Disruptive Time: Parental Leave, Flexible Work, and Superannuation in Australia

by

C Starla Hargita

Kent Law School, Faculty of Social Sciences, University of Kent
2018

Abstract

Reproduction and child-rearing are distinctly gendered, temporalising acts in Australia. As such, reproduction is structured around temporalities of care and labour, and these temporalities emerge and disrupt established orderings in daily life, lifetimes, and larger-scale timelines. This thesis uncovers the underlying conception of time in the Australian legal regimes of parental leave, flexible work, and superannuation and its gendered connotations. As a socio-legal project, this thesis uses existing empirical evidence and theoretical material to conceptualise, critically analyse, and theorise the gendered temporalities of women with children in Australia. By constructing a feminist critique of neo-maternalistic productivism in Australia’s parental leave, flexible work and superannuation systems, the thesis provides an alternate theory of disrupted temporalities in maternity.

Word Count: 80,387
Acknowledgements

This research project is a result of the care, patience, and support of many people. First and foremost, I am grateful for the resounding support and care provided by the University of Kent in making this possible. To Emily Grabham, Judy Fudge, Jenni Millbank, and Karen O’Connell, thank you for your feedback and time. A very heartfelt thank you to Emily for the warm welcome to Kent; I could not have done this without your kind support then and throughout. I am so grateful.

I am also grateful for the friends and colleagues who have shared their wisdom, care, and support over the years. Thank you, Donatella Alessandrini, Katherine Biber, Tracey Booth, David Carter, Katya Dunajeva, Lynn Risbridger, Elyse Methven, Ryan Trumpinski, Anthea Vogl, and Gaby Wohl. I also thank Margy Thomas Horton for her professional editing assistance.

My warmest appreciation goes to my father for all of his love and support. To my two sisters: how many times did you instruct me to look in the encyclopaedia or consult a dictionary? I probably have you two to thank for my love of research. To my mother, I miss you dearly and wish you could have been here to see its completion.

For his extraordinary care, as well as his love and support (including all of the meals and pots of tea), I especially thank Nicholas Dorey. I cannot express the appreciation and joy that you inspire in me. I look forward to experiencing our own care-based temporalities with the twins. I am so grateful and I love you so, so much.

Finally, to Ecco and Loki, thank you for (literally) kicking me in the guts to finish this thesis. You are very loved and already appreciated; may you both know a life full of love, care, and empathy.
Table of Contents

Abstract ................................................................................................................................. i

Acknowledgements ............................................................................................................. ii

Table of Contents .............................................................................................................. iii

Introduction ....................................................................................................................... 1

I. Overview of Research, Research Questions, and Method ............................................. 3

   Theory and Method.......................................................................................................... 6

II. Australia: Legal and Political Context ........................................................................ 8

   Labour Relations in Australia: A Brief Overview of Recent History ......................... 11

   Background to Work Choices ....................................................................................... 15

   Shifting Labour Relations under Work Choices ......................................................... 17

III. Situating the Thesis in Time: The Life Cycle, Chrono-normativity, and Neo-liberalism .................................................................................................................. 29

   Parental leave .............................................................................................................. 30

   Flexible Work ............................................................................................................... 35

   Retirement and Superannuation .................................................................................. 37

   Contextualising the Worker-Mother Laws ................................................................ 39

   The Life Cycle, Chrono-normativity and Neo-liberalism .......................................... 45

Chapter Outline................................................................................................................... 49

Chapter 1 Methods and Frameworks in Law and Time .................................................... 56

   Introduction ............................................................................................................... 56

   I. Interdisciplinarity and Data Sources ........................................................................ 59

      Empirical Data Sources .............................................................................................. 60

   II. Bases: Critical and Ideological ............................................................................ 65

      The Public-Private Divide ....................................................................................... 73

      Gendered Division of Labour: Ideal Mother and Ideal Worker ............................ 76
### Part I Legal Temporalities ...........................................117

#### Chapter 2 Gendering Care: Parental Leave .......................118

- **Introduction** .................................................120
- **I: Legislation on Parental Leave in Australia** ..................131
  - Parental Leave Pay Scheme: A Product of the Productivity Commission Report ..................................................133
- **II: Parental Leave as Neoliberal and Hetero-Capitalist** ......141
  - ‘Co-Funding’ the Gap? .......................................144
  - Disingenuous and Other Attachments to Unwaged work ..........149
  - Temporality of Gendered Division of Labour: Chrono-normativity and Neo-maternalistic Productivism .........................158
- **Conclusion** ......................................................165

#### Chapter 3 The Enduring Temporality of Flexible Work in Work Choices ..................................................169

- **I. Theoretical and Conceptual Models** ........................171
- **II. Parenthood, Labour, and the Employment Contract becomes the Employment Relationship** .........................184
  - Working Time Transitions and Transitional Labour Markets ..........185
Labour Transitions ................................................................. 191
Remaining Instability and Time Stress ......................................... 205

III. Conclusion ......................................................................... 211

Chapter 4 Superannuation: Waged Work and Labour Hours ......... 213

I. Introduction ........................................................................ 213

II. Superannuation: Legal and Policy Background ....................... 221

The Function of Superannuation ................................................. 221
Policy and Women’s Economic Security .................................... 223

III. Temporal Analysis and Alternatives .................................... 228

IV. Analysis of Actual and Proposed Reforms ............................. 238

A. Income Disparity ............................................................... 242
B. Time out of Waged Work .................................................. 245
C. Relationship Breakdown ..................................................... 251
D. Women Live Longer .......................................................... 259
E. Analysis ................................................................................ 264

V. An Alternative Proposal ...................................................... 266

VI. Conclusion .......................................................................... 274

Part II Feminist Alternatives in Disruption ................................. 278

Chapter 5 Disruptive Time and Transitional Labour Markets ........ 279

Introduction ............................................................................. 279

I. Legal Temporalities ............................................................. 281

Parental Leave ........................................................................ 282
Flexible Work .......................................................................... 283
Superannuation ....................................................................... 286

II. Maternity and Critical Temporalities .................................... 288

Julia Kristeva’s Women’s Time .................................................. 289
<table>
<thead>
<tr>
<th>Queer Time</th>
<th>293</th>
</tr>
</thead>
<tbody>
<tr>
<td>III. Care and Disruptive time</td>
<td>297</td>
</tr>
<tr>
<td>Disruptive time</td>
<td>299</td>
</tr>
<tr>
<td>IV. Transitional Labour Markets</td>
<td>309</td>
</tr>
<tr>
<td>Introduction</td>
<td>310</td>
</tr>
<tr>
<td>Fully Integrated TLMs</td>
<td>314</td>
</tr>
<tr>
<td>V. Conclusion</td>
<td>320</td>
</tr>
</tbody>
</table>

**Chapter 6 Conclusion**  | 323 |
| Introduction  | 323 |
| The Enduring Ideology of the Ideal Worker and Intensive Mother  | 324 |
| Disrupting Neo-maternalistic Productivism  | 330 |
| Conclusion  | 335 |

**Bibliography**  | 340 |
| A. Articles/Books/Reports  | 340 |
| B. Cases  | 362 |
| C. Legislation  | 362 |
| D. Other  | 363 |
Introduction

The time that parents can share with children shifts over the life cycle, beginning at birth or adoption, and then shifting as children age and life circumstances change. How parents can maintain an income whilst caring for children, how work is organised to allow for the exigencies of life, especially the care of children, and how employment relations are converted into retirement income are regulated by law. This thesis is about the construction of time for women with children in Australia’s parental leave, flexible work, and superannuation regimes. My thesis addresses three central questions:

1) What is the dominant conception of time underlying Australian work and parenting laws and policies in parental leave, flexible work, and superannuation?

2) In what sense is that conception gendered, particularly as it relates to women with children?

3) What alternative conceptions of time are possible?

This thesis investigates and identifies the legal temporalities\(^1\) — the representation and conception of time and temporality in law and legal text — of each legal regime and proposes more inclusive alternative conceptions of time and temporality for those with caring responsibilities. In response to these questions, I focus on what I call the ‘worker-mother laws’ of parental leave, flexible work, and certain

---

superannuation reforms and argue that there is one dominant conception of time in the legislation, what I have conceptualised as neo-maternalistic productivism. The ideology of neo-maternalistic productivism advances a hegemonic time that structures women’s role as subservient to the productivistic regime of Australia’s neoliberal capitalism. I examine the laws regulating these three worker-mother regimes, place them into a broader social context to examine how women experience time, and use analytic tools from other disciplines to help understand the relationship between this hegemonic temporality constructed in the laws and women’s experiences of time.

Throughout this thesis, I return to the core themes of the life cycle, neoliberalism, chrono-normativity, and labour relations. In this introduction, I situate the thesis within these core concepts while providing a background and overview of the thesis. I begin with a deeper discussion of my research questions, followed by a brief outline of the theory and method used throughout this thesis (which is elaborated in more detail in Chapter 1). Section II provides an abbreviated political background and context for the thesis, mapping out the major shift in Australian labour relations in the late 20th century and into the 21st century. Section III of this introduction expands on the life cycle literature to illustrate how the three worker-mother laws relate to each other before providing additional legal context to each case study. I further introduce key background issues in labour centred on working time and child care, as well as introduce the themes of chrono-
normativity and neo-liberalism before concluding with a chapter outline of the thesis.

I. Overview of Research, Research Questions, and Method

There is a great deal of empirical evidence documenting that Australian women consistently suffer compounding economic disadvantage across multiple stages of the life cycle. I argue that understanding the construction and role of time in law and society is critical to first, illustrate how the gender-time gap consistently disadvantages women across these stages of the adult life cycle, and second, begin to redress that disadvantage. This thesis is motivated by concern about the ways in which legal regimes meant to redress women’s economic disadvantage, namely, parental leave, flexible work, and various reforms of Australia’s superannuation system, instead perpetuate the gendered problems that they claim to remedy, most especially the gender-time gap.

My thesis takes as its particular focus the dominant construction of time underlying the three distinct but related legal regimes of parental leave, flexible work, and superannuation. Taken as case studies, I interrogate the extent to which these laws help to construct gendered experiences of time for women with children over multiple phases of the life cycle. Therefore, the analysis begins with the birth or adoption of a child with parental leave, cycles through to flexible work, and ends with retirement in my discussion of superannuation. In addressing my first two research questions, additional, related questions and their answers
surface: what assumptions and ideologies underlie these laws, particularly about gender and maternity? Do the laws’ outcomes match their public rhetoric? I argue that these laws reinforce idealised images of gendered labour, while maintaining the primacy of paid work in the hierarchy of time needs.

