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Minister for Consumer and Employment Protection; Indigenous Affairs; Assisting the Minister for Water Resources; Leader of the House in the Legislative Assembly

Our Ref:

0503717

Paid Work and Family Responsibilities Submission Sex Discrimination Unit Human Rights and Equal Opportunity Commission GPO Box 5218 Sydney NSW 2001

Dear Ms Goward

STRIKING THE BALANCE: WOMEN, MEN, WORK & FAMILY DISCUSSION PAPER 2005

I refer to the discussion paper entitled *Striking the Balance, Women, men, work and family* published in 2005 by the Sex Discrimination Unit at the Human Rights and Equal Opportunity Commission (HREOC).

HREOC has invited submissions on the issues raised in the discussion paper. Please find enclosed a submission outlining comments on the paper from the Western Australian Government's Office of Women's Policy and specific initiatives undertaken by the Department of Consumer and Employment Protection (DOCEP) in relation to some of the matters in the discussion paper.

Yours sincerely

JOHN KOBELKE MLA

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MINISTER FOR CONSUMER AND

EMPLOYMENT PROTECTION

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Submission to

Striking the Balance: Women, Men, Work and Family Discussion Paper 2005

Sex Discrimination Unit Human Rights and Equal Opportunity Commission

Government of Western Australia

September 2005

Executive summary

The Human Rights and Equal Opportunity Commission's (HREOC) Discussion Paper 'Striking the Balance: Women, Men, Work and Family' provides a comprehensive discussion of the challenges and barriers facing both women and men trying to balance their work and family lives.

The Western Australian Government is committed to addressing the key barriers and disincentives which may prevent both women and men adopting working arrangements which may have a more positive influence on meeting the demands of their private lives.

A major issue of concern to the Western Australian Government is the Federal Government's proposed changes to industrial relations. These changes have the potential to undermine the fundamental rights and protection of employees. In particular, the proposals may limit the choices available to employees to have flexible and secure working arrangements which are more conducive to combining the responsibilities of work and family.

The Australian demographic patterns which are emerging in the 21st century will highlight the enormous challenges facing working families. Caring for the aged as well as parenting responsibilities will place greater importance on workplace policies which provide options for families to accommodate these diverse and demanding caring responsibilities.

This submission highlights the range of strategies which the Western Australian Government has both adopted and is also currently developing to address work and family issues. It is hoped that some of these initiatives may also provide an environment in which the relative imbalance between women and men with the responsibility for caring and undertaking unpaid work may be addressed.

Introduction: Work and Family Matters

This submission makes a number of general comments on the HREOC Discussion Paper prepared by the WA Office of Women's Policy. The paper then outlines the specific initiatives undertaken by the Department of Consumer and Employment Protection (DOCEP) in relation to some of the matters raised.

General Commentary

Values and Attitudes

While the paper deals with a range of factors affecting the issue of work and family, it is primarily focussed upon the social construction of gender and gender roles as factors that determine the division of labour between men and women in regard to paid work and unpaid work, and in particular, caring roles.

This is an element that has not featured very prominently in many previous examinations of the issue, which have tended to focus on institutional, legal and industrial relations factors. This shift in emphasis is considered very important, as the values and beliefs of society are arguably the most important determinants of behaviour and provide the underlying drivers for many of the existing legal and institutional arrangements. However, this is also likely to be the most difficult and contentious issue to address, as it relies on shifting existing social values and conventions, which cannot be achieved by fiat or legislative change.

In targeting social values, such as the division of labour between men and women, it is essential to accurately determine what those values are. The discussion paper asserts that "Australians believe that caring work and housework should be equally shared between men and women," and further asserts this matches contemporary social expectations of equality and fairness for women and men in all aspects of social and private life. The mismatch between expectations and reality is then noted.

While the statements regarding values are supported by various studies (page 53) that are cited, the discrepancy between the values and the reality are difficult to reconcile. For example, an individual may hold a series of values that are apparently contradictory, but this may not be apparent if the survey or methodology used to extract these values is too narrow. Alternatively, survey respondents may elect to give responses that reflect well on them, rather than give truthful responses. Apart from the discrepancy between values and reality, a range of contradictory evidence regarding the values held by Australians exists within the discussion paper. For example, the research by FACS (page 95) on barriers to men taking up family-friendly working provisions includes doubts about the legitimacy of men's claims to family responsibilities and taken-for-granted assumptions. Additionally, the research on attitudes of fathers (page 54) showed that 53% of fathers felt their work and family lives interfered with each other, which presumably means the remaining half did not feel a serious problem existed.

