

WorkChoices and Family Friendly Working Hours

by

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Women in Social and Economic Research

Women in Social and Economic Research (WiSER) is a research program that spans two divisions of Curtin University: the Curtin Business School (CBS) and the Division of Humanities. WiSER was founded in April 1999 in response to a growing void, both within the Australian and international contexts, in the gendered analysis of the economic and social policy issues that confront women. As such, WiSER is committed to producing high quality quantitative and qualitative research on a broad range of issues which women identify as impeding their ability to achieve equity and autonomy. The gender perspective generated through the work of WiSER has provided a number of key opportunities to inform the policy debates within numerous government departments. WiSER seeks to further its commitment to providing a meaningful gender analysis of policy through pursuing further research opportunities which focus on women's experiences of social and economic policies within the Australian context. The broad objectives of WiSER include:

- To identify the cases and causes of women's disadvantaged social and economic status and to contribute to appropriate policy initiatives to address this disadvantage;
- To demonstrate the way in which social factors, particularly gender, influence the construction of economic theory and policy;
- To extend current theory and research by placing women and their social context at the centre of analysis;
- To contribute an interdisciplinary approach to the understanding of women's position in society. In turn, this should enable the unit to better reflect the interrelatedness of the social, economic and political discourses in policy and their consequent implications for women;
- To foster feminist research both nationally and internationally;
- To expand linkages with industry;
- To establish and support a thriving Curtin University of Technology post-graduate research community with a common interest in feminist scholarship.

ABSTRACT

When the Australian Federal Government introduced the WorkChoices legislation in 2006, one of its stated aims was to facilitate the negotiation of “family friendly” employment arrangements. This paper assesses our capacity to achieve an accurate picture of “family friendly” arrangements in the new regulatory regime and examines the adequacy of publicly available indicators of women’s employment status. We focus specifically on the capacity of current data to monitor “family friendly” employment arrangements in the form of flexible working hours and find that while there are a range of potential indicators, few will give a complete assessment of how women are faring.

We conclude that there is ample capacity to reduce the fragmentation of currently available information and to increase the regulatory with which it is collected. There is also a need for additional research to determine the indicators that might be most relevant to women in vulnerable positions in the workforce.

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I Introduction

In May 2006, the Workplace Relations Amendment (Work Choices) Bill 2005 introduced significant changes the operation of the Workplace Relations Act 1996.

The Government's stated goal for the new regulations is:

...to create a more flexible, simpler and fairer system of workplace relations for Australia. The Bill will carry forward the evolution of Australia's workplace relations system to improve productivity, increase wages, balance work and family life, and reduce unemployment (The Parliament of the Commonwealth of Australia, 2004/05).

However in further explaining the rationale and operation of the new regulatory regime, the issue of balancing work and family life has received some priority:

...workplace relations reforms are designed to achieve the right balance between paid work and family responsibilities by building on and enhancing the protections and flexibilities already provided to Australian workers with family responsibilities. WorkChoices will provide greater flexibility and make it simpler to negotiate family-friendly working arrangements (Australian Government, 2006b A New Workplace Relations System p.10)

Bargaining at the workplace level is particularly suited to tailoring working arrangements in ways that assist employees to balance work and family responsibilities (Australian Government, 2006a, WorkChoices and Australian families).

In this paper we are focusing specifically on the claim that the new regulations may assist employees to better meet and appropriately balance both their paid and unpaid responsibilities. We see this as particularly relevant to women's workforce experiences because it has been traditional in Australia for many women to dramatically alter their pattern of workforce participation when they have children. In general terms, Australian women's caring responsibilities are associated with part time work, lower rates of earnings and relatively slow career progression. However, the issue is not relevant to women's employment only. As emphasised by the Human Rights and Equal Opportunity Commission, the need to balance paid work and family

responsibilities is “about giving men and women the choices they need to balance their caring responsibilities” (HREOC 2007: ix).

In these circumstances, the claim that the new workplace regulations can facilitate a more favourable approach to combining work and family is one that warrants attention. However, how are we to assess whether these measures are contributing to favourable outcomes for women? In this paper we examine the community’s capacity to access the data that is necessary for monitoring developments in “family friendly”, flexible working arrangements under the new regulations.

