



Striking the Balance or Tipping the Scales?: The HREOC Women, Men, Work and Family Discussion Paper

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Introduction

In June 2005, Pru Goward, the Sex Discrimination Commissioner for the Federal Human Rights and Equal Opportunity Commission (HREOC) launched a discussion paper in an effort to start what she termed a 'national conversation' about paid and unpaid work and 'the choices we make about who does it'.¹ Entitled *Striking the Balance: Women, Men, Work and Family*,² the Discussion Paper comes out of the first stage of the Commission's project on paid work and family responsibilities. This project is, in Goward's words, 'fundamentally concerned with the choices men and women make about how they spend their unpaid work time and the effect this has on their choices and opportunities in paid work'.³ The Discussion Paper aims to stimulate and contribute to public debate on current practices and attitudes to combining work and family among Australian men and women.⁴ To get feedback on the issues raised in the Discussion Paper, the public has been invited to make written submissions to HREOC. Together with national consultations undertaken by the Sex Discrimination Commissioner, these submissions will be used to inform the final paper from the Striking the Balance project to be released in 2006.⁵

While eschewing the title 'inquiry', the Striking the Balance project follows a number of important inquiries and reviews by various Federal Sex Discrimination Commissioners since the early 1990s. In 1991/1992 for example, the *Inquiry into Sex Discrimination in Overaward Payments*⁶ provided some impetus for addressing the impact of overaward payments on gender pay equity in the award restructuring process in several industries. In 1992, the *Review of Permanent Exemptions under the Sex Discrimination Act*

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1 Launch Speech by Pru Goward, Federal Sex Discrimination Commissioner, 22 June 2005. <http://www.hreoc.gov.au/sex_discrimination/strikingbalance/media/speech.html> (accessed 3 October 2005).

2 HREOC, *Striking the Balance: Women, Men Work and Family. Discussion Paper 2005*, Sex Discrimination Unit, HREOC, Canberra, 2005.

3 Launch Speech, above n 1.

4 *Striking the Balance*, above n 2, p 7.

5 Sex Discrimination Commissioner, 'Extension to Striking the Balance submissions', 28 September 2005, available at <http://www.hreoc.gov.au/sex_discrimination/index.html> (accessed 3 October 2005).

6 Human Right Australia, *Just Rewards: A Report of the Inquiry into Sex Discrimination in Overaward Payments*, AGPS, Canberra, 1992.

1984⁷ led to proposals to remove many of the permanent exemptions to that legislation.⁸ The impetus for the current Striking the Balance project relates directly to the last two major inquiries by Federal Sex Discrimination Commissioners in 1998/1999 on pregnancy discrimination in employment,⁹ and in 2002 on options for a national paid maternity leave scheme.¹⁰ The importance of paid maternity leave was canvassed in the report of the Pregnancy and Work Inquiry, which recommended the Federal Government commission economic modelling to assess the viability and consequences of such a scheme,¹¹ a recommendation that was ultimately rejected.¹² In 2002 and with a new Sex Discrimination Commissioner, an Interim Paper was developed by the HREOC Sex Discrimination Unit to 'consult, inform the [maternity leave] debate and examine the options for paid maternity leave in Australia'.¹³ While the final report focused on a HREOC proposal for a national paid maternity leave scheme, the consultation process that followed the release of the Interim Paper emphasised the need to consider the roles of both women and men as carers and to challenge the gender stereotypes that prescribe 'women's work' and 'men's work' in both the paid workforce and in unpaid caring work.¹⁴ It is these issues and challenges that the Striking the Balance project seeks to take up.

The Striking the Balance project is a broad and ambitious one. Its scope goes beyond previous inquiries and reviews undertaken by Federal Sex Discrimination Commissioners, focused in the main on discrimination in paid employment, 'to consider all the caring responsibilities of Australian families, such as the care of people with disabilities and the frail aged, and considering the structure of unpaid work as well as paid work'.¹⁵ The project draws its rationale or mandate from both the UN *Convention on the Elimination of all forms of Discrimination Against Women* (CEDAW) and one of the objects of the Federal Sex Discrimination Act 1984 (SDA) 'to promote recognition within the community of the principle of the equality of men and women'

7 Sex Discrimination Commissioner, *Report on Review of Permanent Exemptions under the Sex Discrimination Act 1984*, AGPS, Canberra, 1992.