If, as the paper states, Australians have already adopted the values that caring and household work should be equally shared, then many of the possibilities for achieving attitudinal change, outlined on page 131, would presumably not be required. In general, it is difficult to fully accept the opening assertion of the paper and a more elaborate and thorough examination of the values of Australian society seems

required before effective options for changing these values could be considered or developed.

It would be useful if any further work in this area sought to disaggregate the responses to enable factors such as age, socio-economic status, educational attainment and cultural background were captured. It is suggested that while many Australians believe in the equal sharing of caring roles and unpaid work, this is probably an in-principle position, based on the assumption that all other factors being equal. The likely reason for the difference between stated values and reality are that others factors are not equal. This suggests the appropriate focus of future initiatives to address gender imbalances in caring and unpaid work are the institutional and other barriers that prevent those values being put into reality.

Unequal division of gender roles as an economic choice

A key factor that may be preventing or hindering Australian families from enacting the values held regarding the equal sharing of responsibilities for caring and unpaid work is the financial disincentive created by the gender pay gap.

This is touched upon on pages 55 and 57, but only briefly. When a two income family is faced with the loss of one income to enable a parent to leave the paid workforce to care for children or other family, the most economically beneficial outcome is for the lowest earning parent to cease or reduce paid work.

Given the persistence of the pay gap, which is substantial when non-ordinary earnings are taken into account, it seems probable that many families cannot afford to pursue the equal sharing of caring roles or would prefer the advantages of additional income over a more equal caring arrangement. Fundamentally, the concept of the equal sharing of caring responsibilities carries a cost for families. The observed increase in father's hours when a partner ceases work to care for a child is almost certainly a response to the loss of a partner's income. Such responses would obviously exacerbate the unequal sharing of care.

The gender pay gap may also contribute to the unequal distribution of unpaid work besides caring roles. The increasing use of services such as domestic cleaning may be a rational economic choice for two income families, where the couple's hourly earnings exceed the cost of hired labour such as cleaners. That is, it is economically more beneficial to outsource domestic tasks, rather than perform them.

However, if one of a couple's hourly earnings are lower than the cost of hiring help, it would yield a financially superior result for the lower earning individual to perform these duties. The financial decision about whether to use replacement labour to perform household duties would most likely be a question about whether the lowest earning individual should perform these tasks or they are outsourced. As the lowest earning member of a couple would be likely to be the female, this would bias the distribution of labour towards women performing unpaid work.

Despite the potential significance of this factor, the HREOC paper merely raises this matter in passing and none of 45 questions posed by the paper raises this as a point of discussion. The conclusion on page 131 notes the impact of men's superior earning power as "locking" men into full time working roles, but the matter is not raised as something that can be addressed.

A large number of the questions posed deal with means of changing attitudes and cultures. It is suggested that there should be a greater focus upon the barriers that

prevent the existing values being put into practice by Australian families. This would include means of addressing the gender pay gap.

The Government of Western Australia is supportive of measures that assist families in caring responsibilities and that enables men and women make active choices in how to share responsibilities.

Overview of work and family in Western Australia

Working Patterns of Western Australian families¹

Number of families	555,000
Number of families with children under 15	226,000
Percentage of families with children	
where at least one child is under 5	45.3%
Of the 226,000 families with children:	
Percentage that are couple families with children aged under 15	76.1%
Percentage of couple families where both parents are employed	54.1%
Percentage that are lone parent families with children under 15	21.3%
Percentage of lone parents that are employed	51.3%
Percentage of women with children aged 0-4 who are employed	45.1%
Part-time employment	
Percentage of working people employed part-time	29.4%
Percentage of working women employed part-time	48.6%
Percentage of working men employed part-time	14.6%

A family is defined as "two or more persons, one of whom is aged 15 years and over, who are related by blood, marriage (registered or de facto), adoption, step or fostering; and who are usually resident in the same household."

