

# HAS ENTERPRISE BARGAINING IN THE AUSTRALIAN RETAIL INDUSTRY DELIVERED ITS PROMISE OF FAMILY FRIENDLY WORKING CONDITIONS?

Dennis Mortimer  
University of Western Sydney

Brian O'Neill  
University of Western Sydney

Keri Spooner  
University of Technology Sydney

## INTRODUCTION

Enterprise bargaining is an important mechanism for achieving work-family working conditions in the Australian context. Some form of enterprise based bargaining has been present in this country at least since the early 1800's and the formation of functioning trade unions, but its establishment as the dominant source of determining wages and working conditions took place by increments over the period from the late 1980's until the present time. Similarly, concerns about the implications of working conditions for managing family responsibilities is evident in the writings of Charles Dickens and influenced the Harvester Judgment of 1908 in which a basic wage was set for Australian workers, yet the issue was not placed firmly on the public agenda until the early 1980's with the ratification of the International Labour Organisation's (ILO) Convention Number 156, *Workers with Family Responsibilities 1981*. Since the 1980's and up until the present, work-family issues have continued to gain prominence in legislation, public policy and community discussion.

Enterprise bargaining and family-friendly working conditions are not mere common travellers but rather share a degree of inter-dependency. The rationale for the introduction of enterprise bargaining was based in part upon its offer of delivering working conditions more attuned to the needs of workers, the issues are linked in relevant legislation and, in theory at least, the success of bargaining arrangements must be dependent upon workers achieving their goals which are likely to include non-work and family considerations. A number of studies demonstrate that although enterprise bargaining has been associated with the establishment of work-family practices, the form and extent of these varies considerably.

The purpose of this paper is to assess the extent to which enterprise bargaining might have facilitated the establishment of work-family employment conditions in the Australian retail industry. In 2002-03, the retail trade industry employed the greatest number of people of all industries (1.4 million employed persons or 15.3% of total employment) and, women make up 51% of all retail industry employees, representing 18% of all female workers in Australia (Australian Bureau of Statistics (ABS), 2005). The Shop Distributive and Allied Employees Association (SDA) represents most employees in the retail industry and is the largest trade union in Australia, with over 230,000 members. Its largest membership is in the New South Wales (NSW) branch, which includes the Australian Capital Territory (ACT), and exceeds 67,000. The SDA is a party to both, the major award covering retail employees in NSW, the Shop Employees (State) Award, as well as registered enterprise agreements covering shop assistants.

With the establishment of the Conciliation and Arbitration system in Australia in the early 1900's, a centralised system of award determination presided over by members of the industrial tribunals came to dominate the setting of wages and conditions of employment for most Australian workers. By the mid-1980's however, in response to economic pressures and the emergence of a dominant economic rationalist ideology and in pursuit of improved national macroeconomic performance, government policy shifted in favour of decentralizing employment relations towards the workplace (Dabscheck, 1995:44; Morris, 1999:7-8; Sullivan, Strachan, & Burgess, 2003:161). "From award restructuring in the 1980's through

to the 1996 Workplace Relations Act, the goal of greater productivity has dominated the workplace and called into being continuous reforms” (Morris, 1999:3). Although enterprise bargaining has been encouraged by legislation in Australia since the late 1980’s, it continued to operate alongside the more traditional, although altered, award system. Until the late 1990’s, enterprise bargaining to some extent continued to operate in the shadow of the award system, with awards providing a comprehensive set of enforceable working conditions and enterprise bargaining predominantly modifying or supplementing award conditions. From 1996, this balance shifted in favour of a dominance by enterprise bargaining as government legislated first to reduce the power of the Industrial Relations Commission (IRC) and the ‘allowable matters’ to be covered in awards and then in 2005-6 to remove most of the IRC’s remaining powers (Workplace Relations Act 1996; Workplace Relations Amendment (Work Choices) Act 2005). Up to the present time, both federal and State systems of industrial regulation have co-existed in Australia, with awards and enterprise agreements determined in different jurisdictions often operating within the same industry. Under the federal government’s *WorkChoices* legislation (2005), the role of the various State tribunals will be significantly eroded, with most authority over industrial relations activity and regulation shifting to the federal jurisdiction.