8 The Review led to recommendations to remove a number of major exemptions to the SDA, including for charities/voluntary bodies, educational institutions for religious purposes, sport and industrial awards. Only the recommendation concerning industrial awards has been implemented: see K Guest, 'The Elusive Promise of Equality: Analysing the Limits of the Sex Discrimination Act 1984', Research Paper No 16, Department of the Parliamentary Library, Information and Research Services, 1999.

9 HREOC, *Pregnant and Productive: It's a Right not a Privilege to Work While Pregnant*, HREOC, Sydney, 1999.

10 HREOC, *Valuing Parenthood: Options for Paid Maternity Leave Interim Paper 2002*, Sex Discrimination Unit, HREOC, Sydney, 2002; HREOC, *A Time to Value: Proposal for a National Paid Maternity Leave Scheme*, Sex Discrimination Unit, HREOC, Sydney, 2002. See B Smith, 'A Time to Value: Proposal for a National Paid Maternity Leave Scheme' (2003) 16 *AJLL* 226.

11 *Pregnant and Productive*, above n 9.

12 Twenty of the 45 recommendations directed to the Federal Government were rejected. *HREOC Assessment of Government Responses to Recommendations*, available at <http://www.hreoc.gov.au/sex_discrimination/pml_pregnancy.html> (accessed 3 October 2005).

13 *Valuing Parenthood*, above n 10, p 9.

14 *Striking the Balance*, above n 2, p 2.

15 *Ibid*, p 6.

(s 3(d)). The ultimate aim of the project, as set out in the Discussion Paper, is to reconcile and incorporate the apparently opposing and diverse interests of Australian families caught between the pressures of paid work and unpaid care 'into a policy framework that would prevent discrimination against women and men on the basis of their family responsibilities'.¹⁶

The following section outlines the main structure and contents of the Discussion Paper, including possible policy goals and options for change, and notes its central elements and emphases. The third section then presents a critique of the Discussion Paper and identifies a number of gaps in its analyses of gender, work and family. Finally, the last section briefly highlights the political and strategic context in which the Discussion Paper will be read.

The Discussion Paper: Scope and Emphases

The purpose of the Striking the Balance Discussion Paper is to canvas current concerns and raise a number of questions around the balance of paid work and family responsibilities in order to get input from interested individuals and organisations. It aims to assess the particular pressures facing men and women and the social, cultural, workplace and legislative barriers to families trying to balance their paid work and family responsibilities. In doing so it focuses in particular on the barriers to men taking a more equal share of this unpaid work and on issues around the valuing of the unpaid work of caring for family members. The paper is divided into four main parts; the first three raising the issues central to combining work and caring responsibilities in Australia, and the final part outlining possible course of action to address identified barriers.

Part A provides an overview of current arrangements of both paid and unpaid work in Australian families. Much of the data on which this section of the paper draws was extensively canvassed recently before the Australian Industrial Relations Commission (AIRC) in the Family Provisions Test Case, and referred to the recent decision of the AIRC in that case.¹⁷ However, the summary of some key data in a clear and accessible format — in a publication that will hopefully have a wide readership — is of great value in informing the waxing and waning work and family debate in Australia. Importantly, this data provides a significant, if indirect, challenge to the declaration of the Prime Minister that the work and family policy mix in Australia 'is about right' in providing effective choice for parents.¹⁸

The first chapter focuses initially on the engagement of men and women as parents in paid work. This provides a helpful summary of the available data and research. While brief and selective, the following overview of current 'family-friendly' working arrangements makes the unequal distribution of these arrangements between men and women, between high status and low status occupations, and between the public and private sector, crystal clear.

¹⁶ Ibid.

¹⁷ See <<http://www.e-airc.gov.au/familyprovisions>> (accessed 3 October 2005). See further J Murray, this issue.

¹⁸ J Howard, 'Giving Australian Families Choice', *Options*, No 17, August 2003, p 5, available at <http://www.sa.liberal.org.au/pyne/_pdf/Options_work_and_family.PDF> (accessed 3 October 2005). In particular, the Prime Minister drew attention to his government's workplace relations reforms, which he argued 'have worked to create more flexible workplaces, thereby helping women realise their workforce choices'.