These social trends provided by the ABS emphasise the sizable percentage of Western Australians with family responsibilities. Most particularly it shows the challenges facing families where both parents are employed and have responsibility for children aged 0-4 years. The figure for lone working parents of 51.3 per cent demonstrates that balancing work and family responsibilities is not confined to households in which two parents reside.

The impact of unpaid work for which a greater percentage of working and non working women have responsibility, represents an area which may require further research.2 That is, despite a large percentage of men and women agreeing that a more equitable distribution of unpaid labour is desirable, women still do a larger percentage of the unpaid work in Australian families. Whilst parenthood impacts on the time of both men and women, it does not influence the amount of unpaid work undertaken by men as parents.3

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¹ Source: ABS Australian Social Trends 2005

² Source: Michael Bittman and Jocelyn Pixley *The Double Life of the Family* Allen and Unwin St Leonards 1997, pp 101-102

Source: Lyn Craig The Time Cost of Parenthood: An Analysis of Daily Workload SPRC Discussion Paper No 117 University of New South Wales Sydney 2002, pp 10-11

Work-life Balance Survey 2004

In mid 2004, the *Survey of Work-life Balance in Western Australia*⁴ was undertaken. The survey was conducted by the Centre for Labour Market Research at the University of Western Australia, on behalf of the Government of Western Australia. The survey contained 1750 respondents aged between 18 and 65 years.

The primary purpose of the Work-life Balance Survey was to gain an indication of the proportion of working Western Australians who face hardship in balancing work and home life, and determine whether other factors such as hours, working entitlements, award coverage and demographics influence how people are managing the balance.

The results provided an overview of how Western Australian workers are managing at combining lifestyle and family and working arrangements.

The general themes addressed by the survey instrument were:

- intensification of work effort:
- entitlements and workplace;
- · community, leisure and carer responsibilities; and
- perceptions of work-life balance.

Some of the key findings of the survey in relation to work and family balance were:

- 60% of employees have access to some type of flexible work arrangements;
- 34% have access to paid parental leave; and
- 32% of people took time off for caring, including many with no dependent children.

Survey respondents were asked about their perceptions of work-life balance. Interestingly,

- 24% of full-time employees said work-life balance had deteriorated over the past 2 years, and an equal 24% said that it had improved.
- 14% of part-time employees said work-life balance had deteriorated over the past 2 years, and 31% said that it had improved.

The survey confirmed that from a work-life balance perspective, the most important types of workplace entitlements are those enabling flexible working arrangements. This holds true for all employees, not just those with dependent children.

The survey results also highlighted a number of important issues in relation to the balance between work and family life and the impact of caring responsibilities. Dependent children and/or other caring responsibilities affect the hours and days worked for a significant proportion of working women.

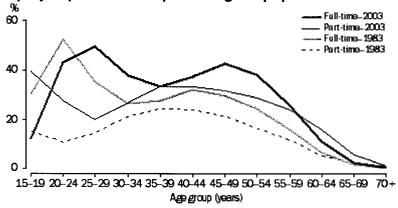
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⁴ Survey of Work-life Balance in Western Australia, June 2004. R. Kelly and C. Mulvey, Centre for Labour Market Research The University of Western Australia. A report for the Department of Consumer and Employment Protection, Government of Western Australia.

For some women in the survey it meant working shorter hours than they would like and/or having to work on a casual basis.

The care of children impacts not just on women's labour force participation but also on the type of participation. The graph below illustrates a decrease in participation in full-time employment for women of child bearing age accompanied by an increase in part-time work. This trend highlights the fact that many women combine part-time work with family responsibilities

Employed persons as a percentage of population: Females



Source: Labour Force Survey, Australia, Detailed—Electronic Delivery (cat. no. 6291.0.55.001).

Parental Leave

Currently in 2005, all WA public sector employers are eligible for seven weeks paid parental leave, and the Gallop Government is committed to increasing this to 14 weeks. Western Australia is also the only State where fathers working in the public sector are eligible for paid parental leave, where they are the primary care giver for their child.

