

9. ACTU'S GENERALISED CONTENTIONS

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Introduction

[9.1] The bulk of the ACTU's contentions are in reality highly generalised and at large ones concerning family based and social policy research (and the bulk of the evidence in ACTU Volumes I, II and III addresses these generalised contentions). This applies in particular to the ACTU contentions relating to:

- a. The labour force, families and dependency (Section 2).¹
- b. Changes in the organisation of work (Section 3).²
- c. Family health and well being (Section 4).³
- d. Caring for infants and young children (5.4 to 5.6).⁴

[9.2] The ACTU claims are generalised in the sense that they are in substantial part essentially commentary on various sociological and societal developments. This material does not have any valid nexus to this matter, and no such nexus has been provided, nor proved by the ACTU.

[9.3] As outlined in the introduction, they do not constitute any form of proper deductive argument in favour of the ACTU claims. They do not logically compel or lead to any conclusions, and in particular they do not in any way lead to, or support, the particular battery of claims being advanced by the ACTU in this matter.

¹ ACTU Outline of Contentions, 30 April 2004, pp.8-11

² ACTU Outline of Contentions, 30 April 2004, pp.12-17

³ ACTU Outline of Contentions, 30 April 2004, pp.18-21

[9.4] Various of the contentions are not contested and no issue is taken with the accuracy of the material relied upon. Others simply should not validly be subject to proof or disproof in this matter – and have not been addressed in detail. In turn others are meaningless generalisations (e.g. “The healthy development of children is crucial to the future well-being of any society”).

[9.5] This is due to the fundamental irrelevance of the material presented to the claims being pursued. Simply because a piece of research is nominally associated with families and caring, and this case is associated with families and caring, does not create a nexus between the two. The entire research output of the Australian Institute of Family Studies does not for example automatically become relevant to this matter.

[9.6] As stated, much of the material in Volumes I, II and III relates to sociological, societal and familial research which has not been in any way shown by the ACTU to be relevant to this matter. This is consistent with ACCI/NFF’s overall assessment that despite the overall bulk of paper lodged, there is a threadbare paucity of materials that in any way actually go to, or could advance, the particular relief being sought by the ACTU.

Labour force, families and dependency (ACTU Sect. 2)

[9.7] The recitation of well understood labour force and demographic change in ACTU paragraphs 2.1 to 2.9 doesn’t assist the ACTU position, nor the Commission in choosing between the alternative approaches before it. Nothing may validly be concluded from this material – save perhaps that:

- a. The Australian labour market, and in particular employment regulation system has successfully integrated the participation of women, mothers and carers into work during the past three decades - without the interventions now sought by the ACTU. No case for change has been made out.
- b. In particular, the past decade of reform in the way we work, and in particular the shift to a workplace focus, have continued to facilitate the successful integration of women, mothers and carers into work.

⁴ ACTU Outline of Contentions, 30 April 2004, p.25

- c. There is no compelling case for the radical change in approach sought by the ACTU in this matter.

[9.8] If the reference in 2.11 to ‘deinstitutionalisation’ is to the care of those with intellectual disabilities – this is clearly an issue of government policy – as indeed are support and respite care services, and carers pensions.

[9.9] The ACTU itself acknowledges at 2.12 the fundamental responsibilities of the community in regard to the phenomena raised. As we maintain, there are fundamental demands on the community – and community should address them.

[9.10] The ACTU’s fundamental misunderstanding of this matter is set out at its paragraph 2.13:

2.13 Labour force participation and caring roles describe the two potentially conflicting roles that individuals undertake. How these are managed in households and workplaces is the key to work and family reconciliation. Workplaces need to be involved in the adjustment process to achieving balance.

- a. It is the link between how Australians in their households in manage their familial affairs and mandatory obligations upon employers which is problematic, and remains fundamentally unproven.

[9.11] Re ACTU paragraph 2.15 – how are households where no-one works in any way relevant to this claim? They appear to be about as relevant to a work and family based case as outcomes for dual aged pensioner families in their mid 80s.

Changes in work and caring (ACTU Sect. 3)

[9.12] The ACTU claims there are so called gaps in the provision of care⁵ and in arrangements for pre-school children. In summary:

- a. Considerations such as the provision of childcare, pre-school care etc are matters for governments and communities, not for employers. There is no valid nexus to the employment relationship and the ACTU has not made out such a linkage.
- b. Initiatives were taken in a range of these areas in the recent budgetary process:

⁵ ACTU Outline of Contentions, 30 April 2004, p.13

- i) This further underscores the extent to which these are matters of public policy and expenditure and the lack of a valid nexus to the employment relationship.
 - ii) These initiatives should be allowed to mature and to have the policy effect they have been introduced to secure. It would be precipitous to usurp the proper role of government policy (and indeed the measures introduced by Parliament) by pursuing the course proposed by the ACTU.
- c. These contentions appear to relate to claims which may no longer be pressed in this matter following the settlement of all parties' carers' leave claims. ACTU paragraph 3.10 also appears to relate to matters addressed in the carers' leave settlement.
 - d. To the extent relevant to this matter, the considerations raised do not advance the ACTU claims over those of any other party, nor do they advance compulsion based approaches over those based on workplace level agreement.