The paper begins with a consideration of the nature of the relationship between enterprise bargaining and work-family conditions including historical arguments and current legislation. From this discussion, insights are gleaned as to the meanings attached to the notion of work-family conditions in the Australian context. These understandings are then augmented through a discussion of the literature concerning family-friendly working conditions and several work-family indicators are identified. These indicators or different types of provisions are evaluated according to their legislative base (mandatory or optional) and their effect in terms of other employment conditions (substitutionary or additional). A content analysis of the NSW Shop Employees (State) Award and twenty federally registered retail industry enterprise agreements is then undertaken to identify the frequency and ranking of work-family clauses. A comparison of the Award and enterprise bargaining provisions, as well as a comparison of the entitlements provided by industry sub-sectors in their agreements, provides the basis for drawing some conclusions about whether or not enterprise bargaining in Australia has assisted employees in balancing their work and family commitments.

### **Relationship between enterprise bargaining and work-family conditions**

Whilst the push for enterprise bargaining in Australia was motivated primarily by a mixture of economic and political factors, a common argument advanced in support of the move has been that the traditional centralized industrial relations system lacked the flexibility needed to meet the needs of those at the workplace and that enterprise bargaining would facilitate the development of employment conditions more attuned to the needs of both employers and employees. (Niland, 1989). According to the Commonwealth Government in 1994, enterprise bargaining would foster more cooperative and flexible workplaces with agreements specifically tailored to the needs of the parties (Commonwealth Government, 1995:29). Several academics have also noted that part of the justification for the further decentralization of the industrial relations system under the *Workplace Relations Act 1996* (the *Act*) was that it would promote gender equity more effectively (Newman, 1997; Sullivan et al., 2003:161-2). The argument advanced was that a decentralized system would more effectively promote flexible employment conditions which in turn would facilitate a better matching of employment and family care responsibilities (Strachan & Burgess, 1998). The ‘family-friendly workplace’ is the embodiment of this argument, in that employers claim to recognize the important potential contribution to workplace productivity by employees who can successfully combine work and family responsibilities (Sullivan et al., 2003:162). Indeed, some observers have argued that only through a system of decentralized bargaining can work-family arrangements be effectively negotiated and implemented (Moynan, 1998; Newman, 1997).

The *Workplace Relations Act 1996*, as at 31 March 2006, establishes a clear nexus between enterprise bargaining and work-family conditions under the terms of its 'Principal Object' (s.3). One of the principal objects of the Act is to ensure 'that, as far as possible, the primary responsibility for determining matters affecting the employment relationship rests with the employer and employees at the workplace or enterprise level' (s.3(d)). Another is to assist 'employees to balance their work and family responsibilities effectively through the development of mutually beneficial work practices with employers' (s. 3(i)).

The Act also reaffirms the application of various legislation relating to work-family conditions of employment, as well as establishing some relevant minimum standards. In the performance of its functions, the IRC must take account of the principles embodied in the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992* and the *Age Discrimination Act 2004* relating to discrimination in relation to employment (s.105). The Act also provides for a minimum entitlement of parental leave, and aims to prevent and eliminate discrimination on a range of grounds, including family responsibilities. Employees have entitlements to three types of unpaid parental leave, of up to a maximum of 52 weeks: maternity leave, paternity leave and adoption leave (s.266). The Act also provides for paid personal/carer's leave of 10 days a year that can be used for personal sick leave or carer's leave and a further two additional days of unpaid carer's leave. Paid or unpaid carer's leave may be taken by an employee to provide care or support to a member of the employee's immediate family or the employee's household who requires care or support because of a personal injury or an unexpected emergency (s.244). Further, the Act requires the IRC to take account of the principles embodied in the ILO Family Responsibilities Convention including those relating to preventing discrimination against workers who have family responsibilities and helping working to reconcile their employment and family responsibilities (s.106).

It is clear that there has been some encouragement to develop work-family provisions at the workplace level in Australia through enterprise bargaining as well as legislation providing a number of related minimum enforceable conditions. To assist an analysis of those provisions negotiated in retail industry enterprise agreements, the literature concerning work-family conditions of employment will be reviewed.