2 Defining and Measuring Family Friendly Working Arrangements

One of the challenges that arises when attempting to assess the effects of changing working arrangements is defining the term “family friendly”. It appears to mean different things in different contexts and it is not clear why, for example, relatively high wages are rarely discussed as a “family friendly” measure. The Human Rights and Equal Opportunity Commission, drawing on OECD definitions, describes “family friendly” policies as those that:

- facilitate the reconciliation of work and family life through adequate family and child development resources;
- facilitate parental and other carers’ choice about work and care; and
- promote gender equality in employment opportunities. (HREOC 2007: 74)

Largely based on recognition of the second point above, “family friendly” employment measures are often associated with two broad groups of indicators. The first group of indicators are those relevant to the arrangements of men’s and women’s regular working hours, such as flexible starting and finishing times,

negotiated hours and flexi time. The second group are entitlements which deal with access to specific forms of leave such as maternity leave, parental leave or access to leave to meet family responsibilities (say, accessing sick leave to look after a child).

However, even when this more restricted approach is adopted, there are challenges to be addressed. When estimates of earnings are used as indicators of employment conditions, their meaning is usually clear: there is little question about assuming higher wages are beneficial to employees. In comparison, the relationship between time spent at work and in unpaid duties is relatively complex. Preferences for various types of working arrangements vary between people and households. It is challenging to identify clear indicators to act as proxy measures for concepts such as “family friendly” or “flexibility”. The challenges of adequately defining such terms can be illustrated by reference to the following example.

The Australian Bureau of Statistics has undertaken surveys asking respondents whether their start and finishing times at work are “fixed” or variable. Without a contextual framework, however, it is difficult to know, a priori, which arrangement is preferable. Variable start and finishing times may be beneficial for employees who can exercise discretion over their working times: for example, to vary work times so that they can assist children to engage in extracurricular activities after school. For others, fixed working times and a regular number of paid hours might be required to plan child-care arrangements and household budgets. In such cases, requests from employers for employees to vary start and finishing times may result in significant difficulties. The important feature, from an employee’s point of view, is the extent to which discretion which can be exercised while also meeting workplace requirements,

rather than the existence of fixed or variable start and finish times. The specific definitions attached to the term “variable” is therefore important in interpreting the extent to which women’s preferred patterns of work are facilitated. The ABS uses the term “variable” working times to indicate that a degree of discretion is available on the part of the employee. It is a detail that is worth considering if/when other sources of data are being used.

One of the first difficulties in monitoring the effects of new workplace regulations is, therefore, a commonly understood definition of measures that are “family friendly” or the contexts in which different “family friendly” arrangements are beneficial to women’s social and economic status.

3 Focusing on family friendly arrangements of working hours

Despite the difficulties of developing a working definition of “family friendly” working arrangements that is appropriate in different contexts, there are data that indicate that the arrangement of working hours is particularly important. The strong relationship between women’s unpaid household responsibilities and their patterns of workforce participation is indicated most clearly by the relatively common pattern of undertaking part-time work following the birth of a child. The recognition of the importance of patterns of paid and unpaid work forms the base of a range of theoretical and empirical studies of women’s workforce participation, ranging from human capital theory to surveys of time use.

The close alignment of working arrangements with child-care for parents engaged in paid employment is indicated by estimates from ABS Child Care Survey (Catalogue 4402.0). Two tables from that publication are reproduced below as Tables 1 and 2.

Table 1 shows that using work arrangements as a child care strategy has become relatively more common during the past decade. Table 2 shows that it is relatively common for parents to use work arrangements as part of their approach to providing child care.

Table 1: Families with Children aged 0-12 years with at least one parent employed – Work arrangements used to care for child March 1996- June 2005

	March 1996 %	June 1999 %	June 2002 %	June 2005 %
	Families with employed father			
Families where father used work arrangements	26.1	26.7	30.0	34.0
	Families with employed mother			
Families where mother used work arrangements	68.7	67.8	70.4	74.3
	All families with at least one parent employed			
Working arrangements used by either parent	52.3	52.9	56.2	61.3

Source: Australian Bureau of Statistics (2006a) Child Care Australia 4402.0:46, Table 30

Table 2: Families with Children aged 0-12 years with at least one parent employed – Work arrangements used to care for child June 2005

	Couple families %	One parent families %	All families %
Families with employed father			
Work arrangements used by father			
Flexible working hours	24.2	52.6	24.7
Permanent part-time work	2.7	*15.1	2.9
Shiftwork	6.0	*8.2	6.0
Work at home	8.6	*17.5	8.7
Other (includes job sharing)	2.4	*5.0	2.5
Families with employed mother			
Working arrangements used by mother			
Flexible working hours	43.7	42.9	43.6
Permanent part-time work	35.1	36.5	35.3
Shiftwork	8.1	7.9	8.0
Work at home	18.4	9.2	17.2
Job sharing	3.9	3.4	3.8
Other	2.4	*2.8	2.5
All families with at least one parent employed			
Working arrangements used by either parent			
Flexible working hours	40.8	44.4	41.2
Permanent part-time work	24.4	33.6	25.3
Shiftwork	9.8	8.0	9.6
Work at home	16.7	10.4	16.1
Job sharing	3.0	3.0	3.0
Other	2.8	3.0	2.8

Source: Australian Bureau of Statistics (2006a) Child Care Australia 4402.0:38, Table 23.