A number of what can be termed 'family-hostile'¹⁹ workplace trends, including long hours for full-time workers, work intensification, casualisation and the price that is paid, overwhelmingly by women, in accessing part-time work, are also highlighted.

Part A then focuses in its second chapter on the gendered division of labour in unpaid domestic and caring work, predominantly child care. Drawing in the main on now rather outdated time use survey data,²⁰ this chapter provides a useful snapshot of not only the gendered division of family work, but also of the time pressures on women who engage in both 'market work' and 'family work'.²¹ The third chapter examines the implications of the current arrangements in paid and unpaid work for Australian families, public policy and the economy. It provides an overview of available data on the caring responsibilities assumed by carers other than parents, including for people with disabilities, the frail aged and grandchildren. The data summarised here lays out in sharp relief both the gendered nature of the provision of this care and the consequences for such caring responsibilities for participation in the paid workforce. This sets the groundwork for a discussion in Part B of both the reliance on unpaid care and the lack of value and recognition it is accorded.

Part B of the Discussion Paper canvasses the implications of the current arrangements for paid and unpaid work for Australian families, and for what is termed Australia's national interest. The first chapter in this section provides a snapshot of some of the available data on attitudes to paid work and family responsibilities. More recent shifts in such attitudes and aspirations, such as men and women believing housework and child care should be shared and fathers wanting to spend more time with their families, suggest some support for a more equal distribution of family work and market work. However, as is pointed out, such attitudes are at odds with the current gendered divisions of labour in the home and in the workplace. Some of the pressures on women and men which might frustrate the realisation of any aspirations for gender equality are then sketched out. These include the impact of long working hours, which can work to exaggerate the traditional male breadwinner model, or what has been referred to elsewhere as a 'highly gendered partial specialisation between men and women' of work and care.²² The impact of what Barbara Pocock has called the 'work/family collision'²³ on time pressures experienced by parents and carers, particularly women, on health and well-being, on children and on relationships is also canvassed. There is a useful linking of the gendered division of labour in both market work and family work to the post-separation consequences for men in sharing care for

19 I Campbell and S Charlesworth, *Background Report: Key Work and Family Trends in Australia*, Centre for Applied Social Research, RMIT University, Melbourne, 2003, p 41.

20 The last Australian Bureau of Statistics (ABS) time use survey was run in 1997. The ABS anticipates the conduct of a further time use survey in 2006.

21 J Williams, *Unbending Gender: Why Work and Family Conflict and What to Do About It*, Oxford University Press, New York, 2000, pp 2–3.

22 J Gornick and M Myers, *Families that Work: Policies for Reconciling Parenthood and Employment*, Russell Sage Foundation, New York, 2003, p 25.

23 B Pocock, *The Work/Life Collision: What Work is Doing to Australians and What To Do About It*, Federation Press, Sydney, 2003.

their children. It is argued that shared parenting after separation depends on whether shared parenting is in place prior to relationship breakdown and that the traditional pattern of unequal unpaid work responsibilities is reinforced in post-separation arrangements.²⁴

The second chapter in Part B examines the implications for Australia's broader national interest of the present gendered division of paid and unpaid work. It attempts to link Australia's economic prosperity to families 'being able to combine paid work with family responsibilities efficiently and sustainably'.²⁵ The effect of unpaid and paid work responsibilities on gender equality, both in constraining the choices women, and men, make about their lives and the short and long term economic consequences of our current gender regime for women is briefly but coherently set out. One of the most useful discussions in this chapter is the linking of a more gender equal distribution of paid work and care work with meeting the challenges of Australia's aging population and the three factors identified by the Treasurer that contribute to GDP growth — population, participation and productivity.²⁶ This is particularly important given the almost total disregard of the differential impacts of the aging workforce on women or of any potential benefits of increasing women's labour force participation in the Federal Government's Intergenerational Report.²⁷