As the first two research questions and their related corollary questions are addressed in relation to each case study, the third research question emerges, asking ‘what alternative conceptions of time are possible?’ In the process of answering this question, I investigate alternatives proposed by other scholars and legal academics, develop my own theoretical approach, and explore comprehensive reform.

In response to these main questions, my thesis builds two central arguments. First, I argue that neo-maternalistic productivism is the dominant conception of time underlying, informing, and constructing parental leave, flexible work, and superannuation in Australia. Neo-maternalistic productivism, I argue, is a hetero-capitalistic time that elevates productivism and productivistic economism over care and the temporalities of care. That is, the practice and concept of neo-maternalistic productivism describes how legal, political, and social actors eschew or obfuscate gender-sensitive constructions of time in order to promote and achieve its own ideological ends based largely in heteronormative and neoliberal capitalism’s rationalities. Thus, it is both gendered and gendering. Second, I argue that time for those with
caring responsibilities is better conceptualised as the care-based temporalities of disruptive time.

Part I, comprising Chapters 2 through 4, introduces and forms the substantive analysis of parental leave, flexible work, and superannuation, and constitutes the main part of my first argument. Arising from this first argument are specific outcomes of my research in each case study locating exclusion and disadvantage to women with children across parental leave, flexible work practices, and superannuation reform efforts. Despite completing more labour hours over a life course than men, women with children suffer compounding disadvantage that often culminate in economic insecurity in older age.

The motivating, core contentions of my thesis form part of a second, but related argument, about reflecting a more inclusive construction of time within law and policy. One of the aims of this thesis is to bring insight on time, critical temporalities, and time-use to bear on the reform of laws and policies meant to alleviate disproportionately gendered outcomes borne by those with caring responsibilities. This aim is discussed in my methodology in Chapter 1, followed by an analysis and proposal in Part II (Chapters 5 and 6). How this aim is achieved is addressed in more detail in Chapter 5, which introduces my concept of disruptive time within the context of critical temporalities and caring responsibilities, and Chapter 6, which suggests and then analyses an alternative to the established legal regimes and organisation of labour in Australia through transitional labour markets.
Theory and Method

As a socio-legal project, this thesis provides a fuller and more accurate description, analysis, and critique of the gendered temporal implications of parental leave, flexible work, and superannuation in Australia, which I treat as separate case studies of legal time. Socio-legal methods extend beyond a closed system of legal theory and jurisprudence to answer questions that legal text alone cannot sufficiently answer. This involves careful reference to both empirical and theoretical methods and is explained in more detail in Chapter 1.

The empirical component draws on secondary quantitative and qualitative data to demonstrate disparate effects drawn along gender lines. The quantitative data, which includes time-use surveys, labour statistics, and economic markers, drawn predominantly from the Australian Bureau of Statistics, demonstrates quantifiable differences along gender lines. My use of qualitative data, which includes other social indicators related to time-use and time-stress and references to the type and quality of child care provided, demonstrates differences in reported attitudes, subjective experiences, and how time in care-related activities is characterised. These data provide the necessary backdrop to the worker-mother laws but do not entirely account for disparate experiences of time and care. Therefore, I turn to theoretical methods and models to understand what some of the empirical data indicate.

Although a basic doctrinal analysis of worker-mother laws would demonstrate the statutory underpinnings and interpretations of the
relevant laws, the theoretical component of this project is essential to address the question of dominant time in Australia and in what sense that concept of time is gendered, particularly in reference to women with children. Accordingly, I draw on a range of feminist perspectives in a variety of disciplines including law, sociology, cultural studies, and labour economics to develop a feminist theory of disruptive time. This theory emerges, in part, through careful analysis and feminist interpretation of sociologist Pierre Bourdieu’s *Pascalian Meditations*² and his concept of embodied time. Taken further, theoretical methods are essential to analysing the gendered conceptions of time in the first two research questions and three case studies, and theories of time are vital to providing robust, alternative conceptions of time in answering the final research question. In sum, the empirical component demonstrates *what* is happening, while the theoretical part analyses *how and why* it is happening. I provide the foregoing overview to portray the broad bases forming the interdisciplinary nature of this socio-legal thesis. In building this interdisciplinary approach, however, I have had to recount the political and legal context underpinning my case studies and the marked shift in labour relations that occurred at the cusp of the 21st century.

---

II. Australia: Legal and Political Context

In much-publicised attempts and largely at the urging of the Australian Human Rights Commission, the Commonwealth has introduced a number of legislative reforms in the last fifteen years aimed at increasing women’s workforce participation rates in an effort to alleviate the economic burdens of existing legal frameworks. The archetypal examples of these laws, which I refer to as Australia’s ‘worker-mother laws,’ are parental leave, flexible work, and mandated wage-contingent retirement savings (superannuation). These legal reforms have been largely successful at increasing women’s employment, in that they facilitate the combination of paid work with the unpaid labour of care.

However, notwithstanding the good intentions that may have led to these laws, they have had unintended consequences. When the first such laws were designed, labour economics scholars expected that the increase in maternal employment would lead to more equal sharing of care and domestic labours between men and women. The assumption was that women’s care work would be redistributed or shared, such that

---


without expending greater effort, women could become more economically independent and self-sufficient. In this way, care work and paid labour could be harmoniously combined. Yet, labour and time-use surveys indicate that this sharing of labour has not occurred. As women’s waged work has increased, the expected offset from men has not eventuated. Men’s child care activities have increased only marginally, and without any decrease in their waged working hours.\(^5\) Meanwhile, women have not substantially decreased their time spent providing child care. As a result, women have experienced increased time-pressure in direct proportion to their increase in waged working hours.\(^6\) Such has been the outcome of Australia’s worker-mother laws in the face of the nation’s longstanding gendered division of labour, in which the male serves as the predominant breadwinner and the female as, overwhelmingly, the predominant caregiver.\(^7\) The consequence of

---


these laws, then, has been the emergence of a complicated relationship among individuals, laws, and societal norms and expectations around gender, care, and labour, unfolding over the course of the life cycle.

Australia is an appropriate site for this study for three reasons. First, as discussed above, successive Australian governments have maintained a policy platform aimed at women, care, and waged work, with the express goal of increasing women’s workforce participation rates, especially the rates of women with children. Yet, this platform simultaneously emphasises ‘economic efficiency’. The likelihood of conflict between these two aims—helping women with caring responsibilities and economic efficiency—raises the question of how effective these policies actually are for women with children. The second reason for focusing this study on Australia is that it is one of the more recent sites where bipartisan political aims and platforms have implemented (partisan) legislative reforms specifically targeting women with children. Because these reforms are relatively recent (discussed in more detail below), Australia’s established workplace norms and


practices are currently in a state of change and confrontation, providing a uniquely nascent legal and social window to study. Third, Australia is an appropriate site for this study because it provides a telling example of how gendered time manifests across the life cycle. With robust time-use data collected by the Australian Bureau of Statistics, as well as additional time-use research by university-affiliated researchers, there is accurate data with which to analyse time across waged work, unwaged work, and gender. Further, the three Australian legal frameworks under investigation, parental leave, flexible work, and superannuation, specifically implicate time and temporality in the statutory language, but have not been analysed together as archetypal laws in the gendered life cycle. These three worker-mother laws provide a continuum of legislation to study over the gendered life course.

**Labour Relations in Australia: A Brief Overview of Recent History**

This section begins with a brief introduction of the social and political landscape in Australia under the Howard Government (1996-2007) before demonstrating how Howard Government legislation changed the process of industrial relations from a negotiated approach to a constrained voluntarist approach. Between 1996 and 2008, the Howard Government’s approach to gender and care took the form of mounting tensions between the Coalition Government’s social conservatism and its contradictory positions on women’s workforce participation. Centred around decollectivising labour relations, deregulating working time, and promoting a hetero-capitalist approach to work and labour,
the Howard Government pledged to help working families ‘balance work and family responsibilities’. However, this stance on ‘flexibility’ failed to address the gendered embodiment of time for women with caring responsibilities.

The twentieth century saw a shift in women’s waged employment in Australia. Women suffered legally sanctioned job discrimination and lower rates of pay prior to the 1970s. This ‘marriage bar’ that kept married women outside of waged labour in many job classifications began to be dismantled under feminist pressure in the second half of the twentieth century. In 1969, the Equal Pay Case was brought before the federal Arbitration and Conciliation Commission, followed in 1972 by another Equal Pay Case and a litany of federal and state anti-discrimination laws. As legal hurdles were increasingly addressed, the employment of married and unmarried women, regardless of class, increased significantly from the 1970s.

By the time John Howard and the Liberal-National conservative coalition took government in 1996, the gender-time gap was at a critical point. For the first time in labour history, over half of working-age


\[13\] National Wage and Equal Pay Cases (1972) 147 CAR 172.
women were participating in some form of waged employment by the early 1990s.\textsuperscript{14} Just over 60\% of women in a couple with children were engaged in waged labour,\textsuperscript{15} however a trend was emerging: even as women were increasing their presence in the waged workforce, this declined for mothers of young children (aged 0-4), and men with children were increasing their working hours.\textsuperscript{16} The 1990s and 2000s was a pivotal period in the gendered division of labour, and the Howard Government had the potential to curb the outcomes of the gender-time and gender-wage gaps while addressing the time-pressure of an increasingly overworked, neoliberal society and shift the ways in which women’s time was constructed and valued. However, rather than address this, the Howard Government encouraged this gender-time gap while supporting a ‘flexible’ work place publicly aimed at helping ‘employees and employers to negotiate workplace agreements incorporating family friendly working agreements’\textsuperscript{17}


\textsuperscript{15} Of the 61.4\% of mothers in a couple engaged in waged labour, 57\% were in part-time waged work; for lone mothers 56.8\% of those in waged labour did so on a part-time basis, ibid.


\textsuperscript{17} Australian Government, above n 10.
Part of the Howard Government’s objective was to activate more women with children into the part-time waged labour market.\textsuperscript{18} The \textit{Workplace Relations Act 1996} (Cth) and subsequent amendments known as \textit{Work Choices}\textsuperscript{19} introduced radical and systemic changes to Australia’s established labour laws, practices and regulations. Because \textit{Work Choices} amended the \textit{Workplace Relations Act 1996} and was presented as the final iteration of the Howard Government approach to work and labour, this section focuses predominantly on this Act to provide a more comprehensive background to subsequent legislation covered by this thesis. In the public policy materials promoted at the time, \textit{Work Choices} was presented as helping to ‘balance work and family responsibilities’ and as ‘particularly suited to tailoring working arrangements’ for families.\textsuperscript{20} The Howard Government relied on a dominant rhetoric centred on ‘flexibility’ and ‘choice’ to communicate the benefits of \textit{Work Choices} to Australian workers, with special regard to workers with children.\textsuperscript{21}

\textsuperscript{18} See, eg, Interview with Melissa Doyle and Mark Baretta, ‘Interview with Prime Minister John Howard’ (11 May 2005).