Note: * indicates relatively standard error of 25-50 per cent, these estimates should be treated with caution.

The following discussion is based on the premise that, aside from part-time work, flexible working hours are a key method through which women find a way to meet their work and household responsibilities. In order to examine the availability of data to monitor change in this area, we focus specifically on the issue of flexible start and finishing times.

4 Australian information on flexible working arrangements

At a national level, there are two key sources of publicly available information about flexible working arrangements: The Australian Bureau of Statistics and the Office of the Employment Advocate. Estimates from ABS Catalogue 6342.0, reproduced in Table 3 below, indicate that, at an aggregate level, women are less likely than men to have variable start and finishing times at work. This appears to vary little according to whether employees are working on a full-time or a part-time basis, with approximately 70 per cent of women having fixed start and finishing times.

Table 3: Selected estimates of employees with fixed and variable start and finish times: Employees in main job, male and female, part-time and full-time employees

	Part-time		Full-time	
	Male	Female	Male	Female
	% of part time males	% of part time females	% of full time males	% of full time females
Start/finish time not fixed	37.5	30.3	37.3	29.1
Start/finish time fixed	62.5	69.7	62.7	70.9
	% of pt males with fixed times	% of pt females with fixed times	% of ft males with fixed times	% of ft females with fixed times
Fixed start/finish times negotiated with employer	23.9	33.9	22.1	22.8
Fixed start/finish times not negotiated with employer	76.1	66.1	77.9	77.2
	% of pt males with variable times	% of pt females with variable times	% of ft males with variable times	% of ft females with variable times
Start/finish time variable daily	55.2	58.8	68.9	69.0
Start/finish times not variable daily	44.8	41.2	31.1	31.0

Source: Australian Bureau of Statistics (2004c) Working Arrangements 6342.0

Negotiated, but fixed, start and finish times are another indication of whether men and women have been able to arrange preferred working times. As shown in Table

3, about two-thirds to three quarters of employees do not negotiate with their employer on this matter. However, female part-time employees appear to be more likely to negotiate their start and finish times than other groups, with approximately one third of female part-timers negotiating these arrangements with their employer. Again, however, this tells us relatively little about the preferences of employees who do not negotiate on this issue: was little negotiation required because working hours were already suited to their requirements? Further, for those who did negotiate their start and finish times, did their final arrangements match their preferred working hours?

Perhaps the largest degree of discretion over working hours lies with those who can vary their start and finish times on a daily basis. Estimates in Table 2 show that of the proportion of employees with variable start and finish times, the majority have discretion to vary those times on a daily basis. Again such estimates are open to varying interpretation but it would appear that while only 30.3 per cent of part-time and 29.1 per cent of full-time female employees can vary their hours, up to 69 per cent of these employees can vary their arrangements on a regular basis. At an aggregate level, this means that approximately 18 percent of part-time and 21 per cent of full-time female employees can regularly exercise some discretion over their start and finish times. Slightly higher estimates apply to men: 21 per cent of part-timers and 26 per cent of full-timers responded that they could vary their times on a daily basis.

Another relatively common form of flexible workplace arrangements is the capacity to work extra hours on one day at work in order to work fewer hours on another

day. ABS data provide some indication of the prevalence of this type of arrangement through estimates of the number of females and males, with varying characteristics, who are able, or not able, to work extra hours in order to take time off.

In general terms, about 41.3 per cent of the workforce can access this type of arrangement. However, for those working in clerical, sales, service or labouring occupations access is generally available to between 27.2 and 31.5 per cent of employees. In general terms, patterns of access to “flexi days” or “time off in lieu” are broadly similar to those outlined above with respect to start and finish times. Older employees have greater access to this provision, males have slightly more access than females and employees in a couple relationship have slightly more access than lone parents with dependents. There is little clear indication that access to this provision reflects varying needs. Instead the differences appear to be associated with the negotiating or bargaining capacity associated with greater workforce experience, being male and having a partner with whom responsibilities or income might be shared.