Part C of the Discussion Paper then sketches out the current legal and regulatory framework relevant to the workplace as well as income support provided by the government, all of which provide a policy, and indeed a political context in which decisions about paid work and unpaid work take place. In the first chapter there is a short and useful critique of the limits of anti-discrimination law in respect to family responsibilities discrimination and the complaints process such legislation provides. The workplace relations framework is sketched out in the second chapter and a brief summary of several work and family cases under the Federal Workplace Relations Act 1996 provided. Focus is then shifted to workplace level policy, practices and barriers to work and family balance. This underpins an analysis of the 'business case' for work and family balance and on workplace culture as a driver for change. The influence of legislation on workplace culture is briefly noted and illustrated by a reference to the impact of the UK 'right to request' legislation.

The third chapter in Part C describes government support for working families, focusing in the main on income support arrangements. While referring to the role government policy plays in affecting how Australian families manage work and family, the analysis of the effect of government policies deals almost exclusively with the taxation effects of current income

24 *Striking the Balance*, above n 2, p 65.

25 *Ibid*, p 77.

26 *Ibid*, p 70.

27 Commonwealth Treasury, *Intergenerational Report 2002-03*, (Budget Paper No 5), Commonwealth of Australia, 14 May 2002. For a critique of the consequences of the gender blindness of this report, see *Australian Women Facing the Future: Is the Intergenerational Report Gender Neutral?* which reports the outcomes of an Academy of the Social Sciences in Australia sponsored workshop, held in Brisbane, 1-2 July 2004, available at <www.assa.edu.au/policy/papers/2004/future.pdf> (accessed 3 October 2005).

support arrangements on families and carers. The Federal Government's promotion of work family balance and family friendly arrangements through national best practice awards and various agencies is briefly outlined. The fourth and final chapter examines attitudes to work and family in Australia. It is argued that while legal, workplace and social policy frameworks significantly shape behaviour and attitudes, these frameworks and how they operate in practice are also the outcomes of social attitudes. The social attitudes discussed include changes to valuing unpaid caring and housework, changing attitudes to gender roles, including men's role in the work and family debate. The identification of a number of barriers to attitude change draws on recent Australian research around masculinity and masculinities. The paper provides a useful discussion of the social and gender constraints which can work to limit men's engagement with unpaid caring work, including a reference to Bob Connell's concept of the 'patriarchal dividend' — the benefit men as a group get from the current gender arrangements.²⁸ The chapter then concludes with a case for promoting attitudinal change including the positive aspects of caring and housework, supporting quality and equality in relationships and the benefits to men and women of sharing paid and unpaid work.

Part D draws the main themes of the Discussion Paper together and outlines possible courses of action in response to some of the barriers identified. It identifies several key issues that inform or underpin the work and family debate. The most crucial of these, it is argued, is the place of unpaid work:

Unpaid work is the linchpin of the work and family debate. The recurring problems of managing paid work and family will not be solved until issues of valuing, supporting and managing unpaid work are squarely faced and dealt with.²⁹

A number of possible goals for any changes to current work and family arrangements are outlined for comment by those making submissions. These goals include: a more equal distribution of unpaid work between women and men; a re-valuing of unpaid work as central to the economic and social aims of the nation; governments that provide adequate support for families to make real choices; and workplaces that are culturally and structurally flexible. Four possible areas for change are also outlined. These include legislative change, social policy change, cultural change in the workplace and attitudinal change. Options for social policy change centre on ways of addressing the income support disincentives to women and carers and providing greater assistance to families to access affordable quality child care and other care services. Possibilities for legislative change include changes to current family responsibilities provisions under the SDA and 'more or different workplace regulation such as amendments to workplace laws and regulations'.³⁰

Striking the Balance or Tipping the Scales?

The Discussion Paper makes an important contribution to the debate around balancing paid work and family and caring responsibilities in Australia. In

²⁸ R W Connell, *Gender, Polity*, Oxford, 2002, p 142, cited in *Striking the Balance*, above n 2, p 117.

²⁹ *Striking the Balance*, above n 2, p 126.