\textsuperscript{19} \textit{Workplace Relations Amendment (Work Choices) Act 2005} (Cth).

\textsuperscript{20} Australian Government, above n 10; see also \textit{Workplace Relations Amendment (Work Choices) Act 2005} (Cth) s 3(1) providing a ‘principal object’ as ‘assisting employees to balance their work and family responsibilities effectively through the development of mutually beneficial work practices with employers’.

\textsuperscript{21} Australian Government, above n 10.
Background to Work Choices

What the Howard Government attempted to do (and succeeded for a short while) was to shift the practices of regulating working patterns from a negotiated approach to that of externally constrained voluntarism\(^{22}\). Externally constrained voluntarism is an approach that eschews legislated labour regulations in favour of voluntary self-regulation and private forces external to the government and law. It reflects a neoliberal approach to work pattern flexibility, vesting power in capital-based market forces and traditional employer demands and power. We see this legacy endure beyond the Howard Government despite the repeals made under the *Fair Work Act 2009* (Cth).

States that rely on externally constrained voluntarism to regulate work pattern flexibility tend to be based on more individual employment contracts with a wide distribution of normal working hours, spanning from longer hours to sporadic, shorter hour jobs.\(^{23}\) These hours tend to be highly gendered and classed, resulting in men (usually fathers) working longer hour jobs, and women and the impoverished working


the other end of the spectrum in highly precarious positions. The UK is one example of a system built largely on voluntarism with weakened collective bargaining power and a highly gendered distribution of paid and unpaid labour hours.²⁴

Prior to the suite of changes ushered in during the Howard Government, Australia had largely operated under a negotiated approach to labour law and regulation. Working patterns and labour conditions were negotiated between unions and employers or set by industrial tribunals, with relatively generous deference to union demands and priorities. During the previous Australian Labor Party (‘ALP’) Governments, various formal agreements were brokered between the trade union movement, represented by the Australian Council of Trade Unions (‘ACTU’), and the ALP. These Accords established a cooperative relationship between the ALP and trade unions, and regulated traditional labour issues such as wages and hours. The Accords also included broader areas of social concern such as social security, education, and health care. During this time, child care rebates, anti-discrimination legislation, and income support were introduced, earning the ALP Government a reputation of applying a

‘femocrat strategy’. This ‘femocrat’ strategy came about as a negotiated outcome between feminist activists, trade unions, and the ALP.

Under the Australian Constitution, the federal government does not have the power to set wages, but does have the power to create laws with respect to ‘conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one state’ (s 51(xxxv)). Over the twentieth century, Australia (and New Zealand) developed a unique approach to labour regulation largely set by union priorities. Wages, working patterns, and labour conditions were set by negotiation between trade unions and employers and captured in legally binding awards. There are thousands of awards each applying to specific classifications; each job belongs to a classification and is thus covered by an award. Where negotiation broke down, federal arbitration bodies would decide awards.

**Shifting Labour Relations under Work Choices**

Under Howard, this negotiated mechanism by which labour conditions and laws were decided was set to change, resulting in a perceptible shift

---


26 Brennan, above n 16, 32; Johnson, above n 25, 105.

27 The legislation was passed using the corporations power under the *Australian Constitution* s 51(xx).
in transitional labour markets, working patterns, and the gendered
distribution of labour and time-use. In this introduction, and again in
Chapter 3, I focus on two Acts from the Howard Government: *Workplace
Relations Act 1996* (Cth) and *Workplace Relations Amendment (Work
Choices) Act 2005* (Cth) (‘Work Choices’). The rhetoric surrounding both
acts relied heavily on ‘flexibility’. The Howard Government used
‘flexibility’ to convey a flexibility of industrial relations and labour
regulation with an aim toward employer interests and neoliberal
values.\(^{28}\) This flexibility was changing the mechanism by which labour
regulations were made, shifting it from a negotiated approach to a
constrained voluntarist approach.

(Kevin Andrews, Minister for Employment and Workplace Relations);
Commonwealth of Australia, ‘Media Release from PM John Howard on
WorkChoices’ (9 October 2005)
Relations’ *Sydney Morning Herald*, 26 May 2005
Interview with John Howard, ‘Interview with John Laws Radio 2US’ (20 June
Howard, ‘Joint Press Conference with The Hon Joe Hockey MP, Minister for
Employment and Workplace Relations Commonwealth Parliamentary Offices,
Melbourne’ (4 May 2007); Rae Cooper and Bradon Ellem, ‘The Neoliberal State,
Trade Unions and Collective Bargaining in Australia’ (2008) 46(3)
*British Journal of Industrial Relations* 532; Christopher Jon Arup et al, ‘Assessing the
Impact of Employment Legislation: The Coalition Government’s Labour Law
Programme 1996-2007 and the Challenge of Research’ (Research Report,
Workplace and Corporate Law Research Group Department of Business Law
and Taxation and Australian Centre for Research in Employment and Work
Department of Management, Monash University, 2009) 4–6
The Howard Government concentrated efforts toward decollectivising labour relations. The Coalition ran a campaign based on the ‘great principle of choice’ and flexibility. In promoting Work Choices, Howard PM explained:

The purpose of this legislation is to add to the future economic strength of Australia because we are living in a competitive world and we have to have more flexibility, we have to encourage workers and their bosses to make agreements at the workplace level.

‘Choice’ was closely related to ‘flexibility’ in the rhetoric of Work Choices. The Howard Government’s use of the term ‘flexibility’ predominantly applied to describe the balance of forces between the workforce and employers, rather than working patterns of hours, days or place.

Howard’s PM use of ‘industrial relations flexibility’ and ‘flexible

---

29 Note difference between ‘decollectivise and “deregulate”. Although Howard PM argued that he was “deregulating” the labour market, he was actually decollectivising decision-making and instead relegating workplace relations to the place of employment; to do this Work Choices actually increased the length and complexity of regulations and legislation. The Workplace Relations Amendment (Work Choices) Act 2004 was over 706 pages long, with subsequent amendments and changes increasing the length and complexity. The legislation “constitute a high point of direct government regulation of employment relationships in Australia in employers” interests’ Barbara Pocock et al, ‘The Impact of Work Choices on Women in Low Paid Employment in Australia: A Qualitative Analysis’ (2008) 50(3) Journal of Industrial Relations 475. Therefore, the term ‘decollectivise’ is more appropriate than ‘deregulate’ to describe what Howard sought to achieve.


31 Interview with John Howard PM, above n 30.

32 One Millionth AWA Announcement Comrec Elizabeth Downs; Prime Minister - Howard, John; Interview - 05 October 2006
workplaces free of rigidity in the industrial system’ belies his understanding of ‘flexibility’ to describe a decollectivised and atomistic system of workplace relations.

*Work Choices* was meant to grant employers and employees the ‘choice’ to be flexible with the way in which they negotiate labour; it was largely about privatising an otherwise collectively negotiated and publicly regulated relationship between labour and employment. Kevin Andrews, then Minister for Employment and Workplace Relations, introduced the *Work Choices Bill* in 2005 as accommodating:

> the greater demand for choice and flexibility in our workplaces. It continues a process of evolution, begun over a decade ago, towards a system that trusts Australian men and women to make their own decisions in the workplace and to do so in a way which best suits them.34

The approach exemplified under *Work Choices* disempowered union-based collective bargaining and industrial tribunals in favour of individualised Australian Workplace Agreements (AWAs) and employer mandated standards and conditions.35 Under *Work Choices*, new employees could be forced to sign AWAs as a condition of

33 ‘John Howard’s Acceptance Speech’, above n 30.

34 Commonwealth, Parliamentary Debates 2005 12 (Kevin Andrews).

employment. Awards were stripped of their force, relegated to twenty allowable matters, beyond which the Australian Industrial Relations Commission was no longer able to arbitrate.³⁶ Work Choices displaced the previous centralised system based on negotiated flexibility with a neoliberal approach to working conditions and employment contracts, reflecting a more individualistic paradigm based.

Under Work Choices, once the award and collectively bargained agreement expired, there was no requirement or obligation to renegotiate a new agreement or maintain previously awarded entitlements and conditions. Instead, employers had the option to formalise the employment relationship as an AWA. The No Disadvantage Test, which was originally introduced into the Australian Industrial Relations Commission, was meant to ensure that workers under AWAs were no worse off than workers under collectively bargained agreements and awards.³⁷ However, Work Choices removed the No Disadvantage Test, replacing it instead with the Australian Fair Pay and Conditions Standard (AFPCS). The AFPCS articulated the minimal legal standards in:

(a) basic rates of pay and casual loadings;
(b) maximum ordinary hours of work;
(c) annual leave;
(d) personal leave;

³⁶ Cooper and Ellem, above n 28, 539.
³⁷ Ibid.
(e) parental leave and related entitlements.\(^{38}\)

Essentially, the AFPCS wrested power from awards to cover minimum pay, maximum hours, and leave. Penalty rates and overtime rates were not covered, and aside from basic maximum hours (set to 38 hours per week, but averaged over 12 months by agreement), working hours were not legislated. Flexible working arrangements ‘can be given in return for the non-payment of penalty rates’.\(^{39}\) Further, where previously agreements were to be subject to substantive scrutiny and oversight from the state and federal commission bodies, Work Choices introduced a ‘streamlined’ approval process by which AWAs and Union Greenfields Agreements were automatically accepted after ‘lodgment’ to the newly created Office of the Employment Advocate (‘OEA’).\(^{40}\) ‘Lodgment’ simply means the employer filled out the required form and gave it to the Employment Advocate.\(^{41}\) It was then a validly lodged workplace agreement, without need for further scrutiny or oversight.

\(^{38}\) *Workplace Relations Amendment (Work Choices) Act 2005* (Cth) s 89(2).


\(^{40}\) *Workplace Relations Amendment (Work Choices) Act 2005* (Cth) div 5, s 99; see also Cooper and Ellem, above n 28, 538; Carolyn Sutherland, ‘Industrial Legislation in 2008’ (2009) 51(3) *Journal of Industrial Relations* 297; The OEA was created with the *Workplace Relations and Other Legislation Amendment Act 1996* (Cth) sch 3 but this streamlining occurred in Work Choices.

