A right to flexible work - why a strong legislative standard is required to provide for quality, permanent part time work in Australia

As a result of qualitative research, the paper proposes that the features of the Netherlands model, *The Adaptation of Working Time Act* (Netherlands, 2000) is a suitable legislative framework for providing a right to permanent part time work, via a universal right to adaptable working hours, with further adaptations to suit the Australian industrial context.

Quality, permanent part time work is necessary. Research has shown that 71 per cent of part time jobs are filled by women (Smith, 2005), and part time work has been examined as a means by which women with caring responsibilities can participate in the workforce (Charlesworth, 2005; Pocock, 2003). Yet only a small percentage of Australian employees have access to permanent part time work, by making a request or applying for permanent part time work (DEWR, 2003). The majority of current part time work is employer initiated, poorly paid and casual (Smith, 2005; Watson 2005).

Enterprise Bargaining will not provide the majority of Australian employees with rights to flexible working provisions. In bargaining, employers will pit workers with caring responsibilities against those without (Baird, 2004); and Pocock has concluded that the rare provision of quality permanent part time work and other substantive employment conditions in enterprise agreements are: '...islands of enterprise-based exemplary good practice, afloat in a sea of poor provision.' (Pocock, 2003) Legislation is required to ensure workplaces structurally accommodate part time work (Burri et al., 2003).

Without a strong legislative framework to provide for employee access to quality, permanent part time work, most Australians will not have this option. Even where these provisions have been regulated by awards, they have been weakened through subsequent enterprise bargaining, as the case study of Centrelink will illustrate. This paper will trace the erosion of part time work provisions arising from the *ACOA and Public Service Board and Others Permanent Part Time Award* 1986 and a qualitative analysis of successive Enterprise Agreements until 2009.

The contested nature of part time work requires the introduction of a legislative standard to assist in shaping a new norm of flexible working hours. In cases of award simplification, unions have fought to keep provisions which gave employees access to part time work (*Australian Public Service Award* 1998); job share arrangements (*Australian Municipal, Administrative, Clerical and Services Union and Qantas Airways Limited*, 2000); and equitable career progression (*Australian Liquor, Hospitality, and Miscellaneous Workers Union, Child Care Industry/Children's Services Award*, 2005; *Australian Municipal, Administrative, Clerical and Services Union, Queensland Local Government Officers' Award,* 2005). Disputes regarding Enterprise Agreement provisions (*Community and Public Sector Union and CSL Limited* C2002/2562) and court cases in the last decade (*Hickie v Hunt* (1998) onwards) further illustrate the firm resistance to part time work by employers, which requires a strong legislative framework to overcome. Campbell and Charlesworth have noted that the recognition of employer resistance was a reason for the strong legislative provisions introduced in Germany (2008).

The Government's proposed National Employment Standard (NES, Section 13, 1) providing some employees with the right to request flexible work, has been criticised by a number of experienced researchers and organisations (Baird, Charlesworth, Whitehouse; Buchanan, Campbell, van Wanrooy; Bamberry, Campbell and Charlesworth; Elton and Pocock; Peetz; HREOC; Unions NSW). The proposed standard does not provide Australian employees with access to quality, permanent part time work.

Murray has noted that, 'Internationally, significant changes have occurred in relation to the extent to which law is used to assist workers adapt their working lives to the requirements of their care responsibilities' (Murray, 2005). More recently, Campbell and Charlesworth have examined features of the Dutch, German and UK models (2008), which could be used to strengthen and improve the proposed National Employment Standard. This paper will assert that the best of these

legislative schemes is the Netherlands model, which has ‘broken free from a focus on traditional family responsibilities’ (Murray, 2005) and provides a universal right to flexible work. In the words of a permanent part time worker: ‘Universality is the key’ (Wells, 2005).

Adaptation of this model is needed for the Australian industrial context. Given that a growing number of Australian employees are employed casually (OECD, 2002), and Campbell and Charlesworth have noted ‘...over 60 per cent of all part time employees are also casual...’(2005); a consideration in introducing this legislative framework would be to provide access to casual employees after a suitable qualifying period (Campbell and Charlesworth, 2008). HREOC has noted that the UK legislative scheme has had little or no impact upon employees working long hours (HREOC, 2007). The right to adaptable working hours needs to be universal, within a legislative scheme which effectively limits working hours each week, with no ability for employees or employers to opt out of this scheme (Campbell, 2005).