³⁰ *Ibid*, p 129.

particular, it canvasses the pressures of increasing care responsibilities on families, predominantly assumed by women. The paper shifts the 'figure and ground' of the work/family debate from the public sphere of the workplace to the private sphere of the family. Focus is also shifted from women's disadvantage in the labour market to the difficulties men in the paid workforce have in taking a larger role in unpaid caring or family work. The argument in the Discussion Paper that the family is a critical site for gender relations and gender (in)equality is a necessary and important corrective to an exclusive focus on the labour market and the workplace that dominates much discussion about gender inequality. But it is equally important that the baby is not thrown out with the bathwater!

The relative lack of weight given to women's inequality in paid work, and its relationship with gender inequality in the family, arguably narrows any options for change that might be considered. While gender inequality in paid work is addressed in various places throughout the paper, the strong focus on the cultural and workplace barriers to men taking on a more equal share of unpaid caring work risks downplaying the persistence of women's disadvantage in employment, the nexus between women's inequality at work and in the home, and the importance of workplace regulation. Unless the final report of the Striking the Balance project takes up these issues more comprehensively, the policy and strategic impact of this project will be limited.

The Discussion Paper rightly emphasises the significance of unpaid caring work and the breadth of its subject matter makes giving priority to certain issues inevitable. In my view however, not enough weight is given to the way in which unpaid work directly and indirectly subsidises the performance of paid work, and the employers and enterprises for which it is performed.³¹ The macro perspective adopted in Part B, particularly around some of the social benefits of unpaid caring work, is a useful antidote to more traditional economic assessments that overlook the contribution of such family work. However, one of the gaps in the analysis lies in its failure to link unpaid caring work with paid employment and to draw attention to the extent to which the economy depends on unpaid caring work to subsidise paid work.³² Rather curiously too, the lack of adequate access for many carers to affordable and quality child care and elder care services and to care for the disabled is only briefly noted in the Discussion Paper. Although the issue of child care is touched on, the importance of the provision of care services in shaping choices for families and for men and women is not developed. Nor is any link made between the provision of high quality caring services with improved remuneration and clear career structures for the workers who provide this care.³³

31 See J Conaghan, 'Women, Work and Family: A British Revolution?' in J Conaghan, R Fischl and K Klare (Eds), *Labour Law in an Era of Globalisation: Transformative practices and Possibilities*, Oxford University Press, Oxford, 2004, p 72.

32 As Kerry Rittich argues, the value of this unpaid work to employers has increased to the extent that they are no longer providing even limited compensation for unpaid work through family wages: K Rittich, 'Feminization and Contingency: Regulating the Stakes of Work for Women' in Conaghan et al, above n 31, p 128.

33 Work + Family Policy Roundtable, *Submission to House of Representatives Inquiry into*

The impact of enterprise level working conditions and government policies are seen as two of many possible constraints on the choices men and women exercise about balancing work and family. However, the lesser role accorded to the gendered arrangements in paid work in the Discussion Paper significantly underplays the nexus between gender inequality in family work and in market work. There are references in the paper to the discrimination women face in the workplace. And there is an illuminating example provided of the way in which the gender pay gap may lock men into the breadwinner model and their female partners into a part time paid worker/carer model.³⁴ However, there is little analysis of the gendered organisation of the labour market or of the ways that the gendered arrangements in the public and private spheres reflect and shape the other. Such analysis is crucially important. Any policy changes that would support a goal of a more equitable division of unpaid work are dependent on changes in paid work. While income support policy and adequate support for care services and carers are critical, it is employment policy and regulatory initiatives, such as the reduction or capping of long work hours, paid parental leave, including non-transferable parental leave entitlements for men, and support for employee time autonomy and flexibility, that can work to make a more gender equal division of family and caring work possible.³⁵

The focus on unpaid caring work and on the cultural and workplace barriers to men taking on a more equal share of unpaid caring work also risks downplaying the importance of workplace regulation. The more engaged critique found in Parts A and B of the Discussion Paper around the importance of paid work and unpaid work for Australian families is much more muted and cautious in the description of the relevant workplace relations framework in Part C. While there is a quick overview of research on the capacity of enterprise bargaining to deliver family friendly benefits, there is no summary evaluation of the extent to which the current regulatory framework might assist or frustrate better work/family balance, or indeed gender equality. Given HREOC's submissions to the AIRC Family Provisions test case,³⁶ which argued strongly for the insertion of family-friendly conditions in awards, it is perhaps surprising that the importance of awards in this respect is not addressed here.