\(^{41}\) *Workplace Relations Amendment (Work Choices) Act 2005* (Cth) s 99B.
Where a previous award or collectively bargained agreement existed, the Act stipulated that certain terms and conditions were ‘protected’: rest breaks, incentive-based payments and bonuses, annual leave loadings, public holidays, overtime or shift loadings, some monetary allowances, penalty rates and outworker conditions. But without the No Disadvantage Test, this ‘protection’ merely meant that these terms were treated as retained unless explicitly addressed as removed or modified in the terms of the contract. Employers were required to explicitly spell out in the agreement where any of those protected items were removed or modified — otherwise they were deemed to be retained under the original award or agreement.

In response to public dissatisfaction with the loss of entitlements under Work Choices and the loss of the No Disadvantage Test, a ‘Fairness Test’ was introduced in July of 2007. This test, conducted by the newly created Workplace Authority, is limited only to a requirement that ‘fair compensation’ be provided for the loss of any protected award conditions, or if there is not ‘fair compensation’ that the employee’s or


42 Ibid s 354.
43 Sutherland, above n 40, 3 Check this cite for 2008 at 3.
44 Sutherland (2008) at 3.
45 Sutherland (2008) at 3; Cooper & Ellem at 538; Coulthard 1999; Creighton and Stewart 2005; MacDermott 1997.
employer’s circumstances justify ratification nonetheless.\textsuperscript{48} ‘Fair compensation’ is defined as ‘monetary and non-monetary compensation’ as well as ‘the work obligations’, with regard to ‘personal circumstances’, including ‘in particular the family responsibilities’ of the relevant employees.\textsuperscript{49} This meant that certain benefits or entitlements could be exchanged so long as ‘fair compensation’ was demonstrated. Flexible work patterns could be traded for monetary or non-monetary ‘compensation’. This disproportionately impacted women who, in Australia, are predominantly the primary carers in society.\textsuperscript{50}

Rather than operating on a consensus-based negotiation approach to labour regulations, labour relations became ‘flexible’ by becoming fractured and atomised to specific workplaces with the rise of individual and workplace bargaining. The AWA epitomised this individualising approach to labour relations by granting primacy to agreements made between individuals and employers. Individualisation was further supported by the introduction of Greenfields Agreements, specified as either ‘Union’ Greenfields Agreements, where an employer seeks to open a new business and prior to hiring any employees negotiates with a union to draw up an

\textsuperscript{48} Ibid sch 1, subdiv C, 346M, (4)-(5); see also Sutherland (2008) 3-4.

\textsuperscript{49} Ibid sch 1 subdiv 346M (2)-(3).


24
agreement, or an Employer Greenfields Agreements which granted unilateral agreement-making ability to employers without any other party involved in the process or outcome. The Act allowed the employer to unilaterally create a document before any persons were actually employed, and this document was to be treated as a valid, enforceable workplace agreement. Under *Work Choices*, awards lost the power to govern whole swaths of work classifications as individual enterprises negotiated agreements and replaced awards. Thus, the priorities of labour as a collective whole and the trade union-led project of society-wide redistribution of income and social wages gave way to individual and enterprise-based negotiations representing increasingly fractured and individualised interests.

Labour could no longer operate as a collective group representing the interests of workers taken broadly; instead bargaining power shifted to different factions of enterprises, employers, and individuals. This individualisation of labour disproportionately impacted women because the majority of workplaces most likely to employ women with

---

51 *Workplace Relations Amendment (Work Choices) Act 2005* (Cth) s 96C.

52 Ibid s 96D.

53 Ibid 96G(4).

54 Ibid div 2, s 11C(B)(1).

55 Cooper and Ellem, above n 28, 538.
children are on an award-basis. The 1996 Act as well as *Work Choices* sought to, amongst other considerable retractions, undermine the industrial tribunals and award system by facilitating and encouraging individual workplace agreements. The rise of the workplace agreement without the previous protection of awards shifted the bargaining power away from employees. *Work Choices* achieved this, in part, by removing protections against unfair dismissal in workplaces with up to 100 employees. The protection against unfair dismissal is a central fulcrum of bargaining power, one that had been enshrined in Australian law since 1994. This left many workers without the power to influence their wages, working hours, or request flexibility.

We see this reflected in the wage disparity after *Work Choices*. Wage increases under the award stream, around 1.5% per annum, were significantly below the average 4% per annum increase afforded to the

---


57 *Workplace Relations Amendment (Work Choices) Act 2005* (Cth) sch 1, s 3; 115(c)(i).

58 See ibid pt VI see also div 2, s 11(6)(1) specifying ‘allowable award matters’ which does not include pay but does include working hours (sub s a) and working time status (sub s 1). Further, transitional hours, conditions, or working patterns are not included. Parental leave is subject to special attention in the Act at s 94C - 94Z.

59 See, eg, ibid s 94Q allowing employers to terminate employment during maternity or paternity leave, so long as any required notice is given.

60 Pocock et al, above n 29, 478.

61 See also ibid 475.
bargaining stream.\textsuperscript{62} This disparity is even more marked by gender: women earned an estimated 11\% less on AWAs than men did on registered collective agreements.\textsuperscript{63} The gendered segregation of industries, such as mining, had a further impact: in the State of Western Australian where the male-dominated mining boom was continuing, men earned 22\% \textit{more} under AWAs than under collective agreements, whereas women in WA earned 9\% \textit{less} than under collective agreements.\textsuperscript{64} In the overall private sector, the gender pay gap had been narrowing slightly until \textit{Work Choices} came into effect: 70\% of the gains achieved in the previous ten years was eradicated in the first nine months after the legislation came into effect.\textsuperscript{65} Women in the public sector fared better, where average weekly ordinary time earnings for full-time employees were equal between men and women (0.4\%) between February and December 2006.\textsuperscript{66}

This disparity between public and private sector workers relates closely to the way in which wage negotiations are conducted and negotiated. Public sector workers are most likely to be covered by collectively bargained agreements, but in the private sector women are more likely

\begin{flushright}
\textsuperscript{62} Barns and Preston, above n 35, 13.
\textsuperscript{63} Cooper and Ellem, above n 28, 544–45.
\textsuperscript{64} Peetz, above n 56, 30–35; cited in Cooper and Ellem, above n 28, 545.
\textsuperscript{65} Peetz, above n 56, 55 the gender pay gap had narrowed from 79.6\% in February of 1996 to 81.3\% in February 2006, then fell sharply in just nine months to 80.1\% in November of 2006.
\textsuperscript{66} Ibid.
\end{flushright}
than men to be covered by an award (one in three women in the private sector are covered by an award, compared to one in six men).\textsuperscript{67}

Enterprise bargaining is more likely to occur in large firms and workplaces who employ full-time workers—statistically, this is most likely to be men.\textsuperscript{68}

Combining the public and private sectors saw a similar increase in the gender pay gap after \textit{Work Choices}, finding that 55\% of the gains made toward narrowing the gender pay gap were erased in nine months.\textsuperscript{69} In addition to wages, awards provide other protections such as favourable working conditions and patterns, overtime, pay loading, and holidays.\textsuperscript{70} Therefore, an accurate portrait of the gendered loss from \textit{Work Choices} extends beyond wages to its impact on parental labour transitions and resultant gender-time gap.

However, the relevancy of analysing \textit{Work Choices}, labour relations, and the gender-time gap during the Howard Government is in mapping its legacy in contemporary Australia. Though the specific labour laws that the Howard Government implemented were repealed by the \textit{Fair Work Act 2009} (Cth), the neoliberal rationality underlying the Howard Government reforms remain with Australian labour law today, along with the gendered implications and outcomes of its neo-maternalistic

\textsuperscript{67} Ibid.

\textsuperscript{68} Ibid.

\textsuperscript{69} Ibid see above n 62.

\textsuperscript{70} Workplace Relations Amendment (Work Choices) Act 2005 (Cth) see above n 55.
productivism. This thesis argues that second point, following from the Howard Government’s rhetoric of ‘flexibility’. This neoliberal rationality and its attendant impact on time in the life cycle are discussed below.

III. Situating the Thesis in Time: The Life Cycle, Chrononormativity, and Neo-liberalism

In articulating the framework of this thesis, the life cycle literature has been particularly relevant to my research organisation together with a critical analysis of chrono-normativity and neo-liberalism as they relate to Australia. Chrono-normativity is a concept developed by Elizabeth Freeman to describes a mode of temporal implantation—‘the way in which institutional, hegemonic forces and values come to seem like somatic facts in the rhythm of life’.71 In this part of the introduction, I situate the thesis within the life cycle literature to illustrate how the three worker-mother laws relate to each other before providing additional legal context and background to each case study of parental leave, flexible work, and superannuation. I conclude this section by further discussing chrono-normativity and neo-liberalism in the life cycle.

The gender-time gap is best analysed through the lens of the life cycle. The three case studies of parental leave, flexible work, and superannuation each exemplify how the gender-time gap disproportionately impacts women across the life cycle after children

---

enter the household. Further, each corresponds to a stage in the worker-mother’s life cycle.

In the literature, the life cycle tends to be framed in terms of the age of a worker, assumed to be a male, paid labourer. However, in this thesis, the understanding of the life cycle incorporates caring responsibilities and is framed in terms of the age of children through a carer’s life cycle. In the following sub-sections, I discuss each of the three life cycle stages and its associated worker-mother law. For each stage and law, I (a) identify and describe the law, and (b) introduce problems with the law: its gendered consequences in neoliberal Australia. This thesis is the first legal analysis that takes the life cycle as an organising feature of the research. These issues of the life cycle and the worker-mother laws are discussed in more detail in subsequent chapters.

**Parental leave**

The starting point in this thesis is the transition into what I call the ‘parental care labour’ where parents are faced with simultaneously caring for dependents in a non-material sense (eg, care), while procuring the material, economic needs of the family. The case study of parental leave best encapsulates the start of this life phase. Parental leave allows for a bracket of time, after a child is born, for women to transition from

---


73 See also Apps and Rees, above n 72.
paid labour to the unpaid labour of child care. That is, it marks the legislatively protected temporal disruption of the life cycle from waged work-based temporalities to one of care-based temporalities. At present in Australia, parental leave pay is codified in the Paid Parental Leave Act 2010 (Cth) and unpaid parental leave in the Fair Work Act 2009 (Cth). Parental leave pay is the prototypical policy platform maintained by successive Australian governments aimed at women, work, and care. In its original form, which came into effect in 2010, it provided a workplace entitlement to eligible parents (mainly ‘birth mothers’) on parental leave to a maximum of 18 weeks of payment at the federal minimum wage. Although the recent Social Services Legislation Amendment (Omnibus Savings and Child Care Reform) Bill 2017 proposes extending paid parental leave to 20 weeks for those without any employer-provided paid parental leave, along with other substantive

74 Parental leave legislation protects the transition from waged work to child care responsibilities in eligible workers, but does not address other forms of caring responsibilities such as those provided to other family members or friends for a variety of reasons. Other legislation exists for these carers but is beyond the scope of this thesis. By focusing on women with children, this thesis does not seek to diminish the import or reject the existence of these other caring responsibilities. For this thesis my analysis pertains to those with child care responsibilities, although I believe that a version of my theory of time as a disruption to established hegemonic temporal orderings applies also to these other experiences and practices of care.