While the ABS produces extensive information about access to flexible working hours, the survey referred to above has been conducted three times at three yearly intervals (1997, 2000 and 2003). The estimates referred to above are from 2003 and the ABS website does not indicate future plans for the survey. Further, the data were not collected with the new workplace regulations in mind and do not provide insights into whether flexible working hours are more or less prevalent under different forms of employment contract, for example, Australian Workplace Agreements compared with awards.

The Office of the Employment Advocate is required by legislation to present biennial reports to Parliament on the operation of workplace agreements. The analysis and reporting function is fulfilled jointly by the Department of Workplace Relations and the Office of the Employment. The relevant reports can be found on: www.workplace.gov.au. These reports contain some information on the prevalence of flexible working arrangements under collective agreements and AWAs.

However, while information is reported separately for certified agreements and Australian Workplace Agreements, each section uses different formats and categorisations and this makes it difficult to compare information across the different types of agreements.

5 Certified Collective Agreements

The information provided by DEWR about working arrangements is relatively comprehensive. In Table 4 below, estimates of the prevalence of different working hour arrangements have been brought together from two different sections of their reports for purposes of comparison. Table 4 shows changes in working arrangements between the two reporting periods of 2000-01 and 2002-03, as well as working arrangements covering female employees in 2002-03.

Interpreting these figures presents challenges. For example, the absence of restrictions on the days for working ordinary time hours and the averaging of working hours over an extended period are discussed favourably as signs of flexibility. However, it is possible that such provisions might operate to reduce

penalty or overtime payments and that the extent to which they are perceived as favourable may vary between employees. Similarly, it appears that there was a marked increase in the incidence of time off in lieu for working on rostered days off (from 9 to 26 per cent), although the extent to which this is an improvement in conditions is unclear.

The interpretation of these provisions becomes particularly important if there is an interest in monitoring future changes in women's working conditions. As the column for female employee coverage demonstrates, there are significant differences in the prevalence of some provisions among male and female employees. In particular, female employees are much more likely to have provisions that contain no restrictions on the days that can be worked or that allow ordinary hours to be averaged over an extended period.

Table 4 Hours of Work Provisions in Collective Agreements, 2000-01 and 2002-03

Provision	% of Collective Agreements		
	2000-01	2002-03	2002-03
	All employees %	All employees %	Female employees %
Span of ordinary hours and how they are worked			
Average weekly hours *	38.1 hrs	37.4 hrs	
Specified weekly hours	51	70	73
Make-up time	7	5	29
Time in lieu at ordinary rates	11	11	32
Time off in lieu at penalty rates	6	4	32
No restrictions on days to perform ordinary hours	11	12	42
Ordinary hours of work may be averaged over and extended period**	4	9	29
Compressed week	2	2	6
Hours of work decided by employee majority	8	5	3
Hours of work may be negotiated	12	6	18
Hours of work may be varied by employer in consultation with employee	6	7	10
Management may alter hours	3	2	9
Flexible starting and finishing times for ordinary hours of work	3	4	14
Flexitime	3	2	16
Shifts and rostered days off			
12-hour shifts	8	8	15
Rostered days off may be banked/accrued	40	45	11
Rostered days off maybe varied by mutual agreement	40	38	5
Time off in lieu maybe granted for working on a rostered day off	9	26	3
Public holidays may be taken on another day by mutual arrangement	9	7	18
Breaks			
Staggered breaks	14	8	4
Breaks not to interrupt continuity of work	10	5	4
Management may alter break	3	2	6

Source: DEWR & OEA (2004):54 and 70

Notes: * These figures refer to number of hours not percentage figures.

** An 'extended period' in this provision usually means a period longer than a month.

While the OEA provides information on working hours provisions under AWAs, it does this in a very different format to that used above. It presents a two part analysis. Firstly, it uses the results from a survey to compare levels of satisfaction between AWA employees and those with collective agreements. There are three paragraphs relevant to the arrangement of employees' hours of work, reproduced in entirety below.

Overall, AWA employees reported higher levels of satisfaction with their hours than collective employees (68 percent compared with 65 per cent). They were also more satisfied with their level of control over hours than collective employees (52 per cent compared with 49 per cent).... Similar proportions of AWA and collective employees felt they had, as a minimum, some influence over start and finish times (62 per cent compared with 61 per cent). AWA employees, however, were more likely to report that their influence over start and finish times had increased in the two years prior to being surveyed (25 per cent compared with 19 per cent)... Forty-five per cent of collective employees reported that balancing work and family life had become harder in the past two years, compared with 39 per cent of AWA employees. Collective employees were also less likely than AWA employees to report that balancing work and family life had become easier in this period (19 per cent compared with 20 per cent). (DEWR & OEA, 2004:85-86)

The second part of the OEA's analysis of AWAs presents information on the contents of a sample of 250 AWAs. From this sample, two key tables relating to the arrangement of working hours are produced and these are included below as Tables 5 and 6.