Balancing Work and Family, available at <<http://www.aph.gov.au/house/committee/fhs/workandfamily/subs.htm>> (accessed 3 October 2005).

34 That is, where the male partner's income is higher, families are likely to make the economically rational decision to maximise household income after children are born. This in turn works to entrench 'families in an arrangement that exacerbates pay inequities and makes it difficult to break out of gendered stereotyping in future': *Striking the Balance*, above n 2, p 57.

35 See E Appelbaum, T Bailey, P Berg and A L Kalleberg, *Shared Work Valued Care: New Norms for Organizing Market Work and Unpaid Care Work*, Economic Policy Institute, Washington DC, 2002; and C Fagan, 'Gender and Working Time in Industrialised Countries' in J Messenger (Ed), *Working Time and Workers' Preferences in Industrialized Countries: Finding the Balance*, Routledge, London, 2004.

36 *Contentions of the Human Rights and Equal Opportunity Commission Work and Family Test Case*, 14 May 2004; *Submission of the Human Rights and Equal Opportunity Commission Work and Family Test Case*, 19 November 2004, available at <[http://www.e-airc.gov.au/familyprovisions/stories/storyReader\\$12](http://www.e-airc.gov.au/familyprovisions/stories/storyReader$12)> (accessed 3 October 2005).

Further, the consequences of the government's policy approach in delivering family friendly benefits at the workplace are not drawn out. There is no explicit connection made between the current regulatory framework and the poor coverage of family friendly provisions outlined in Part A. It would have also been useful to further explore the impact of Australia's current industrial relations system on workplace practice and no doubt some submissions in response to the Discussion Paper will take this issue up. The political and industrial relations context in which workplaces operate is dominated by the rhetoric of the market and by the increasing deregulation of employment conditions, including a reduction in the scope and importance of awards. At the workplace level this means that practical access to family friendly benefits, even where they may be formally available, depends increasingly on managerial discretion and support, rather than on generalised minimum standards or entitlements.³⁷

On the one hand, the careful description of the workplace relations system appears to fit comfortably within the government's policy agenda for market-based regulation of work and family.³⁸ It also works in places to deflect attention from the consequences of that agenda as seen in the assertion that the Federal Government 'participates in test cases before the AIRC to have input into the content of awards'.³⁹ This statement could be understood to imply the current government supports test cases that may lead to improved work and family provisions in awards. In fact, consistent with its market-based approach, the Federal Government opposed each and every one of the claims made by the ACTU in the recent Family Provisions test case before the AIRC,⁴⁰ as it did in the Parental Leave for Casual Employees test case.⁴¹ On the other hand, the approach in the Discussion Paper to the workplace relations system may have been strategic, designed to engender debate and submissions in response from industrial parties and academics. The problem is, however, it does not adequately inform others in the community who may also wish to make submissions to HREOC. Many will not have access to the critiques and evaluations of the workplace relations system in respect of work and family balance, particularly for those in low paid and precarious work, found in the literature and in evidence before the AIRC in the Family Provisions test case.

The policy goals of a more equal distribution of unpaid work between

37 On the workplace impact of industrial relations deregulation generally, see M Bray and P Waring, 'The Rise of Managerial Prerogative under the Howard Government', Paper for the *IR Changes Report Card*, University of Sydney Law School, 21 June 2005.

38 I note however that in a recent interview the Sex Discrimination Commissioner has expressed concern about the consequences, particularly for low-paid women with little bargaining power, of reliance on the market to achieve better work/family balance: L Taylor, 'Pru Goward's Taste for a Fight', *The Financial Review*, 16 July 2005.

39 *Striking the Balance*, above n 2, p 105.

40 *Final Commonwealth Submission: Family Provisions Case 2004*, 19 November 2004, available at <[http://www.e-airc.gov.au/familyprovisions/stories/storyReader\\$14](http://www.e-airc.gov.au/familyprovisions/stories/storyReader$14)> (accessed 3 October 2005). The only claims the Commonwealth did not oppose were those agreed between the ACTU and the employer groups in conciliation, which went to emergency leave for casual workers and increased access to carers leave from existing sick leave entitlements.