75 See Baird, Williamson and Heron, above n 3, 326.

76 Paid Parental Leave Act 2010 (Cth) s 3A(1); div 3; because the Act requires 330 hours of qualifying work in a given work test period, usually 392 days for eligibility.

77 The current version now provides leave for either parent, subject to certain conditions explained in more detail in Chapter 2, following the birth or adoption of a child or children. Paid Parental Leave Act 2010 (Cth).
changes to the paid parental leave scheme, it seems unlikely to pass in its current form. The current Paid Parental Leave scheme provides 18 weeks of federal minimum wage payments to primary carers (still currently aimed at ‘birth mothers’ first and foremost) and up to two weeks of minimum wage payment to ‘fathers and partners’. To be eligible for parental leave pay, a claimant must have worked for ten out of the previous 13 months, for a minimum of 330 hours in those 10 months, with no more than an 8-week gap between two consecutive working days. To be eligible for statutory unpaid parental leave governed by the Fair Work Act, an eligible parent must have been employed by the same employer on a ‘regular and systematic basis’ for at least 12 months. Therefore, it is plausible that an employee will have switched employers or stopped work in time to be eligible for PLP but not the full 12 months of unpaid parental leave. Eligibility is further set by a citizenship/residency test and income ceiling. When the law initially passed in 2010, public commentators in Australia cheered in

---


79 Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measures) Act 2012 (Cth); Paid Parental Leave Act 2010 (Cth).

80 Paid Parental Leave Act 2010 (Cth) s 32.

81 Ibid pt 2-3. Eligibility is discussed in more detail in Chapter 2.
victory.\textsuperscript{82} Sex Discrimination Commissioner Elizabeth Broderick heralded the Act as a ‘major triumph’ that ‘will assist mothers to maintain skills and income by encouraging workplace attachment for workers who have historically been forced to downgrade in both areas [skills and income] when they have a child’.\textsuperscript{83}

However, Australia’s parental leave laws have not lived up to their promise of improving gender parity in the care of new infants, or the economic consequences that follow. Nearly a decade after the passage of the law, this moment in the worker’s life cycle—the shift as a child is born or adopted into a male-female, two-parent household—often marks the establishment of economic inequalities between the man and the woman. The ‘skills and income’ that Commissioner Broderick suggested women would no longer have to sacrifice upon having children, continue to be eroded after the birth or adoption of children. It is also this period of leave that corresponds quite closely with women’s


\textsuperscript{83} Australian Human Rights Commission, ‘2010 Media Release’, above n 82.
workforce attachment: the longer a woman spends away from paid labour after parental leave is exhausted, the less likely she is to reattach to full-time waged work. However, on average, women work more than men when both paid and unpaid labour hours are considered. But women in Australia still face increased risks of poverty in old age. Whatever the intention of the law, it does not counteract the disproportionate detriment to women’s economic security.


Flexible Work

Once the worker-mother has shifted from leave back to the paid workforce, the issue of combining paid labour with caring responsibilities emerges. The next phase in the worker-mother’s life cycle, then, and the second category of worker-mother laws and practices considered in this thesis, is flexible work. Governed by provisions under the Fair Work Act 2009 (Cth), workers with caring responsibilities, usually women, may make a request to their employer that their hours and location of work be varied—for example, workers can request to decrease their working hours, spread them throughout the day or week, and/or work from home, in an attempt to be available for care labour. This provides a right to request flexible work, not a right to flexible work.

As mentioned above, the Howard Government undertook an unprecedented, radical whole-scale reform of Australian labour laws, principally aimed at ‘flexibilising’ labour. The Workplace Relations Act 1996 (Cth) initially repealed the previously operating Industrial Relations Act 1988 (Cth), but Work Choices went further and wholly dismantled the existing system of labour relations whereby trade unions had worked closely with the Australian Labor Party to share power in industrial relations. By invoking what I term the ‘rhetoric of flexibility’, the Howard Government mobilised public policy toward employer

---

87 Fair Work Act 2009 (Cth) s 65.
demands. Frequent reference to and use of the term ‘flexible’ in the Work Choices campaign marks, I argue, a deliberately obfuscatory approach to strategically confuse the polity. ‘Flexibility’ in relation to labour was characterised by the Howard Government as the ability to ‘negotiate workplace agreements incorporating family friendly working agreements’.88 However, the actual intended result and demonstrated outcomes were very different from the proposition of family friendly working arrangements: any purported ‘negotiation’ was effectively dismantled by the Howard Government’s decollectivisation of labour relations and employers were imbued with the unilateral power to alter working arrangements.89 The result of these policies demonstrably retarded previous Governments’ efforts toward gender equality: women with children were increasingly shut out of the workforce, women’s workplace participation rates decreased, and the gender disparity of working hours increased.90

These outcomes are sustained today with data indicating that Australia’s flexible work laws have decidedly gendered outcomes. In 2014, 29.1% of women with children requested some form of flexible

88 Australian Government, above n 10.

89 See, eg, Workplace Relations Amendment (Work Choices) Act 2005 (Cth) ss 329-330.

work practices, and the majority of these women had children under school-age.⁹¹ Half as many men with children requested flexible work, demonstrating the gendering of care in Australia.⁹² Current laws, though implemented to replace Work Choices, do not go far enough to counteract the harms done by the Howard Government and the attendant engrained social norms.

**Retirement and Superannuation**

The third stage in the worker-mother’s life cycle is marked by the shift from paid labour into retirement. At this point, workers begin to receive retirement income pulled from savings, pension, and/or superannuation. Superannuation is a forced retirement-savings device based on prior workforce participation. A percentage of earned income is diverted into an approved superannuation account available to the retired worker upon maturation (and subject to conditions set by statute, eg retirement age).

Data from superannuation funds indicate that Australia’s superannuation system disproportionately penalises women, particularly women who have been carers.⁹³ The average Australian

---


⁹² Ibid 40.

man retires with almost twice the average superannuation balance of a woman.94 Because Australia’s superannuation system is linked to waged work, women are consistently disadvantaged along four main points in superannuation. First, women are disadvantaged from the outset of their working lives: because superannuation contributions are calculated as a percentage of earned income, the persistent gender-wage gap decreases accumulated savings in superannuation.95 Second, in Australia and indeed all societies, women are more likely than men to take time off of waged work for care and other unpaid labours.96 This introduces an expanse of time where women are not earning income and have no employer-funded superannuation contributions. The system currently assumes these women have higher income-earning


partners who may contribute on their behalf. However, this leads us to the third point: relationship breakdown is an increasing reality in many Australian households, leaving women without the support of partners, and the number of sole woman-headed households is increasing. Fourth and finally, women outlive men in Australia. A man retiring at age 67 can expect to live, on average, to the age of 80, whereas a woman retiring at age 67 can expect to live, on average, past the age of 84, leaving a four-year funding gap in an already disparate superannuation system. Superannuation is a system that demonstrates that a lifetime of unpaid caring responsibilities can leave many women in older age poverty. It is at this point in the life cycle that we see the cumulative effects of compounding inequalities in women’s precarious economic security over the life course.

**Contextualising the Worker-Mother Laws**

This section introduces the broader child care related context of female labour force participation in Australia. Implicit within each argument of the worker-mother laws is the issue of gendered part-time waged work.

---


100 As above.
This gendering is largely a result of the temporal characteristics of caring responsibilities. This section begins by discussing part-time employment including the policies and practices relating to part-time working hours. It then discusses the phenomenon of part-time work in the context of school hours and child care.

With nearly half of all employed women working part-time, Australia is characterised as a ‘part-time country’.

Part-time work is defined by the ABS as working 35 hours or less a week. But in Australia, part-time work largely has a ‘degraded’ status – it is predominantly made up of casualised labour with very limited rights and entitlements and little job security. Australia has low levels of permanent part-time work—although the Fair Work Act provides certain eligible employees


the right to request flexible and part-time work after the birth or adoption of a child.\textsuperscript{105}

In Australia, women are more likely than men to be employed part-time. This has been demonstrated, in part, to be due to a number of factors, including those discussed in this thesis around the temporalities of care-work. Furthermore, we know that school and child care hours in Australia, like most comparator countries, are short relative to normal working hours, making part-time work more suitable to providing parental care.\textsuperscript{106} Normal primary school hours, generally starting between 8.30 - 9.30am and finishing around 3.30pm, are unfriendly to usual full-time working hours which are typically 8.00am to 5.00pm. Those who work non-standard working hours which include evenings and weekends face additional difficulties coordinating waged work, child schooling, and care-work (along with sleep and self-care).

Child care poses a similar problem of available hours. Early child care in Australia falls into two categories: informal care and formal care. A third category of early childhood education (pre-school) should also be noted as it provides a substitute for child care in the 1-2 years prior to starting school. Informal care is made up of care provided by

\textsuperscript{105} \textit{Fair Work Act} 2009 (Cth) s 65(1B). It should be noted that the Act does not provide a right to request or return to full-time status following a period of part-time employment related to child care.

grandparents, and other family members, friends, or nannies. Formal care includes day care centres, long day care centres, family day care (approved day care centres operated out of someone else’s home), and out-of-school-hours care.\textsuperscript{107} It seems that the distinction between ‘formal’ and ‘informal’ care relates to care that has set and timed availability. However, I find it more relevant and accurate to think of child care in terms of unpaid and marketised care because even friends, families, and nannies may have set availability. A majority of children will receive some form of non-parental care in the first two years of their lives (before pre-school is available) and most families will use a combination of unpaid care and marketised care to meet employment demands.\textsuperscript{108}

Overwhelmingly, parents who rely on marketised child care in the form of day care centres have to contend with day care hours that are generally 8.00am – 5.00pm or, less typically, 7.30 – 7.00pm for long day care. Without the assistance of additional care providers, day care centres provide little opportunity for parents to commit to the longer hours or non-standard hours associated with various employment.