In 2002 the Western Australian Government made a submission supporting paid parental leave in response to the Human Rights and Equal Opportunity Commission's interim paper *Valuing Parenthood: Options for paid maternity leave*. The WA Government provided in principle support for a national 14-week maternity leave scheme paid at the level of the Federal Minimum Wage to be funded by the Federal Government.

The State Government's proposal recommended that paid maternity leave be available to full time and part time employees engaged for a minimum of 12 months, and casual employees engaged for a minimum of 12 months out of the previous 18 months. This position was consistent with the State's *Minimum Conditions of Employment Act 1993* provisions for unpaid parental leave for full time and part time employees after 12 months service.

Whilst many employees have access to some kind of flexible working arrangements, there is still a significant need to increase employees' access to flexibility in the workplace. This highlights the need for ongoing education of employers and the community on the importance of flexibility in work arrangements.

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⁵ Human Rights and Equal Opportunity Commission, *Valuing Parenthood: Options for paid maternity leave*, interim paper 2002, HREOC, Sydney 2002

The Western Australian Government remains supportive of a federally funded paid parental leave scheme.

Casual employment

A number of State awards are currently in the process of being varied to incorporate parental leave for long-term casual employees, as part of the current award updating project being undertaken in Western Australia. The WA Government is actively supporting this award updating process through the provision of cash grants to some parties to ensure awards better reflect the needs of industry and employees.

Work and family initiatives of the Western Australian Government

The Western Australian Government holds the view that the industrial relations system must provide a strong safety net of minimum entitlements that support working parents and facilitate a return to the paid workforce. Additional entitlements and benefits can then be negotiated at the workplace level and flexible working arrangements implemented to support business operations and meet the needs of employees and their families.

In 2002 Western Australia introduced an entitlement to paid carers' leave for all full-time and part-time employees in the *Minimum Conditions of Employment Act 1993*. The minimum wage established under this Act was also significantly increased and the minimum casual loading increased from 15 to 20 percent to ensure that all working men and women are paid a fair and equitable wage for the work that they do.

Recent initiatives:

Recent initiatives of the Western Australian Government to support employees in maintaining work and family balance include:

- inclusion of improved options for flexible work arrangements in public sector agreements, such as an increase in the amount of additional leave available as purchased leave from 4 weeks to 8 weeks per year.
- provision of grants to organisations updating State awards to remove discriminatory provisions and create flexible terms and conditions of employment that better meet industry and employee needs;
- production of a major new publication entitled Pregnancy and Parental Leave:
 a guide for employees and their partners to assist pregnant employees and
 their partners understand their rights and obligations in relation to pregnancy,
 parental leave and returning to work after childbirth;
- addition of a Breastfeeding at Work page to the Department of Consumer and Employment Protection website to provide information on employers' legal responsibilities in accommodating employees who wish to continue breastfeeding after a period of parental leave;

 release of the Creating Carer-friendly Workplaces publication, to assist employers in providing workplace support and flexible employment arrangements for the growing number of employees who have caring responsibilities for family members who are sick, elderly or have a disability; and

DOCEP is also currently participating in a trial Gender Analysis project being conducted in Western Australia. The long-term goal of the Gender Analysis Project is to encourage the mainstreaming of gender awareness and integrating a gender analysis process into policy making across government in Western Australia. This will align Western Australia with international best practice and ensure the inclusion of a "gender lens" into every aspect of public policy formulation.

As part of the trial project, DOCEP is undertaking a gender analysis of the casualisation of the workforce, and assessing the gender impact of a range of possible reforms to reduce misuse of casual employment and inequality in entitlements for casual employees.

New initiatives

DOCEP is currently developing a range of initiatives for the future to encourage work and family balance for Western Australian workers. These include:

- the creation of a new website on work life balance, which will contain extensive information on work and family and flexible working arrangements as well as covering mature age employment, working hours and pay equity issues:
- the development of publications and promotional material for a campaign about Fathers in the Workplace to address the common misconception that "work and family" equals "working mothers" and promote family-friendly employment conditions for male employees;
- the production of a Work and Family Guide for Small to Medium Businesses, which will focus on practical family-friendly employment practices that provide business benefits and ensure compliance with employment obligations. The Work and Family Guide for Small to Medium Businesses will be supported by a series of Award Profiles that provide industry and award specific information. These Award Profiles will feature guidance on how employers can implement family-friendly initiatives while still ensuring compliance with award provisions; and
- research on work and family initiatives in other jurisdictions, research into the
 practical benefits for corporations and small business of implementing work
 and family practices and initiatives and research into the utilisation of flexible
 working arrangements within the Western Australian public sector.