[9.13] The ACTU claim that various changes in the organisation of work make it harder to reconcile work and family life. Again, the interaction of changing work with non-employment, government provided mechanisms for childcare and infant care remains an issue for government – any failure of government/community provided services which the ACTU contends does not legitimately become the responsibility of employers, nor advance a compulsion based approach to work and family accommodation.

[9.14] In its summary, the ACTU states that:

3.23 The Commission has recognised that the way in which work is organised has changed significantly in the past 20 years. The rise of long hours, irregular hours and intense working arrangements have been accompanied by increased part time employment which is primarily casual, and without leave entitlements. These changes in working arrangements have not been met by changes in the provision of care. Most formal care is structured around employees who work a standard week, whose dependents have good (or at least stable) health and, who have other family resources available when usual care arrangements fail.

- a. That any changes in work have not been met with changes in care (to the extent this is accurate) is an issue for governments and communities not employment regulation.

- b. To the extent that employment flexibility can play a role, the ACCI/NFF prescriptions offer ample prospect to address this based on agreement (the approach which has been successful to date).

[9.15] ACCI has also elsewhere in this submission addressed the ACTU contentions in regard to:

- a. Before and after school care
- b. School holiday / vacation care
- c. Curriculum days
- d. Breakdown of care
- e. Non-parental care – the needs of the disabled and their carers.

Family health and wellbeing (ACTU Sect. 4)

[9.16] *“When work and family responsibilities are in conflict, this can affect an employee’s work or an employee’s family.”*⁶

- a. This adopts an inherently conflict based model of the relationship between work and family. This may be the case in some instances – but should not be assumed. Any regulation (to the extent it is relevant) should strive for consensual and reconciliation based approaches. These work effectively on a daily basis in Australian workplaces. The ACCI/NFF approach would provide further scope for mutually agreed strategies.

[9.17] *“The evidence is that it is employees who bear the impact of the work/family collision.”*⁷

- a. Which evidence? This is not consistent with the ACTU’s own evidence, nor that from employers included with this outline.
- b. Generally this is far too black and white an assessment and assumes work and family is a zero sum game which one party must win and another must lose.

⁶ ACTU Outline of Contentions, 30 April 2004, [4.1], p.18

⁷ ACTU Outline of Contentions, 30 April 2004, [4.1], p.18

- c. The system should be striving to avoid a work family collision, not trying to impose the impact of that collision on one party or another.

[9.18] *“Evidence of negative impact on family functioning” and “concerns about the impact of work/family imbalance on children’s development and health”* ⁸ do not actually assist the ACTU claim. They do not advance the ACTU prescriptions over those of ACCI/NFF in this matter.

[9.19] *“Studies show that work has both a positive and negative effect on family life, health and well-being” ... “Certain working arrangements are more likely to be associated with these negative effects, and there are some common mediating factors”*.⁹

- a. Which studies?
- b. Which working arrangements?
- c. Which mediating factors?

[9.20] Re ACTU paragraphs 4.3, 4.3, 4.4, 4.5, 4.6, 4.9 etc

- a. These matters were the subject of the 2002 Working Hours Test Case. They were comprehensively dealt with in those proceedings.
- b. This does not prove that the ACTU claims should be preferred to the alternatives in this matter.

[9.21] Re ACTU paragraph 4.5:

- a. Higher paid men are irrelevant to this claim. The ACTU and international evidence shows that higher paid managers and professionals have a demonstrated capacity to bargain on their working time and work and family.

[9.22] *“Mothers report they are constantly rushed and exhausted.”*¹⁰... *“A number of surveys also report on the impact of work on marital harmony, and relationship quality”*¹¹:

⁸ ACTU Outline of Contentions, 30 April 2004, [4.1], p.18

⁹ ACTU Outline of Contentions, 30 April 2004, [4.2], p.18

¹⁰ ACTU Outline of Contentions, 30 April 2004, [4.8], p.19

¹¹ ACTU Outline of Contentions, 30 April 2004, [4.10], p.20

- a. Again, the working time case examined the regulation of both ordinary working hours and overtime very recently.
- b. Nothing which can be done in this case can re-engineer the gender division of labour within relationships.
- c. Relationship harmony and quality are firstly highly subjective, and secondly amongst the most complex of social phenomena. It would be highly unwise and imprudent to generalise on these considerations nor to over-state the extent to which work impacts on them, nor to generalise regarding any consequences or conclusions which may be drawn from this for this case.
- d. This said, once again, this does not actually advance the ACTU claim in this matter:
 - i) It does not in any way show that the ACTU claim is the (or even an) appropriate policy response, nor that on balance a policy response through employment regulation is required.
 - ii) It does not show the ACTU claim to be in any way superior to the alternatives being considered in this matter.