41 PR904631. See also R Watts, 'The ACTU's Response to the Growth in Long-term Casual Employment in Australia' (2001) 27(2) *Aust Bulletin of Labour* 144.

women and men and a re-valuing of unpaid work as central to the economic and social aims of the nation put forward in Part C are laudable. They could however be enhanced by an explicit reference to gender equality in paid work and, importantly, a more equal distribution of paid work and caring work between households and families.⁴² Indeed, a goal of ‘shared work/valued care’ — incorporating more employee control over working hours and scheduling, the availability of ‘decent’ paid work, the sharing of care work between men and women and with community and public institutions; and good-paying care jobs⁴³ — may better capture the goals of gender equality in paid and unpaid caring work. The other two suggested policy goals — including the provision of adequate support for families to make real choices and ensuring that workplaces are culturally and structurally flexible — however reflect a degree of uncertainty, employing as they do the much contested concepts of ‘choice’ and ‘flexibility’. This is well illustrated by the Federal Government’s assertion that the current work/family policy regime in Australia enhances both choice for families and flexible workplaces.⁴⁴

The examples given of possible amendments to workplace laws and regulations include the right to or right to request, part time work, or legislated paid maternity and paternity leave. Exactly what the first of these examples means is not explained. The HREOC submission to the AIRC Family Provisions test case provided extensive data on the UK model of the ‘right to request’ legislation.⁴⁵ However, any such detailed description or promotion is curiously absent here. Cultural change in the workplace is given somewhat greater weight with suggestions for further promotion and encouragement for workplace cultural change, including family friendly arrangements and government support for parenting programs for men in the workplace. However as noted above, cultural change at the workplace level cannot be sheered off from the political and regulatory context in which it takes place. Arguably efforts at cultural change will be very much dependent on the degree of management support for employees attempting to balance work and family and the ‘sense of entitlement’ that employees may feel in trying to negotiate some control over the quantum and scheduling of their working hours — and the extent of management support and sense of entitlement employees have is heavily influenced by the regulatory framework.

Likewise the success of the suggested options for attitudinal change more generally, which are focused on education, public campaigns, leadership and research, will depend very much on explicit political and policy support. Almost 15 years ago, following Australia’s 1991 ratification of ILO Convention 156, *The Convention Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family*

42 While it is critical that paid and unpaid work are valued equally and shared between men and women, it is also important to recognise that some households have more resources than others for care: see G Pascal and J Lewis, ‘Emerging Gender Regimes and Policies for Gender Equality in a Wider Europe’ (2004) 33(3) *Jnl of Social Policy* 373 at 378.

43 Appelbaum et al, above n 35, p viii.

44 See ‘Giving Australian Families Choice’, above n 18. See also *Final Commonwealth Submission: Family Provisions Case 2004*, above n 38.

45 *Submission of the Human Rights and Equal Opportunity Commission Work and Family Test Case*, above n 36.

Responsibilities, an education campaign was undertaken to encourage the sharing of domestic and paid work responsibilities by the Office of the Status of Women in its Sharing the Load campaign.⁴⁶ While social attitudes may have changed, the success of any similar campaign would be very much limited without clear and unambiguous Federal Government policy support for a broad policy goal of shared work and shared care.

The discussion of these areas for change highlights two related gaps in the Discussion Paper. The first of these is the failure to contextualise the work/care regime in Australia in cross-national perspective. Cross-national comparisons are important both for explanation and policy development. During the consultation and community debate around options for a paid maternity leave scheme, for example, it was Australia's position as one of only two OECD countries without such a scheme⁴⁷ that struck a cord with the community and commentators and also provided a context for options for a national scheme to be considered. In considering women, men, work and care, it would be useful to understand where Australia stands in cross national perspective in terms of the gender division of labour in both market work and family work and the consequences of such divisions.⁴⁸

A second gap is the absence of any comprehensive discussion of alternative national policy models of work and care. There is a brief reference to the work/care regime in Norway, where family policy is tied to a national gender equality policy of facilitating men's and women's equal participation in paid work, while also equally sharing care work and housework.⁴⁹ However it would be valuable to set out a number of other national work/care policy models so that readers could get both a sense of where Australia's work/care policy regime sits in relation to those of other countries and have some tangible policy options to consider. In the Interim Paper for the previous HREOC consultation around paid maternity leave, the provision of a number of clear models for a national maternity leave scheme⁵⁰ enabled those making submissions to focus on what they believed were the best elements of an appropriate scheme for Australia. An understanding that there are different ways of 'doing' work and care with different outcomes that reflect policy settings as much as cultural differences, would likewise provide the basis for a serious national conversation around women, men, work and family.