### **Family-friendly working conditions in Australia**

A number of researchers provide insights to the meaning and nature of work-family employment conditions in the Australian context. Burgess and Strachan (1999:290) note that 'although gender neutral in theory, work and family policies in practice inevitably revolve around the working conditions of female workers'. Moore and Crawford (2005:206) argue that work-family responsiveness is defined in two ways: first, formal policies and practices that an organisation offers designed to assist employees balance their work and family lives, and second, an informal work environment that is accommodating of the work-family needs of its employees. They argue that formal practices typically include such programs as job-sharing, part-time work, telecommuting, child-care, elder care, career break schemes, maternity and paternity leave (Moore & Crawford, 2005:206).

The meanings attached to the notion of work-family employment conditions Australia closely resemble those identified in the international literature and fall into three general categories: leave -provision of leave for vacation, illness, childbearing, and emergency child care and/or provision for reduced average hours worked; hours- flexibility in the scheduling of work hours and the location of work hours; and services- assistance with various forms of care (Glass & Estes, 1997). These three categories will provide a framework that will assist an examination of the work-family provisions contained within retail industry awards and enterprise agreements.

Thornthwaite (2002:1) asserts that work-family balance initiatives include a range of work and other facilitative arrangements, both formal and informal, that assist employees to fulfil employers' expectations while also meeting the needs of family members. The arrangements identified by Thornthwaite (2002; 2004) can be categorized according to the Gall and Estes (1997) model, although she also includes factors such as job security which although highly relevant to work-family needs, may be viewed as more general in their effect. She argues that the quest for work-family balance encompasses a variety of issues including working time, parental leave, and childcare and provides the following more detailed examples: shorter working hours; special leave and career breaks, including maternity and paternity leave, parental leave, carers' leave and bereavement leave; part-time work and other non-standard work arrangements e.g.. Job sharing, homeworking and telecommuting; flexible work arrangements e.g. flexitime, compressed work week, term-time work, time banking, annualised hours schemes and employee choice rostering; child care and elder care services and support; and, assistance with parenting e.g.. parenting seminars; job security, protection of entitlements and equity in career prospects for those who use family-oriented benefits (2004:206).

It is apparent that employee entitlements to such conditions might take a number of forms: legislation, awards, formal agreements including enterprise agreements or individual contracts, company policies and informal policies and practices. According to a government inquiry, retailers are increasingly attracted to providing family-friendly workplaces in order to address their considerable difficulties in attracting and retaining need skills and to reduced the costs of labour turnover, currently estimated at \$397m per year (Commonwealth of Australia, 2002). However, employment conditions designed to assist employees in balancing their work-family commitments may be formalized in registered agreements or awards. In this paper, we are concerned with the provisions of the retail industry award and retail industry enterprise agreements and therefore, it is likely that many work-family benefits exist that are not embodied in these forms. Although such provisions may be provided informally or through organizational policies, their legal enforceability is clearly enhanced if they are established in legislation, awards or registered enterprise agreements. There have been two major pressures for work-family conditions to be included in enterprise agreements. First, the nature of enterprise bargaining is such that unions will push for employment conditions to be included as rights within agreements and employers may also find that within a bargaining context, the granting of such entitlements offsets wage demands. Government policy and pronouncements have also actively encouraged the inclusion of work-family conditions within enterprise agreements. The Australian government's Office of the Employment Advocate identifies a range of family-friendly work conditions that might be covered in enterprise agreements including: flexible start and finish times, averaging of hours over a set period and/or time off in lieu of overtime; flexible leave arrangements including personal/carer's leave, purchased annual leave (e.g.: granting an employee extra leave without pay in the year, but averaging their income over the whole year) and/or more flexible use of annual leave including single day's leave; paid maternity leave; job sharing; home based work or teleworking (Office of the Employment Advocate, 2006).

There have been numerous studies that have sought to identify the consequences of enterprise bargaining for workers. Those which have focused upon the outcomes of enterprise bargaining in terms of work-family employment conditions have often done so in gender terms, evaluating their outcomes for women workers (Department of Employment Workplace Relations and Small Business (DEWRSB), 2000; Junor, 1999; Sullivan et al., 2003). The DEWRSB report (2000) on enterprise bargaining outcomes under the Workplace Relations Act 1996 found that conditions vary considerably between male and female dominated industries with family friendly provisions, including personal leave and parental leave, more common in enterprise agreements within female dominated industries (Department of Employment Workplace Relations and Small Business (DEWRSB), 2000:116; Sullivan et al., 2003:167). Sullivan, Strachan and Burgess (2003:167) found that "Enterprise bargaining has not systematically disadvantaged women workers, likewise their relative

position has not improved.” They also note that under a decentralised enterprise bargaining system ‘where you work’ is an important determinant of your employment conditions (2003:167)