In addition to these initiatives, DOCEP is planning a conference to be held in February 2006 on the theme of work-life balance. The Conference, which will attract participants from the private and public sector will focus on practical work and family issues and solutions, as well as discussing other key work-life issues such as Australia's ageing workforce.

Review of the Gender Pay Gap in Western Australia

The Western Australian Government is currently considering the recommendations of the *Review of the Gender Pay Gap in Western Australia*. This Review, conducted in 2004, made a number of recommendations in relation to work and family balance to support and encourage greater gender pay equity.

Public consultation on the recommendations of the Gender Pay Gap Review was invited in early 2005, and the recommendations and submissions from interested parties are also currently under consideration by the Government.

The Report's recommendations included a variety of legislative and non-legislative strategies that are relevant to supporting work and family balance and assisting women (and men) return to the paid workforce.

The Report recommended that the *Industrial Relations Act 1979* be amended to include as an additional object of the Act: "to promote employment and workplace practices that will enable employees to achieve a satisfactory balance between their paid work and family responsibilities."

A number of recommendations were also made in relation to paid parental leave, including that the Western Australian Government set as a goal the introduction of paid parental leave within both the public and private sectors in WA in accordance with the ILO standard of 14 weeks, that the Government liaise closely with its federal and other state government counterparts in support of a nationwide strategy to introduce paid parental leave.⁷

The Western Australian Government has provided a commitment to increasing paid parental leave for public sector employees from the current level of 7 weeks to 14 weeks.

The Review of the Gender Pay Gap also made a number of recommendations for legislative change to provide greater work and family entitlements for employees in Western Australia. The Report recommended the amended to the *Minimum Conditions of Employment Act 1993* to provide the following additional minimum employment conditions:⁸

- an entitlement to request an additional four weeks purchased leave per annum and to take a reduced salary – 48/52 – spread over the 52 weeks of the year, with employers not to refuse such requests unreasonably and to give priority access to those employees with carer responsibilities;
- a right for employees to request a change in their employment status to parttime within their substantive or an equivalent position for a stipulated period of
 time. Where that stipulated period of time does not exceed 12 months, this
 should also include the right for such an employee to revert to full-time status.
 Where the stipulated period of time extends beyond 12 months, the legislation
 should allow the employee to apply to revert to full-time status in their
 substantive or an equivalent position and that employers not refuse such
 requests unreasonably;

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⁶ Report of the Review of the Gender Pay Gap in Western Australia 2004 p 62

⁷ Report of the Review of the Gender Pay Gap in Western Australia 2004 p 71

⁸ Report of the Review of the Gender Pay Gap in Western Australia 2004 p 71 -72

 extend the entitlement to unpaid parental leave to long-term casual employees who have been engaged on a regular and systematic basis for at least 12 months with the employer and who have a reasonable expectation of on-going employment on that basis.

The planned establishment of a Pay Equity Unit by the Government of Western Australia will provide an appropriate environment in which to consider the Report's recommendations and their potential implementation.

In relation to work and family in the Western Australian public sector the Report recommended⁹:

- the provision of training for public sector supervisors and managers to increase knowledge and understanding of the following issues:
 - o employee entitlements;
 - o implications of managing part-time employees;
 - creation of part-time employment opportunities at all levels of the organisation; and
 - how to develop a public sector culture in which employees feel comfortable accessing family friendly entitlements
- the recording of data on accessing paid parental leave, requests for conversion to part-time, purchased leave, utilization of personal leave; and
- analysis of this data to assess utilization of these provisions.

The Federal Family Provisions Test Case: Proposal

The Western Australian Government, in conjunction with the other States and Territories made a submission to the Australian Industrial Relations Commission Family Provisions test case in May 2004, advocating for a better recognition of work and family commitments in the industrial relations system.