Concluding Comments

The Striking the Balance Discussion Paper has been released at a time when profound changes have been mooted by the Federal Government both to

46 Office of Status of Women, *Working families — sharing the load: an issues kit for Workers with Family Responsibilities Program*, Commonwealth of Australia, 1991.

47 Detailed in *Valuing Parenthood*, above n 10, Ch 4.

48 See, eg, Gornick and Myers, above n 22, pp 58–83, which employs cross national comparisons between the United States and Canada, Germany, Sweden and the United Kingdom. G Whitehouse and A Hosking, 'Policy frameworks and parental employment: A comparison of Australia, the United States and the United Kingdom', refereed paper presented to the *Transitions & Risk: New Directions in Social Policy Conference*, Centre for Public Policy, University of Melbourne, 23–25 February, 2005, which highlights Australia's relatively poorer maternal employment rates.

49 *Striking the Balance*, above n 2, pp 120–1.

50 See *Valuing Parenthood*, above n 10, Ch 12.

workplace regulation and to income support arrangements, which for the most part affect sole parents. The industrial relations changes in particular threaten to undermine the already porous workplace relations system in providing support for work and family balance. This potential has been pointed out in the fierce debate around the likely legislative changes. To date, this has had apparently little impact on the Federal Government. Indeed the Federal Minister for Employment and Workplace Relations, employing the rhetoric of choice and flexibility, recently insisted that women returning to work from maternity leave could 'talk to employers and bargain and say these are the conditions and hours I would like'.⁵¹ Much of the data and research assembled in the Discussion Paper could be used to present cogent reasons for more rather than less workplace regulation. However, the relatively lesser weight given to the workplace could work to skew the national conversation the Discussion Paper seeks to engender away from paid work as a critical site of gender inequality. Further, the focus in the paper on unpaid caring work as the underpinning of gender inequality in the workplace runs the risk of providing both the government and employers with an excuse to shift the work/family debate away from the workplace, and indeed from regulation of the workplace, as a crucial site of policy intervention.

As with the earlier reviews and inquiries of Federal Sex Discrimination Commissioners, practical outcomes and action are limited by the historical and policy context in which they take place and by the political responses to them. The Federal Government rejected many of the recommendations of the Pregnancy and Work Inquiry and despite considerable community support, the HREOC proposal for a paid maternity leave scheme was taken up by neither the Federal Coalition Government nor the Labor Opposition.⁵² Nevertheless, discussions and consultation that take place around such inquiries and reviews have a more diffuse but none the less important effect. The increase in pregnancy and 'motherhood' related complaints under State and federal anti-discrimination legislation following the HREOC Pregnancy and Work Inquiry, and the community debate and some increase in enterprise provision of paid maternity leave that followed HREOC's proposal for a national paid maternity leave scheme are testament to that. It is to be hoped that the Striking the Balance project will promote similar community awareness about the deficiencies of the current work/care regime we have in Australia and an energetic debate about the sort of work/care regime we want in the future.

51 A Horin, 'Its time to share the load, but the formula does not add up', *Sydney Morning Herald*, 23 June 2005.

52 The Federal Government instead introduced a 'maternity payment' paid as a universal lump sum for each new born child from July 2004. This payment is a welfare payment, no doubt of great assistance to families in meeting the costs of a new baby. It is not, however, paid maternity leave intended to encourage women's on-going attachment to the paid workforce, nor is it intended to compensate working women for income forgone as a result of childbirth: see L Raffin, this issue, and M Baird, 'Orientations to Paid Maternity Leave: Understanding the Australian Debate' (2004) 46(3) *Jnl of Industrial Relations* 259 at 265.