There are also difficulties associated with determining whether particular provisions are delivering work-family benefits. For example, the Australian Chamber of Commerce and Industry (ACCI) argues that ‘the key change that has occurred to working hours in the bargaining system has been increased choice and flexible concepts of working time’ and cites as examples of clauses in enterprise agreements ‘which have provided employees with greater options in their working arrangements’ include those which facilitate part-time and casual work, multiple forms for the taking of annual leave, time off in lieu of overtime, changes to the spread of hours worked and make up time, where employees can take time off for personal reasons and work additional time later (Australian Chamber of Commerce and Industry, 2002). In the absence of in-depth case studies, it is not possible to know whether these provisions are designed to assist employees meet their family commitments or are aimed at providing the employer with flexibility. Such provisions may be positive, negative or neutral in their effect upon achieving a work-family balance.

### **Methodology**

A content analysis of the NSW Shop Employees (State) Award and twenty retail industry enterprise agreements are undertaken to identify the presence of work-family clauses. The industrial awards covering retail employees in Australia are currently State based awards, although the relevant enterprise agreements are federally registered. The major purpose of this study is to identify whether the provisions of the enterprise agreements examined provide work-family provisions not contained in the Retail Award. This comparison takes place against a blanket of legislative provisions, some of which are in the process of transformation. Although the focus of this study is upon comparing the relevant Award with agreements in that same industry, it is impossible to ignore the implications of the *WorkChoices Amendment Bill 2005* (now passed through parliament) and the consequent current *Workplace Relations Act 1996 (WRA)* (as amended). While currently subject to legal appeals, these provisions are aimed at introducing into Australia a unitary national system of industrial relations regulation which will have the effect of making redundant the State Award system. Therefore, the relevant Award and enterprise agreement provisions will also be considered in relation to the requirements under the *WRA*. Indeed, a number of the enterprise agreements examined refer specifically to the provisions of the Act.

There are approximately fifty federally registered enterprise agreements covering members of the Shop Distributive and Allied Employees Association (SDA) working in New South Wales (NSW). The choice of which agreements would be subject to examination was strongly influenced by a desire to capture in the analysis agreements that were broadly representative of the major retail sectors: department stores, large variety stores, major supermarket chains, fast food chain operations and larger chain specialist stores. There are no agreements covering employees in ‘mum and dad’ small retail outlets unless they form part of larger chains. The second major consideration was that there should be something resembling an even distribution between these sectors in the agreements examined. The choice of enterprise agreements covering large department stores was made easy by the presence of only two major players and hence, both Myer and David Jones agreements were examined. Similarly, the choice of enterprise agreements covering employees in large variety stores was limited by the presence of three major chains: Kmart, BigW and Target. Although there are a number of supermarket chains operating in Australia, the following dominate: Coles supermarkets, Coles/Bi-Lo, Woolworth’s, Franklins and the Coles/Myer Liquor Group. The choice of agreements covering employees in take-away food chains was limited by the number of operators and the following were examined: Hungry Jacks, Dominos Pizza, KFC, Red Rooster and Pizza Hut. In deciding which chain specialist stores’ enterprise agreements would be examined, a selection was chosen based upon their operating in different sub-

sectors: Officeworks (paper and other products for clerical/administrative needs), Bunnings (building supplies, hardware etc), Super Cheap Auto (cars), Ikea (furniture and furnishings) and PGFG (Rockmans and others providing clothing).

The enterprise agreements examined in this paper are clearly biased in favour of larger employers and organizations with substantial union membership. The implications of this bias are recognized and discussed in the research findings. Table 1 presents the list of agreements examined and the number of employees covered by the SDA under each agreement.