\textsuperscript{108} I use the distinction of unpaid and marketised care to reflect the unpaid and paid varieties of care. Baxter, above n 107.
Coordinating waged work and day care can be especially difficult for parents facing a significant commute to work.¹⁰⁹

Though the hours available for marketised care poses one constraint, the costs of day care provide another significant constraint. Paying for private, non-familial child care is expensive. Areas in Sydney and Melbourne attract the most expensive child care fees, up to $190 per child per day, but paid child care across the country can be cost prohibitive. Under the current child care policy,¹¹⁰ there are two types of child care financial support available: Child Care Rebate (‘Rebate’) and Child Care Benefit (‘Benefit’).¹¹¹ The Rebate is not income-tested and provides 50% of out-of-pocket child care costs up to $7,613 per child in 2017-18. The Benefit is income-tested and is calculated depending on the hours of child care received, age of child, and the number of children in care. In 2013, the average cost of child care in Australia was $11,288.33,¹¹² and costs have continued to rise, far outpacing government child care benefits. HILDA data demonstrates that the

---

¹⁰⁹ I suspect we will see the rise of this care-commuting problem in capital cities such as Sydney and Melbourne where housing prices in inner city neighbourhoods continue to be unattainable for many young families – forcing them into the outer suburbs, while employment opportunities continue to be concentrated in the inner city.

¹¹⁰ This is set to change on 1 July 2018.


Additionally, the norms around child care in Australia preference parental and familial care.\footnote{Pocock, ‘Work/Care Regimes’, above n 103, 41.} In part, this is an issue of the perception of quality; there remains an enduring attitude that marketised care is of a lower quality than parent or family-provided child care.\footnote{See ibid; see also, eg, Annabel Crabb, The Wife Drought (Random House, 2015) 2–3 and throughout, where she reports the preference for parental care; for example, Crabb recounts a colleague saying, ‘My wife has quit her job, so I can be absolutely confident our child’s getting the best of care’, at 2.} But I suspect this is also linked to notions of class, gender norms, and who has the financial ability to be an ‘ideal mother’.\footnote{The ideal mother is discussed in more detail in this thesis.}

Finally, child care is not always accessible. Even if there is the will, the want, and the money for it, some inner-city child care centres have wait lists that last months or years.\footnote{See also Rebecca Nash, ‘Industry Group Joins Call for an Overhaul of the Australian Childcare System’ \textit{ABC News}, 2 August 2013 <http://www.abc.net.au/news/2013-07-25/push-to-overhaul-childcare-system/4841160>; CareforKids.com.au, \textit{Survey Results: Child Care and Workforce Participation Annual Survey 2016} CareforKids.com.au <https://www.careforkids.com.au/child-care-survey/2016>.} Finding quality and accessible child care leaves many families with unmet needs. There has been a push in recent years to increase the number of child care centres and placements.
available.¹¹⁸ This may not meet the deficit of care available; many centres have placements available for older children but lack placements for infants and younger toddlers. In Australia, data demonstrate that women with older toddlers are more likely to be in the waged workforce,¹¹⁹ which corresponds with the uptake in formal child care places.¹²⁰ However, there remains high levels of underemployment for women with children, while there is no corresponding rise in underemployment rates for men with children.¹²¹

**The Life Cycle, Chrono-normativity and Neo-liberalism**

In examining the three legal areas of parental leave, flexible work and superannuation, each corresponding to a stage of the worker’s life cycle, we see that the worker’s life is structured around three transitions: the transition into parental care labours, the transition into combining paid labour and unpaid child care labour, and the transition from waged labour into retirement. First, paid parental leave provided by the

---


¹²⁰ See Baxter, above n 107, 3–4.

¹²¹ ‘Underemployment rates tend to rise for mothers of dependent children, but not for fathers. The underemployment rates for women with school aged children (6-14 years) and non-school aged children (0-5 year olds) were 12% and 9.1% respectively in 2016-17. These proportions have been reasonably consistent over the past decade, as have those of fathers: 3.5% of fathers of dependent children were underemployed in 2016-17’, Commonwealth of Australia, ‘Gender Indicators, Australia, Sep 2017’, above n 101.
federal government takes the birth or adoption of a child as the starting point in transitional temporalities as the worker transitions into caring responsibilities. Second, flexible work marks the transition into combining paid labour and unpaid care labour. Finally, superannuation is the culmination of a system based on waged work for retirement income. These transitions take on gendered dimensions in Australia. In this thesis, which traces these stages and their associated laws, we track issues of gendered care-based temporalities as they emerge through the life cycle of agents with children.

In analysing the worker-mother laws across the stages of the life cycle, we will consider their basis in chrono-norms: hegemonically imposed expectations about how individuals must perceive time and time-use. Chrono-norms speak directly to the imposed expectations of individuals under the neoliberal hegemony, while Freeman’s chrono-normativity relates to the specific ‘mode of implantation’. Chrono-normativity, as previously mentioned and discussed in more detail in the following chapter, describes the embodied use of time to orientate humans toward maximum productivity. Freeman suggests a temporal counterpoint to chrono-normativity and its emphasis on productivity through sexual dissidents and the queer as ‘figures for and bearers of new corporeal sensations’. I return to these queer temporal referents in later chapters, especially Chapter 5.

---

122 See Freeman, above n 71, 3.
123 Ibid 7.
By contrast to Freeman’s chrono-normativity, my use of chrono-norms shifts the emphasis from one on the ideology of temporalised sexualised norms, to the neoliberal standard of economic rationalisation of time and the body. In other words, chrono-norms refer to temporal norms inculcating capitalist demands and perpetuate the dominant, normative time of neoliberalised global capitalism. Chrono-norms pervade all aspects of the individual and collective, infiltrating the organisation, management, and experience of time on the personal scale, societal scale, and global scale; like chrono-normativity as the process, chrono-norms are part of the technology of governmentality. In the legal context, chrono-norms both contribute to and perpetuate neo-maternalistic productivism by shaping how time is written, practiced, and interpreted in law and legislation. This thesis is specifically concerned with the hegemonic temporal regimes perpetuated in Australia’s worker-mother laws and policies which I identify as neo-maternalistic productivism.

---


As an understanding of temporal norms, neo-maternalistic 
productivism emerges from neo-liberalism’s hegemony in Australia and 
globally. It confines women’s roles to primary carers and secondary 
income earners. Rather than reflecting the maternalism of the early 
twentieth century which sought women’s integration into society based 
on their motherly or nurturing characteristics,\textsuperscript{126} the ideology of neo-
maternalistic productivism advances that women’s role is in service to 
the productivistic regime of neoliberal capitalism. It perfectly captures 
John Howard’s ‘part-time sales assistant’ worker-mother as the one who 
provides intense mothering, but then transitions to the waged 
workforce in a part-time, casual, and often under-employed and under-
paid role.\textsuperscript{127} This speaks to the governmentality of time, chrono-
normativity, in undercutting the temporalities of care. Neo-
maternalistic productivism is a hegemonic time, serving the hegemony 
by privileging heteronormativity within neoliberal capitalism’s confines.

Neo-liberalism is commonly understood as a suite of economic policies 
aimed at affirming free markets through simultaneous deregulation and 
control.\textsuperscript{128} It works closely with capitalism by applying capitalism’s 
valuation and value system to all domains of the political, social and

\textsuperscript{126} See Seth Kovel and Sonya Michel, ‘Introduction: “Mother Worlds”’ in 
\textit{Mothers of a New World: Maternalist Politics and the Origins of Welfare States} 
(Routledge, 1993) 1, 2 and generally.

\textsuperscript{127} See Craig and Mullan, above n 6; see also Chapter 3 of this thesis.

\textsuperscript{128} See Wendy Brown, \textit{Undoing the Demos: Neoliberalism’s Stealth Revolution} (MIT 
personal. Ideologically, neo-liberalism refers to a governing rationality that applies the model of the market to all aspects of life and society; as Wendy Brown describes it, neoliberal rationality ‘configures human beings exhaustively as market actors, always, only, and everywhere as *homo oeconomicus*’, as singularly economised actors.\(^{129}\) This economisation of neoliberal ideology demotes alternately held norms and values of equality, care, and national sovereignty and transposes those from a justice-based framework to an economic register.\(^{130}\) Thus, under neo-maternalistic productivism, norms and expectations of time and time-use emerge in subservience to neo-liberalism’s stranglehold on capitalism, co-opting agents and actors to act, react, and interact in singularly economised rationalities and trajectories. No import is given to the gendering of time, and the relational care aspects of the life cycle.

**Chapter Outline**

This thesis is organised around the adult life cycle of women with children, tracking and analysing the labour-based case studies across the trajectory of legal frameworks of parental leave, flexible work, and retirement. As a socio-legal thesis, it provides several original insights into the legal temporality of parental leave, flexible work, and superannuation in Australia, as well as unique contributions to feminist discourse and law reform on the intersection of time and labour.

\(^{129}\) Ibid 31.

\(^{130}\) See ibid 40–41.
Chapter 1 introduces core concepts, frameworks, and methodologies. Part I, which is made up of Chapters 2, 3, and 4, analyse the substantive legal frameworks on parental leave, flexible work, and superannuation respectively, focusing on answering my first two main research questions for each legal regime. Part II, comprised of the remaining two chapters, focuses on addressing my third research question, ‘What alternative conceptions of time are possible?’ Chapter 5 introduces my theory of disruptive time and maps it across the legal temporalities of preceding chapters before concluding with a discussion of transitional labour markets. Chapter 6 concludes the thesis with by demonstrating how the research questions and outcomes relate specifically to policy objectives.

Chapter 1 outlines in detail the theory, methods and framework that I apply and analyse in answering my research questions while simultaneously situating my work within the emerging field of socio-legal research in time and law. By emphasising how the investigation of time is important and relevant beyond the research outcomes of this thesis, this chapter provides an anchor to broader conversations in law, critique, and society. First, the qualitative data sources and quantitative scope are described in more detail. Then, the chapter introduces key concepts and ideologies structuring Australia’s work and care regimes and superstructures by reference to feminist and labour scholarship. This includes Pierre Bourdieu’s concept of *habitus*, an important sociological framework that informs my understanding of the social
agent in time, and time in the social agent. Additionally, this chapter analyses and critiques neo-liberalism in Australia with particular reference to the various forms of labour and time informing Australia’s legal and social contexts, particularly regarding parenthood and the vicissitudes of gendered temporality in motherhood.