Caring for infants and young children (ACTU 5.4 to 5.6)¹²

[9.23] At paragraphs 5.4 to 5.6, the ACTU makes a range of what are literally motherhood statements. No one would take issue with observations that:

- a. The healthy development of children is crucial to the future well-being of any society.
- b. It is important to support parents in the parenting role.
- c. The role of parents is critical in the development of infants and young children.
- d. Pre school years are important for child development.

¹² ACTU Outline of Contentions, 30 April 2004, p.25

[9.24] There is also however a fundamental imbalance and intemperance in the way some of the statements are presented in these paragraphs:

- a. *“Supporting parents in their parenting role is the most important contribution that can be made to child well-being”*. This is pretty extreme. - More important than providing a safe and secure society? More important than securing WHO levels of maternal and child health? More important than providing employment that can lead to familial and societal incomes?
- b. *“There is compelling evidence that, on a range of indicators, Australian children are falling behind”*. Falling behind precisely whom? Australia is a first world developed country, making a major societal investment in health, parenting, caring and social services. With the exception of well understood challenges in discrete areas such as indigenous health and wellbeing – this seems a highly extreme statement. The ACTU should have written this more carefully – what exactly does it mean in this statement?

[9.25] Most fundamental is that lack of any reliable basis for the apparent leaps of logic which the ACTU makes:

- a. No basis has been provided to transplant these considerations from societal, governmental and public policy matters to matters of employment regulation. This very ambitious, illogical, a-historical and unsound link has been assumed but has not been made out. – If Australia really were somehow falling behind some desired threshold, why would the solution lie in the regulation of work rather than in public policy and public expenditure?
- b. *“Institutions, including employers and workplaces, need to support parents in providing stable, secure, nurturing environments for their children”*.
 - i) Australian employers do this and have been doing this week in and week out since the creation of employment in Australia. Employers provide the wages incomes upon which stable, secure and nurturing family life is erected for most Australians.
 - ii) The best further contribution employers could make to family life in Australia would be being empowered to create more jobs for more Australians. This is in no way advanced and would be retarded by the battery of ACTU claims.

- iii) Where has this leap come from to render employers a societal institution ranking with (and assuming the proper responsibilities of) state and federal governments? What basis is provided for this?
 - iv) Why employers and not someone else equally obliquely linked to the responsibilities identified?
 - v) Why would employers legitimately gain additional responsibilities above and beyond their role in paying wages, paying taxes, providing employment goods and services? How has the ACTU proved this should occur?
- c. *“Protective factors that are relevant to these proceedings include good maternal health and support for breastfeeding, positive attention from both parents, facilitated by family friendly work environments and cultures”.*
- i) How exactly are these factors relevant to these proceedings? – How is this proved by the ACTU?
 - ii) How exactly are these factors facilitated by working considerations? How is this proved by the ACTU?
 - iii) This in no way supports the ACTU claim over other approaches. The Commission should in fact conclude that the ACCI/NFF claims will secure environmental and cultural outcomes more advantageous to work and family (and the factors identified) than moving this into the realm of inherently confrontational rights based approaches (and using the ACTU’s flawed clauses which will encourage rather than prevent disputes).
- d. How has the ACTU proved that *“family friendly work environments and cultures”* will be generated by preferring its compulsion based prescriptions to approaches based on consensus, consent and agreement. ACCI/NFF maintain that the cultural and work and family outcomes identified as important can, and are already, being secured by agreement rather than the imposition of new rights and obligations.

Conclusion

[9.26] The ACTU appears to advance this case on the basis that it has an overwhelming weight of material which necessarily compels the conclusion it would have the Commission reach in favour of its battery of claims. In reality, the ACTU has advanced little more than a set of oblique observations which do not support any change in industrial regulation. The volume of research appended does not make it any more relevant.

[9.27] The material and contentions examined in this chapter certainly do not assist the Commission in making a determination between consensually based approaches as supported by the contemporary *Workplace Relations Act 1996* (the ACCI/NFF claims) and the ACTU's unfounded and unsupported compulsion based approaches.