**Table 1: Enterprise Agreements examined and SDA Membership**

| <b>Organisation</b>     | <b>Enterprise Agreement</b>                                       | <b>SDA Coverage</b> |
|-------------------------|---|---------------------|
| David Jones             | <i>David Jones Enterprise Agreement 2002</i>                      | 3,500               |
| Myer                    | <i>Myer Stores Agreement 2004</i>                                 | 6,000               |
| KMart                   | <i>Kmart Australia Ltd Agreement 2004</i>                         | 6,000               |
| BigW                    | <i>BIG W Certified Agreement 2003</i>                             | 6,500               |
| Target                  | <i>Target Retail Agreement 2003</i>                               | 4,000               |
| Coles Supermarkets      | <i>Coles Supermarkets Australia Pty Ltd Retail Agreement 2005</i> | 16,000              |
| Woolworth's             | <i>Woolworth's Supermarkets - Nsw/Act Agreement 2004</i>          | 30,000              |
| Franklins               | <i>Franklins Limited National Retail Team Agreement 2001</i>      | 4,000               |
| Bi-Lo                   | <i>Bi-Lo Pty Ltd Retail Agreement 2005</i>                        | 2,500               |
| Coles/Myer Liquor Group | <i>Coles Myer Liquor Group (Cmlg) (Retail) Agreement 2005</i>     | 2,500               |
| Hungry Jacks            | <i>Sda Hungry Jack's New South Wales/Act Agreement 2004</i>       | 1,500               |
| Dominos Pizza           | <i>Sda-Domino's Pizza Agreement 2001</i>                          | 2,000               |
| KFC                     | <i>KFC National Enterprise Agreement 2005</i>                     | 4,500               |
| Red Rooster             | <i>Red Rooster Agreement 2003</i>                                 | 1,100               |
| Pizza Hut               | <i>Pizza Hut – Sda National Employee Relations Agreement 2004</i> | 1,500               |
| Officeworks             | <i>Officeworks Pty Ltd Agreement 2003</i>                         | 800                 |
| Bunnings                | <i>Bunnings Warehouse Enterprise Agreement 2003</i>               | 4,000               |
| Super Cheap Auto        | <i>Super Cheap Auto Certified Agreement 2003</i>                  | Not known           |
| Ikea                    | <i>Ikea Certified Agreement 2002</i>                              | 300                 |
| PGFG                    | <i>Pgfg Stores Enterprise Agreement 2005</i>                      | Not known           |

Award and agreement provisions are considered under the three categories identified earlier in this paper, which are seen to be indicators of work-family provisions: *leave*, *hours* and *services*.

*Leave* provisions are seen to take two forms: *core* which are those specifically provided to meet work-family needs, such as parental leave, and *peripheral* which are those providing flexibility in the taking of existing provisions, for instance, the taking of annual leave in single days to care for a family member. Only those forms of leave provisions that are specifically and directly related to work-family needs are included in this study: parental, sick and family/carer's leave. Other forms of leave provisions evident in some enterprise agreements that may have some work-family implications but are not examined here include: blood donors, natural disasters and jury leave. *Core leave* provisions are further categorized according to whether they provide an *additional* quantum of leave overall for the employee or

rather provide only for a more flexible taking of *existing* entitlements, such as where existing sick leave rights can be used for work-family purposes or where unpaid leave can be taken.

*Hours* clauses are seen to be those that specifically provide flexibility in the scheduling of work hours and the location of work hours for work-family reasons. Although the provision of part-time and casual employment has been associated in the literature with family-friendly employment conditions, such clauses are not examined in this paper for several reasons. The retail industry in Australia is somewhat dominated by part-time and casual employment and has been at least since the 1970's. Such hours of work clearly met the needs of retail industry employers and their trading patterns. It would be false to label such working hours as representing work-family conditions as they may in fact be a source of further balancing difficulties. Only in-depth case studies could reveal the extent to which part-time and casual employment over seven days per week is actually a source of work-family employment conditions for workers in the retail industry.

*Services* clauses are those that provide for actual forms of care, such as child care centres. Each agreement will be examined for the presence of such clauses.

### **Work Family Entitlements**

In considering the entitlements of retail industry employees to family-friendly working conditions, an examination will be made of the provisions under the Workplace Relations Act 1996, the NSW Shop Employees (State) Award and the various enterprise agreements.

#### ***Workplace Relations Act 1996***

The Act provides for a minimum entitlement of parental leave and three types of unpaid parental leave, of up to a maximum of 52 weeks: maternity leave, paternity leave and adoption leave (s.266). The 52 week entitlement is on a shared basis (SB) which means that the total entitlement is up to 52 weeks time off for a pregnancy; paternity leave taken by a partner is to be deducted from the total, as are accrued periods of other leave including annual leave and sick leave. Permanent employees and 'eligible casuals', who satisfy certain tests including regular employment for more than 12 months, are entitled to take parental leave (s.264). This standard was originally set by the 1990 AIRC Test Case (Pr. J3596) and various 'State' based legislation, including the *NSW Industrial Relations Act 1996* have adopted the same standard.

