and the apparent blindness to the poor quality of many of the jobs in which women are located. Another related ambiguity is present in some of the objects of the FW Act, which aim to provide workplace relations laws that are flexible for businesses and to assist employees balance their work and family responsibilities - also present in the WGE Act objects, which aim to improve gender equality outcomes and workforce flexibility. Given the non-inclusive NES and poorer minima in many feminised modern awards, it is crucial that the goal of gender equality in the WGE Act is not subordinated to that of flexibility in the implementation and monitoring of the GEIs.

A second theme is that the goal of gender equality is now part of mainstream Australian policy debates and legislative action around women and work. In particular the sharing of work and care between men and women is not only one of the policy goals of the new WGE Act, but is also present as a policy rationale in the Opposition’s paternity leave policy. In addition, while Australia has lagged behind many other countries in not having a national gender equality policy, the Council of Australian Governments (COAG) Select Council on Women’s Issues has recently committed to the ‘ongoing development of a national framework for considering gender equality, with a focus on reporting and analysis of equality of outcomes between women and men, including across the COAG Council System’ (COAG 2012). So what will this new attention mean in terms of outcomes for women? Jill Rubery points to dangers of situations where the gender equality cause is invoked in deregulatory or flexibility discourses (2011), as we have seen in several employer applications in the Modern Award Review. The benchmark for progress to gender equality therefore needs to be, as argued above, the extent to policies actually enable men and women to make genuine choices about their workforce participation and to share work and care.

Funding

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July 2012


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Table 1: Labour force participation rate, 20–74 years, and for parents by age of youngest dependent child under 15 years, 2006–07 to 2010–11

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<tr>
<td>Female total</td>
<td>63.8</td>
<td>64.6</td>
<td>65.1</td>
<td>64.8</td>
<td>65.3</td>
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<tr>
<td>Male total</td>
<td>79.2</td>
<td>79.4</td>
<td>79.5</td>
<td>79.3</td>
<td>79.7</td>
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<td>Female youngest child 5 years &amp; under</td>
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<td>54.2</td>
<td>55.0</td>
<td>53.0</td>
<td>55.1</td>
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<tr>
<td>Male youngest child 5 years &amp; under</td>
<td>94.0</td>
<td>94.5</td>
<td>94.0</td>
<td>94.1</td>
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<td>Female youngest child 6-14 years</td>
<td>76.3</td>
<td>77.7</td>
<td>78.7</td>
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<tr>
<td>Male youngest child 6-15</td>
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<td>92.9</td>
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Source ABS 2012c