Table 5: OEA Reporting of Incidence of hours of work provisions in AWAs, 2002-03

Provision	% of AWAs
Ordinary weekly hours	36
Span of hours	33
Limit on hours worked	15
Ordinary work days	44
Variation to working hours	33
Averaging of working hours	26
Shift types and hours	10

Source: DEWR & OEA (2004):92, Table 3.2.7

Table 6: OEA Reporting of daily span of hours provisions in AWAs, 2002-03

Daily span	% of AWAs
Less than 8 hours	1
8-10 hours	21
10.5-12 hours	34
12.5-15 hours	20
16 or more hours	24

Source: DEWR & OEA (2004):92, Table 3.2.8

The format used for presenting information relies on the prevalence of particular provisions and is relatively informative about hours of work arrangements. For example, it is interesting to note that just 36 per cent of AWAs contain provisions relating to ordinary weekly hours and 44 per cent on ordinary work days. In the accompanying text, it is noted that “in 96 per cent of AWAs with an ordinary weekly hours provision, ordinary weekly hours were specified as 40 hours or less” (DEWR & OEA, 2004:62) Presumably this means that 4 per cent of AWAs had ordinary hours in excess of 40 hours per week. Such detail within the report’s text provides an indication that there is, perhaps, significant extra information that is not presented in a standardised format covering the complete sample of AWAs. For example, there are comments on the daily span of hours in different industries but no table used to present such information in a similar format as, for example, the ABS and DEWR tables that use industry classifications to present comprehensive estimates.

Another example relates to comments on the average of work hours. It is noted that of the 26 per cent of AWAs that contain an averaging provision, 76 per cent average hours over a 1-4 week period, while 15 per cent average ordinary hours over 52 weeks. Such commentary indicates that there may be scope to extend the degree of detail about working hours that is systematically reported in the

DEWR/OEA report if, as expected, the incidence and significance of AWAs as a form of employment contract expands.

Despite the potential for extending reporting on this subject, this section of the report provides information which is difficult to access from other sources. This is particularly the case with the information about the percentage of AWAs with different daily spans of working hours, ranging from less than 8 to more than 16 (Table 6). Such information may provide useful indicators of the types of working arrangements that are introduced if AWA coverage expands through workplaces.

The above report is only produced every two years. The last report for 2002/03 was published in 2004 and it could be reasonably expected that the report for 2004/05 will appear later this year. This means, however, that a report for the period covering the introduction of the new workplace regulations will not be available until 2008.

Other potential sources of information include state based surveys of workplace relations (see for example, Watson, 2005) and a longitudinal data set known as the Household Income and Labour Dynamics, Australia (HILDA). The first surveys have the disadvantage of being state based rather than national. In addition, future plans to repeat the surveys are uncertain. The HILDA data is likely to prove interesting. However, it currently contains no questions about respondents' type of employment contract. Further, it is released as a data set to registered researchers. It is not used as the basis of regular publications such as those produced by the ABS that can be readily accessed by the broader community.

6 Conclusion

While the stated goals of the new workplace regulations are improved flexibility, simplicity and fairness, these are issues that are not readily monitored through the use of existing quantitative indicators. Programs of case study and interview-based research are required to develop working definitions of flexibility, simplicity and fairness that reflect the perceptions and needs of a diverse range of employers and employees. It is likely that these issues will have different meanings for different groups within the workplace regulation system. An improved understanding of these issues is required for assessing the extent to which the new workplace regulations are meeting their goals.

Further, there is considerable scope to improve the availability of more detailed information from existing data collections, particularly from the Office of the Employment Advocate. As a central point for the lodgement of all AWAs, the OEA could act as a valuable source of information on the negotiation of new family friendly working arrangements and the way in which they are distributed through the community of AWA employees.

The designation of some employment provisions as “family friendly” is in particular need of a commonly understood working definition for the purpose of comparing conditions of employment between jurisdictions and forms of employment contract. The term is widely used but encompasses varying conditions of employment. For example, it is unclear why relatively favourable wage rates are rarely discussed as a

family friendly provision. This might be addressed through a combination of literature review and qualitative data collection and analysis.

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