The Act provides for 'personal/carer's leave' which includes personal sick leave and carer's leave to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of a personal illness, injury or an unexpected emergency affecting the member (s.244). An employee is entitled to paid personal/carer's leave, for each completed 4 week period of continuous service with an employer, of 1/26 of the number of nominal hours worked by the employee for the employer during that 4 week period; example: an employee with continuous service for a twelve months period who worked 38 hours per week would be entitled to accrue 76 hours paid personal/carer's leave (which would amount to 10 days of paid personal/carer's leave for that employee) over the period (s.246)

A full-time continuous employee is, subject to various criteria, is entitled to a further 2 days unpaid carer's leave per year subject to their having no entitlement to paid personal/carer's leave (s.252).

#### ***NSW Shop Employees (State) Award***

The Award, which is registered in NSW and, at the time of writing, not subject to the provisions of the *Workplace Relations Act 1996*, sets minimum work-family standards that fall short of the provisions of the Act. The Award's 'Flexibility of Work Clause' (C.7) makes no

mention of employees needs and with respect to 'rostering', the Award provides that whilst the employer 'will have regard for the family responsibilities of the employee...it is accepted that the existence of such responsibilities does not in itself prevent an employer changing an employee's roster where necessary' (cl. 11 (i) (iii)).

With respect to sick leave, the Act provides that a full-time continuous employee working a 38 hour week is entitled to up to 10 days of paid personal/carer's leave while the Award provides that a full-time employee is entitled to up to 38 hours (5 days) paid sick leave in their first year of service and up to 61 hours (8 days approximately) of paid sick leave in their second and subsequent years of continued employment with an employer (cl.18). Part-time employees have a pro rata entitlement. Employees can accrue untaken leave from year to year so long as employment provided that in any year an employee shall not be Entitled to take more than 380 hours accumulated sick leave (cl. 18 (ii) (b)). Employees, other than casual employees, are entitled to use their paid sick leave entitlements to provide care and support for 'a member of a class of person' set out in the Award (cl.21 (1)). Employees also have an entitlement to 'Unpaid Leave for Family Purpose' and "may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a member of a class of person set out in (the Award) who is ill" (cl 21 (2)).

Under the Award, employees, other than casual employees, are entitled to a maximum of two hours paid leave on four separate occasions in a year for the purpose of donating blood (cl.19) and up to three days paid compassionate leave on each occasion of the death of a prescribed person (cl. 20). Other work-family friendly provisions include: the right to take annual leave not exceeding five days in single day periods, or part thereof, in any calendar year at a time or times agreed by the parties; to take time off in lieu of payment for overtime at a time or times agreed with the employer; and, to work 'make-up time', under which the employee takes time off ordinary hours and works those hours at a later time (cl. 21 (3-5)).

In terms of the three categories or indicators of work-family provisions identified earlier in this paper, the NSW Shop Employees (State) Award appears to provide no relevant entitlements in the area of *services* and only the most minimum in the area of *hours*. Those *leave* provisions that exist under the Award are *core*, in that they specifically provide for meeting family/carer's needs, but are *peripheral* and *existing* as they merely provide some flexibility in the taking of existing provisions without adding to the quantum of leave available.

It is against this somewhat minimal base that the provisions of twenty retail industry enterprise agreements are to be compared.

### **Retail Enterprise Agreements**

The literature identified three forms of employment conditions which might assist workers in meeting their family responsibilities and that might contribute to a better work-family balance: leave, hours and services. An examination of the twenty enterprise agreements listed above has found that, to the extent that enterprise bargaining has facilitated work-family employment conditions, it has been almost exclusively in relation to the form of leave provisions and these will be examined shortly.