Chapter 2 is the first of the three substantive chapters addressing the three worker-mother legal case studies. It discusses Australia’s Paid Parental Leave Act 2010 (Cth) and its attendant legal temporalities, focusing on addressing my research questions as they relate to parental leave. As described above, the Paid Parental Leave Act creates a bracket of time whereby mothers can temporarily transition away from waged work in order to engage in the unpaid labour of social reproduction. However, in practice, the law leads to a gender-time gap and significantly contributes to the gendered uptake of care responsibilities; women are expected to provide primary care to their young children but suffer disproportionate disadvantages when they are unable or unwilling to resume work as ideal, full-time waged workers. Therefore, I argue that the construction of time in the Paid Parental Leave Act 2010 (Cth) relies on the ideology of neo-maternalistic productivism. Targeted at women in particular, it provides a short period of parental leave pay to provide (gendered) parental care with the explicit aim to re-engage women in the waged workforce. It provides very little legislative attention to fathers in caring roles or the undulating and unpredictable nature of care-based temporalities.
I further argue that the Act is gender blind: it purports to provide the mechanisms for care-related leave from waged labour but ignores the material reality of gendered time. Gender blindness refers to a position of wilful ignorance or suppression as to the gendering and gendered outcomes of laws, policies, regulations, and practices. Women experience a distinct disjuncture between social norms and expectations, and legal standards of work time and work patterns. This chapter provides an original examination of the temporal labour requirements established in the *Paid Parental Leave Act 2010* (Cth), and analyses how the law manifests neo-liberalism’s enforcement of neo-maternalistic productivism. To illuminate how neo-maternalistic productivism manifests through the legislation, the fraught relationship between eligibility for leave, leave duration, and job protection status is discussed. The discussion of maternal disruptive time in work and labour, as it relates to paid parental leave in Australia, is guided by a Bourdiesuan analysis of temporalities in the *habitus*.

Chapter 3 discusses the practice and laws of flexible work in Australia through reference to the policies of the Howard Government. Specifically, I consider how the administration used the rhetoric of

---

‘flexibility’ to justify its unprecedented and radical, whole-scale reforms of Australian labour law under the guise of ‘flexibility’. I argue that this ‘flexibility’ was not a targeted response to address the care-based temporalities of child care and child-rearing, but rather a neoliberal trope for deregulated workforce relations. From that, I develop my original claims in answering the research questions as they relate to flexible work, further situating the underlying logic of neo-maternalistic productivism within flexible work. This chapter, by recognising the role of ‘flexibility’ (as a rhetorical device and as a concept) in the Australian government’s economisation of the maternal waged worker, charts how neoliberal time has been sustained from Howard to contemporaneous Australian law and policy in flexible work.

Chapter 4 discusses superannuation in Australia. Superannuation is one part of Australia’s multi-pillared retirement income system, and operates as a compulsory savings system whereby an individual’s employer is required to submit a percentage of the employee’s income, up to a quarterly maximum, into a superannuation fund or account, which may then be topped-up by the individual subject to certain tax provisions.\textsuperscript{132} The average Australian woman retires with about half the

superannuation balance of the average Australian man. This chapter analyses how and why women are disproportionately disadvantaged under Australia’s current superannuation system while addressing the underlying conception of time in superannuation and its gendered connotations. I explore how this system, premised on chrono-norms, uses neo-maternalistic productivism to disadvantage women who cannot and do not adhere to a lifetime of uninterrupted waged labour, and fails to value other modes of temporal experiences or lived values. This chapter’s analysis highlights the disproportionate labour hours completed by women and how the gender-time gap and gender-wage gap combine to leave women at higher risk of poverty in older age than men. It ends by suggesting a sex discrimination pension as a more appropriate method of government-mandated retirement savings.

Chapter 5 distils the preceding chapters’ findings on the gender-time gap in Australia with respect to waged and unwaged work. Building on the preceding chapters, I develop my own conception of time by showing that time is not a singular thing, and temporalities of care disrupt neo-maternalistic productivism and hetero-capitalist orderings in unexpected and unimaginable ways. This chapter focuses on a comprehensive approach to answering my second research question.

based on alternative conceptions of time. After introducing my alternative theory of time, disruptive time, the chapter maps that theory across the legal temporalities of parental leave, flexible work, and superannuation. By reference to the maternal, I ground my conception of disruptive time in a logic and praxis of care. The chapter then critically analyses transitional labour markets as one possibility to account for disruptive time across the life course and provide a gender-sensitive shift in Australian legal temporalities.

Chapter 6 provides the conclusion to the thesis, drawing together the outcomes of the research project in light of ongoing policy considerations. By referencing back to the first main argument of this thesis, namely, that neo-maternalistic productivism is the dominant construction of time that perpetuates the gender-time gap and women’s compounding economic disadvantage, it recalls how the second main argument of this thesis, that based on time and temporalising law, informs this research project. By more accurately accounting for how time is experienced by those with caring responsibilities, worker-mother related legal reform can begin to achieve that which is sets out to do: alleviate the disproportionate disadvantages borne by women, particularly women with children.
Chapter 1
Methods and Frameworks in Law and Time

Introduction

This thesis uncovers the underlying dominant conception of time and temporality in the Australian legal frameworks of parental leave, flexible work, and superannuation and constructs an alternative vision through the use of feminist temporalities. In describing legal temporalities, Grabham provides that ‘legal temporalities produce as well as govern, and that they govern productively, often in service to biopolitical projects’. As such, I analyse specific laws, policies, and practices around parental leave, flexible work, and superannuation to understand the legal temporalities and more significantly, the disparate gendered outcomes associated with parenthood under these legal frameworks. Specifically, this thesis addresses the following main question: What is the dominant conception of time underlying Australian work and parenting laws and policies in parental leave, flexible work, and superannuation, and in what sense is that conception gendered, particularly as it relates to women with children? The second part of this thesis addresses the following question: What alternative conceptions of time are possible? In doing so, I investigate multiple conceptions of time before providing an alternative theory of disruptive time that more accurately represents the experience of time for women with caring responsibility of children.

134 Grabham, above n 1, 10.
My central argument is that the laws and policies of Australia’s parental leave, flexible work, and superannuation are informed and constructed by neo-maternalistic productivism—that is, an understanding of time that specifies women’s roles as subordinate to neoliberal capitalist demands. In this initial chapter, I position my argument within the intersection of sociological, feminist, and legal literature, and I outline how the thesis contributes to the scholarship and discourse surrounding law’s relationship with time in society. In so doing, I provide both an overview of the relevant literature and empirical claims, as well as an outline of the main approaches used within this thesis.

Socio-legal scholarship is broad and far-reaching, but this thesis and research is located in a small but growing subset of socio-legal scholarship that relates specifically to gender and time. As such, I rely on empirical data sources to appreciate the measurable distinctions between genders in relation to time. This includes time-use data, labour statistics, and other social indicators. I also incorporate sociological theory and models to understand the individual in relation to society and the social, turning particularly to the literature and research on the life cycle, models of gendered labour and the division of labour, and Pierre Bourdieu’s *habitus*. I also reference theoretical work in what I call critical temporalities—the critical study of time and temporal experience—as well as feminist traditions within law and society.

Accordingly, Section I of this chapter situates my method within the interdisciplinary area of socio-legal scholarship and empirical data.
sources. Section II provides a basis for this thesis’ critical interdisciplinarity and argues that it matters how time is conceptualised in law and society, especially when calling on law makers and legal scholars to be more sensitive to gender and the outcomes of gendered time and gendered labour. In particular, I argue that certain ideologies influence how legislators, legal academics, and other political and legal actors conceive of and represent time, rather than turning to how social agents actually perceive and experience time and temporalities. Section III explores the key literature on critical temporalities, which largely seeks to investigate and/or theorise how social agents experience time and temporalities. I include Pierre Bourdieu’s concept of *habitus* in this designation of critical temporalities as a way to best conceptualise the individual in society through a theorisation of time and embodiment. As such, it has significantly influenced my understanding of social agents’ experiences of time in law and society. Finally, Section IV synthesises the foregoing to present my methodological framework, which incorporates sociological data, theories, and feminist legal insights and interpretations. By reference to empirical data and by drawing on the work of Julia Kristeva, Pierre Bourdieu, and several critical temporal theorists, I establish a critical interdisciplinary method to address my research questions on legal temporalities. Before concluding the chapter, I orientate this thesis in time, drawing on some of the aforementioned scholars to situate this work in temporal reflexivity.
I. Interdisciplinarity and Data Sources

As a critical, interdisciplinary thesis, the research spans across legal doctrinal, social sciences, and theoretical methods and sources. In answering my research questions, my aim is three-fold: to expand beyond doctrinal studies to investigate the underlying conception of time in the relevant acts and provisions, to uncover how that dominant conception of time is gendered, particularly as it relates to women, and to conceptualise alternative imaginings of time that more accurately reflect the experience of women with caring responsibilities. Underlying its methods and approaches, these aims signal this thesis' contribution to the larger project of understanding how time is conceptualised and utilised in law and society. Achieving this requires an interdisciplinary approach, but with a recognition of the benefits and boundaries of each method and approach.

Doctrinal studies of law use interpretive methods and statutory approaches to read cases, statutes, and other sources of law.135 As a system of rules, norms and principles, law is understood to be many things, including a formal instrument of regulation, a body of rules and decisions, a practice, and an academic discipline.136 The task of a

---

135 Some legislation describe the ways in which certain statutes should be read. See also Reza Banakar and Max Travers, ‘Law, Sociology and Method’ in Reza Banakar and Max Travers (eds), Theory and Method in Socio-Legal Research (Hart Publishing, 2005) 7.

136 See ibid 6–7; see also Herbert Lionel Adolphus Hart, The Concept of Law (OUP Oxford, 2012); Ronald Dworkin, Law’s Empire (Harvard University Press, 1986).
doctrinal legal project is to provide coherence to these established legal norms, rules, and principles within the closed system of law. By looking directly at the statutory text, crucial points of the law become clear. The legislation itself establishes key legal operations such as the scope, powers, applicability or eligibility, and extent of the provisions.

Although doctrinal analysis is useful for clarifying the scope and provisions of a given law, it is limited to the text and legal doctrine. Because I understand law as embedded in a political and social context from which individual rules and laws cannot be severed, I also use socio-legal methods to extend beyond this closed system of law to answer questions that doctrinal analysis alone cannot legitimately answer. A socio-legal methodology provides an alternative to the singular understanding found in ‘black-letter law’, thereby giving access to broader context, alternative viewpoints, and a richer, more complex picture of social dynamics. In the next sub-section, I will describe the empirical data sources that I use to quantitatively and qualitatively assess time-use along gender lines in Australia. Theoretical perspectives will be discussed in more detail in sections II and III below. Together, these socio-legal methods enable me to address my research questions regarding the gendered temporalities that underlie Australia’s worker-mother laws and policies.