The States and Territories Contentions were based on a 'right to request' concept that provides a viable middle ground between working arrangements that are subject to employer convenience and entitlements that provide automatic rights for employees. These proposals would give employees greater access to a range of additional unpaid leave and flexible working arrangements to meet family commitments, but take account of the ability of employers to accommodate these arrangements. The particular proposals made by the States and Territories included the following matters:

- Unpaid parental leave
- Part-time work
- Flexible working arrangements
- Additional (unpaid) leave entitlements

⁹ Report of the Review of the Gender Pay Gap in Western Australia 2004 p 79

The Federal Family Provisions Test Case: Decision

On Monday 8 August 2005, the Full Bench of the Australian Industrial Relations Commission (AIRC) handed down its decision in the Family Provisions Test Case. The principles of the case related to the following claims:

An employee entitled to parental leave pursuant to the provisions of clause [] may request the employer to allow the employee:

- to extend the period of simultaneous unpaid parental leave provided for in clause [] up to a maximum of eight weeks;
- to extend the period of unpaid parental leave provided for in clause [] by a further continuous period of leave not exceeding 12 months (ie. to a total of 24 months);
- to return to work from a period of parental leave on a part-time basis until the child reaches school age,

to assist the employee in reconciling work and parental responsibilities.

The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

This Test Case represents a positive step forward in recognising that these provisions may assist employees to better manage their work and family responsibilities.

Maintaining Work and Family standards: Family Impact

A major issue of concern to the Western Australian Government is the Commonwealth Government's proposed changes to industrial relations and the potential introduction of a national industrial relations system.

These changes have the potential to undermine the protection of employees in relation to work and family entitlements and the ability of employees to bargain collectively for improvements in workplace arrangements. Many State awards, agreements, and the *Minimum Conditions of Employment Act* provide for family friendly employment arrangements that may not be available to employees if these employees are integrated into a further stripped back federal award system.

Mature Age Employment Strategy for Western Australia

The ageing population and the implications this has for both the future labour market and caring and family responsibilities makes it important that the needs of mature workers are carefully considered. The Western Australian Government is developing a mature age employment strategy in recognition of the importance of retaining mature workers to meet future labour force demands. This Strategy proposes to address the key barriers and disincentives for mature age employees from continuing their employment in the workforce:

- negative social attitudes towards mature age employment; and
- <u>structural employment barriers</u> for mature age workers such as employment practices, and the need for ongoing training and development opportunities, alternative work opportunities, more flexible working arrangements and phased retirement strategies.

Retirement and Retirement Intentions: Implications for Work and Family

The retention of mature aged employees in the work force forms an important basis of the Government's Mature Aged Employment Strategy. The retirement intentions of mature aged employees needs to also be considered when examining the challenges facing men and women in balancing their work and family lives.

Most particularly, of those employees aged 45 and over who had retired from full-time work, 60 per cent were women. This has important implications for the resources which will be available to families in meeting their future needs. Retirement scheme membership is such that maximum benefit is derived by those remaining in the workforce. Women, therefore, are reaching traditional retirement age with limited financial resources for themselves or their families. For 30 per cent of females who had retired from full-time work aged 45 or more, the most common main source of income was someone else's income 11

It is therefore important that appropriate options be made available which provide real choice to women and men to reconcile the competing demands of paid and unpaid work.

Conclusion

The challenges facing families in the 21st century are diverse and complex. Employers need to be aware of the caring responsibilities of families which extend beyond working parents with young children. An ageing population has brought with it increased levels of caring responsibilities which accompany ageing parents or other family members who may require special assistance. Since much of this work is unpaid and substantially 'invisible' to employers and policy makers, it is important that consideration is given to these factors when trying to create working environments which allow men and women to balance their lives more successfully.

The Western Australian Government takes seriously its responsibility to support working Western Australians in finding an appropriate balance between work, family and other lifestyle commitments. DOCEP will continue to progress a wide range of strategies and initiatives to educate and inspire employers, employees and all industry participants to work towards more flexible and family-friendly workplaces.

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¹⁰ ABS Retirement and Retirement Intentions, November 1997, 6238.0

¹¹ Ibid, page 5