Relevant 'hours' clauses are seen to be those that specifically provide flexibility in the scheduling of work hours and the location of work hours for work-family reasons. The State Award, the WRA and all of the enterprise agreements examined did contain specific clauses providing that rostering would take account of family responsibilities, although in the case of PGFG stores this clause appears to be restricted to the case of employees returning from parental leave. These clauses are noted in Appendix A. It is not possible to know from our study how such provisions are actually applied at the workplace. In almost all cases, the agreements state that while work-family considerations will be taken into account, final authority rests with the business and its needs. However, research undertaken by the Work



and Family Unit of the Department of Employment and Workplace Relations suggests that the difficulties faced by many retailers in attracting and retaining employees has caused them to recognize the benefits that family-friendly work places can deliver in terms of staff morale, increased productivity and reduced labour turnover (Commonwealth of Australia, 2002).

'Services' clauses are those that provide for actual forms of care, such as childcare centres. None of the enterprise agreements examined provided for such services and neither the *WRA* nor the State Award contains provisions requiring the granting of such services. Although employers party to the agreements examined may well provide such services (although it appears that in fact they do not), the significant fact for this present study is that such services are not provided within the terms of the relevant enterprise agreements.

An examination of the provisions of twenty retail industry agreements shows that if enterprise bargaining has delivered work-family employment conditions, it is in the area of 'leave' provisions which are seen to take two forms: *core* which are those specifically provided to meet work-family needs, such as parental leave, and *peripheral* which are those providing flexibility in the taking of existing provisions, for instance, the taking of annual leave in single days to care for a family member. It was earlier argued that 'core' leave provisions could either establish 'additional' rights in terms of quantum or flexibility or mirror 'existing' entitlements, such as where existing sick leave rights could be used for work-family purposes or where unpaid leave could be taken.

Work-family leave provisions were evident in all of the enterprise agreements examined. The nature of these provisions was seen to fall into four categories: Parental leave, Personal/carer's leave (CL), Sick Leave (SL) & other. Within each of these forms, there was evidence of both *core* provisions specifically provided to meet work-family needs and *peripheral* that provide for flexibility in the taking of existing provisions to meet such needs. A high degree of inter-relationship between CL and SL was evident in many of the agreements examined and in most cases this combination was accompanied by an increase in the quantum or *additional* rights being provided under the Award. A detailed analysis of each of the twenty enterprise agreements examined is shown in Appendix A.

With respect to parental leave, nine of the agreements studied provided only the minimum entitlement of 52 weeks unpaid shared leave as provided under the *WRA*: Big W, Woolworth's Supermarkets, Franklins, KFC, Pizza Hut, Bunnings, Super Cheap Auto, and Ikea. Overall, it is the largest employers that tend to provide parental leave in excess of the legal minimum and up to the 104 days requested under the unsuccessful ACTU Test Case of 2005 (Australian Industrial Relations Commission (AIRC), 2005). The David Jones enterprise agreement appears to be the only one examined that includes some paid parental leave: paid up to 7.6 hrs pre-natal.

Sick leave (SL) entitlements were seen to be strongly inter-related with careers/family leave entitlements consistent with the approach adopted under the *WRA*. Although the agreements examined generally provide SL and carer's leave (CL) entitlements in excess of those established under the State Award, many do not fully conform to the current requirements of the *WRA*. The enterprise agreements examined generally met the standard set under the *WRA* of 10 days paid carer's/sick leave for employees in their second and subsequent years of service. The Coles, Target, Bunnings and PGFG stores exceeded the *WRA* standard by 1 day (up to 61 plus 22.8 paid days) for all continuous permanent employees. However, a number of agreements apply the State Award standard for the 1<sup>st</sup> year of service being only 38 hours (5 paid SL days) which even when their carer's entitlement of 3 days is added, they still do not fully met the *WRA* standard for at least part of that first year of service in which an employee has accumulated entitlements under the Act at the rate of 1/26 of the number of nominal hours over a 4 week period. Whether or not included in the provisions of an enterprise agreement, the standard set under the Act legally apply. The agreements were negotiated prior to the introduction of the current provisions of the *WRA* and as they fall due

for renegotiation, this issue will presumably be addressed; it is known that the SDA is currently negotiating to have agreements include one day in addition to those provided under the legislation.

In summary, there is some evidence of enterprise bargaining providing employment conditions designed to assist employees in balancing their work-family needs that exceed the requirements of both the Retail Employees (State) Award and the *WRA*. These superior provisions are mainly associated with the taking of leave and take the form of both an increase in *core* provisions, such as additional 'career's leave' entitlements, as well as improved *peripheral* provisions, such as greater flexibility in the taking of sick leave entitlements.

