

EMPLOYMENT LAW INITIATIVES, WORK, CARE
AND DIVERSITY

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ABSTRACT

Conflict between work and care is one of the most significant issues for workers in contemporary Australia. Employees report that a poor fit exists between the obligations and expectations of their paid working lives and their responsibilities to care for others, such as children and elderly parents. Since the early 1970s a raft of legal initiatives designed to assist workers to better manage collision between work and care has been developed in Australian employment law. New forms of leave have been recognized, such as maternity, paternity and parental leave, and working time rules now build in a consideration of care responsibilities. Concepts of discrimination, reasonable accommodation and adverse action have been developed in relation to care responsibilities, as has a right to request flexible work arrangements.

The gender dimension of work and care conflict has been explored, both in the empirical scholarship documenting it, and in the scholarship examining the legal initiatives that seek to respond to it. However other forms of diversity, and intersections with gender, such as sexual orientation, race, ethnicity and disability, have received virtually no attention. This thesis fills this gap in the literature by addressing the research question:

Have Australian legal initiatives designed to address collision between work and care adequately recognized diversity in work and care practices?

This thesis argues that it is important to examine how well the Australian work and care legal initiatives account for diversity. Indeed, close attention to diversity is not only warranted, it is necessary. This is so for a number of reasons, including the agendas of social inclusion, equality and non-discrimination, which are now well recognized as objectives of Australian employment law.

The argument of the thesis unfolds in a number of stages. First, it is shown that the legal initiatives developed since the early 1970s do recognize and support some aspects of diverse work and care arrangements, benchmarked against the breadwinner/homemaker model of work and care institutionalized in the early part of the 20th Century. Principally, the legal mechanisms recognize mothers as waged workers, male workers as carers, and same sex couples as relationships of care. This provides a level of recognition of diversity. The close examination of legal rules provided in the thesis reveals as a second stage a number of deficiencies in the recognition of diverse work and care practices. These inadequacies relate to three main matters: law's continuing separation of work from care; a range of substantive limitations in the schemes themselves, such as eligibility rules; and thirdly, complexity, uncertainty and incoherency in the definitions used to recognize care relationships. These matters have a particularly detrimental impact on diverse work and care arrangements.

The thesis thus concludes that to date the legal initiatives of employment law provide less than adequate recognition of diversity in work and care practices. This undermines social inclusion, equality and non-discrimination. The broad contours of a proposal to address these inadequacies are mapped out in the conclusion of the thesis, and offered as the basis for future development.

DECLARATION

I, Anna-Louise Margaret Chapman certify that this work contains no material which has been accepted for the award of any other degree or diploma in any university or other tertiary institution and, to the best of my knowledge and belief, contains no material previously published or written by another person, except where due reference has been made in the text.

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