## **CONCLUSIONS**

The chief focus of this paper was upon whether or not enterprise bargaining in Australia has resulted in more family friendly employment conditions for retail industry employees. Enterprise bargaining was introduced in Australia to augment the centralized award system with more enterprise focused bargaining, although it has grown under the legislation to become increasingly the chief source of employees' minimum entitlements at work. Therefore, a comparison of Award and enterprise agreement provisions should reveal whether or not enterprise bargaining has delivered more work-family employment conditions. The finding must be a qualified 'Yes'. The provisions of all of the agreements examined provide for some enhancement of work-family employment conditions as compared with those provided under the relevant Award both in the quantum of leave provided but especially in the area of flexibilities concerning the combining of different forms of leave and in the terms associated with their taking. However, many do not fully meet the *WRA* standard for carer's/sick leave with respect to employees in their first year of service. While most enterprise agreements provide for slightly more generous conditions in the quantum and taking of work-family leave, these are not radically superior to those established under the Act or the Award.

The analysis does not reveal any clear pattern or relationship between the size of the enterprise, number of union members and the level of benefits although the larger enterprises tended to provide for somewhat more generous conditions overall. There are obvious disparities in the conditions provided within particular industry sectors and between organizations of comparable size.

Identifying whether enterprise agreements has delivered its promise of delivering work-family employment conditions has been made more complex by recent legislative changes which will cause State Awards to become obsolete as the State based Industrial Relations Commissions are overtaken by federal law. While we can find that retail industry agreements provide some work-family benefits as compared with the relevant State Award, a number of them actually fall short of meeting the federal requirements. This will no doubt be a short-term issue as agreements are re-negotiated in light of current legislation.

Finally, in considering the overall benefit of enterprise agreements provisions for workers seeking to balance their work-family needs, there are several other issues that might be usefully considered. First, the agreements examined each run to a considerable number of pages and include in every case a repetition of Award or legislative provisions. The negotiation of each has involved a huge investment in time by all of the parties. The results of these deliberations have been, as seen, overall positive in terms of work-family provisions but hardly earth shattering. Secondly, at 2002-03, the retail trade industry employed about 1.4 million persons and enterprise bargaining covers only a small percentage of these whilst centralized provisions technically cover all. Thirdly, 'between the thought and the deed falls a shadow'; legal entitlements are subject to interpretation and application. What is provided for may be different from that applied. The existence of an enterprise agreement is suggestive of greater union presence and activity and it is likely that the terms of enterprise agreements

may be more subject to proper enforcement than those of an Act or an Award in the absence of union activity. Finally, it is difficult to identify whether enterprise agreements has delivered an improvement in work-family employment conditions when we cannot know what might have occurred had it not existed.

#### **Endnote:**

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#### **Awards and Agreements**

BIG W Certified Agreement 2003  
Bi-Lo Pty Ltd Retail Agreement 2005  
Bunnings Warehouse Enterprise Agreement 2003  
Coles Myer Liquor Group (Cmlg) (Retail) Agreement 2005  
Coles Supermarkets Australia Pty Ltd Retail Agreement 2005  
David Jones Enterprise Agreement 2002  
Franklins Limited National Retail Team Agreement 2001  
Ikea Certified Agreement 2002  
Kfc National Enterprise Agreement 2005  
Kmart Australia Ltd Agreement 2004  
Myer Stores Agreement 2004  
NSW Shop Employees (State) Award  
Officeworks Pty Ltd Agreement 2003  
Pgfg Stores Enterprise Agreement 2005  
Pizza Hut – Sda National Employee Relations Agreement 2004  
Red Rooster Agreement 2003  
Sda-Domino's Pizza Agreement 2001  
Sda Hungry Jack's New South Wales/Act Agreement 2004  
Super Cheap Auto Certified Agreement 2003  
Target Retail Agreement 2003  
Woolworth's Supermarkets - NSW/ACT 2004

#### **Legislation and Test Cases**

1990 AIRC Test Case (Pr. J3596)  
NSW Industrial Relations Act 1996  
WorkChoices Amendment Bill 2005  
Workplace Relations Act 1996  
Sex Discrimination Act 1984  
Disability Discrimination Act 1992  
Age Discrimination Act 2004