**Empirical Data Sources**

To assess time-use along gender lines in Australia, I have synthesised primary and secondary sources of both quantitative and qualitative
data. Primary sources include data from the Australian Bureau of Statistics (‘ABS’) on labour, time-use, superannuation, and finance, described below. Secondary sources include analyses of the above data, as well as qualitative data including time-diary analyses and time-quality assessments, life cycle studies, and other social indicators.

Quantitative Data

The quantitative data for this study comes primarily from the ABS. The ABS is Australia’s national statistical agency, established by statute and government-funded. Providing official statistics, the ABS is often relied upon by economists, social scientists, journalists and other political and academic actors. Several key sociologists that I rely on and reference use data provided by the ABS in developing their research on gender and labour in Australia. Accordingly, an important quantitative and qualitative component of this thesis is information from Australia’s

---


139 Census and Statistics Act 1905 (Cth); Australian Bureau of Statistics Act 1975 (Cth).
National Time-Use Surveys. These are national time-diary surveys conducted by the ABS, first in 1992, and later in 1997 and 2006.\footnote{Australian Bureau of Statistics, ‘3414.0 - Guide to Migrant Statistical Sources, 2011 (Edition 2)’ (29 March 2011) <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/3414.0main+features262011%20(Edition%202)>.} The time-use survey is meticulous, methodical, and detailed;\footnote{Australian Bureau of Statistics, ‘4150.0 - Time Use Survey: User Guide, 2006’, above n 90.} it requires participants to detail each day’s activities, participants, and objectives in three-minute intervals for two weeks. At its outset and in line with a growing trend for international time-use surveys, these surveys sought to capture time in ‘all’ of its uses including paid and unpaid labour. The first survey, in 1992 (unlike subsequent surveys), asked participants what their primary, secondary, and tertiary activities were during a given time slot. This is particularly notable, as it had the potential to capture how caring activities and emotional labour imbued the time-use of primary activities. For example, a participant may write ‘commute to work’ as her primary activity during a given time slot. However, her secondary and tertiary activities may include, ‘drop [child] off at childcare’ and ‘phone Granny for her birthday’, indicated other forms of labour including unpaid care labour and emotional labour. This also had the effect of revealing when leisure time was ‘contaminated’ by work and the gendering of activities. Time-diary surveys remain the most accurate record of unpaid labour, but the last scheduled survey in

\footnote{If requested, participation is required by law. \emph{Census and Statistics Act 1905 (Cth)} s 10.}
2013 was abandoned by the ABS as part of a budget cut. Accordingly, the most recently available time-use survey is from 2006—this was during the Howard Government and several years before the implementation of statutory paid parental leave in Australia. Overall, time-use data demonstrates the disparity of labour between male and female parents, both waged and unwaged. Chapter 3 and its discussion of flexible work discusses the results of this time-use survey in more detail.

**Qualitative Data**

In addition to the quantitative time-use data, I also incorporate secondary research on qualitative data. This data includes qualitative aspects of the time-use surveys, life cycle assessments, and other social indicators including indicators of wellbeing, job satisfaction, technology use, the outsourcing of domestic tasks, and subjective time stress. I also draw on secondary materials analysing attitudinal data, such as Barbara Pocock’s work on attitudes to mothering, Lyn Craig’s work on the gendered division of labour, and secondary research on the HILDA Survey results. The HILDA Project was initiated and is funded by the

---


145 Eg, Pocock, ‘Work/Care Regimes’, above n 114; Barbara Pocock, *The Work/Life Collision: What Work Is Doing to Australians and What to Do about It* (Federation Press, 2003). This paper uses unit record data from the Household, Income and Labour Dynamics in Australia (HILDA) Survey. The HILDA Project was initiated and is funded by the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)
Australian Government Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and is managed by the Melbourne Institute of Applied Economic and Social Research (Melbourne Institute). It is a household-based longitudinal study which began in 2001\textsuperscript{146} and surveys households on subjective wellbeing, labour market dynamics, and family dynamics.\textsuperscript{147} It seeks to locate the intersection of household and labour dynamics on an annual basis using questionnaires and interviews.\textsuperscript{148} As a longitudinal study, it indicates social changes over time, and can be linked more closely to policy impacts and outcomes. Using the ‘household’ as the unit of analysis, it is subject to similar criticisms as those linked to the time-use surveys including its overrepresentation of urban, non-Indigenous, and middle and higher income respondents.\textsuperscript{149} Like my use of ABS data, I do not

and is managed by the Melbourne Institute of Applied Economic and Social Research (Melbourne Institute). The findings and views reported in this paper, however, are those of the author and should not be attributed to either FaHCSIA or the Melbourne Institute.


\textsuperscript{147} Melbourne Institute, the University of Melbourne, above n 122.

\textsuperscript{148} Ibid.


**Pulling the Data Together**

This thesis synthesises, analyses, and interprets the foregoing sources to provide new knowledge and understandings of the discipline. This includes a critical engagement with the temporal ideology of neomaternalistic productivism. As such, this thesis combines a number of sources to provide the empirical foundation to a novel conceptualisation of time in Australia’s neoliberal law and society. While existing literature has analysed and interpreted empirical data as applied to gender and society as well as law and society, this thesis interjects a critical temporal component within legal argument. This is explained in more detail in the following section.

**II. Bases: Critical and Ideological**

In this section, I provide a basis for this thesis’ critical interdisciplinarity, arguing that it matters how time is conceptualised in law and society. I outline here dominant ideologies informing how certain political agents perceive and understand time in society. Though I expand my analysis and critique to women with children in this thesis, in this section I am predominantly interested in the agents intimately involved in the construction of legal temporalities, including legislators, lawyers (and
judges), and legal academics and other political actors. In particular, I focus on those assumptions and systems of thought underlying the worker-mother policies and laws.

Ideology is one tool by which political regimes and actors attempt to justify their positions, rally support, and impose their political will. All ideologies are contingent, but dominant ideologies masquerade as universal truths: these dominant ideologies serve the critical function of ‘structur[ing] beliefs and limit[ing] a vision of possible alternatives to those that are constructed by the powerful.’ For example, laws forbidding married women from working prior to the 1960s in Australia relegated a significant subset of women to a particular outcome constructed by men in power. It is the work of critical analysis to expose how the law (and other constructions) are shaped by ideological rationalities. Attention to ideologies is essential to this thesis’s legal-temporal analysis because ideologies influence law and legal practices. By shaping the law, ideologies help to shape individuals’ temporal experiences. This thesis is primarily concerned with the relationship between the law and gendered temporal experiences.

---


152 Ibid 18.

153 See Public Service Act (No 2) 1966 (Cth).

154 See also this and subsequent chapters’ discussion of habitus.
In doing legal research, as Clare McGlynn has explained, it is important to critically analyse the existing and dominant ideologies of the jurisdiction in question because only then can their contingent nature—and the possible alternatives—be recognised.\textsuperscript{155} In the case of laws regarding women’s roles and relationships, McGlynn notes, the underlying ideologies of gender need to be understood because they shape and uphold stereotypes about what men and women can and should do. Legal practices work to reproduce ‘ideas circumscribing women’s relationships to children, men and the family . . . because the dominant “ideology” reproduces stereotypes and norms for women, men and the family, which may not reflect reality’; and moreover, despite the artificiality of these ideologies, they ‘frame the discussion of issues and [are the standard] against which the legitimacy of individual claims are judged.’\textsuperscript{156} This thesis adopts this type of critical analysis to most effectively engage and critique the legal temporality for women with children, and build from that imaginative alternatives.

As mentioned in the Introduction, the most pervasive ideology in Australia today is neo-liberalism, a political-economic doctrine that elevates the market above the individual. To understand this multivalent ideology, I rely, most prominently, on the work of political theorist Wendy Brown. Brown describes neo-liberalism as a


\textsuperscript{156} Ibid 30.
government rationality relying on an agenda of marketisation, privatisation, and decollectivisation in the individual as well as the state and market.¹⁵⁷ Neo-liberalism enshrines market-based capitalism as the preferred economic approach of nations, and looks to markets as a guiding principle for all matters of governance and regulation.¹⁵⁸ Neoliberal rationality extends beyond governance and economic doctrine, to the organising principles and practices of society and individuals. Unlike classical liberalism, which circumscribes the freedom of the individual as the precondition for rational and legitimate government,¹⁵⁹ the role of the individual under neoliberal states is to serve the market and to embody and enact market-based practices and principles. Politically, this shift in focus from a social contract between individual and state to a relationship between individual and market renders the state as responsible merely to support the primacy of market-based economism. By emphasising the ways in which individuals serve their own needs through participation in the market, the state’s role in developing and administering welfare retracts behind the foreground of markets and wages.

Neo-liberalism, like any ideology, embeds a certain morality, albeit a paradoxical one. According to Hartman, neoliberal ideology has a

---

¹⁵⁷ Brown, above n 105.


‘twin, contradictory commitment to a libertarian economic philosophy combined with a morally conservative [view]’.

This moralistic conservatism is illustrated, for example, in neo-liberalism’s approach to welfare, which it views as a ‘scourge producing economic inefficiencies and dependency in its recipients’.

Under neoliberal ideology, the failure of some individuals to ‘successfully’ participate in ‘the solution of specific matters and problems’ is understood as the moral failing of those individuals, rather than a market failure. Under the neoliberal project, the basic unit of analysis for failure will always be the individual and not the market. Indeed, the ultimate ‘success’ of neo-liberalism lies in the fact that its emphasis on markets and economisation obfuscates the role of the neoliberal state in constructing the market-based society that it purports to already exist.

That is, neo-liberalism manages to conceal its own constructed artificiality.

A core argument of this thesis centres on critiquing neo-liberalism’s hegemony of time in law and policy. In her study of contemporary attitudes to mothers and mothering in the neoliberal global north, Julie Stephens found a profound ‘cultural anxiety around nurture, human

---

160 Hartman, above n 104, 59; in the context of Anglophone nation-states (including Australia).

161 Ibid 58.

162 Lemke, above n 104, 202.

163 Ibid 203; see also Brown, above n 105.
dependency, caregiving, and emotion’. Rooting this rejection of care and dependency in neo-liberalism, Stephens turns to the ‘postmaternal’ to describe these insights:

The post-maternal therefore becomes a fantasy of self-sufficiency, the desire for sovereignty promised but never provided by market individualism. The idea of the unencumbered, self-sufficient, rational, and freely choosing agent is thus the antithesis of maternal notions of subjectivity. Yet, it is the unencumbered self the most easily conforms to the instrumental rationality of the neoliberal marketplace.

Tracking the ‘unmothering’ of public life back through social and political thought, Stephens begins with an overview of the various understandings and definitions of the ideology of maternalism. Amongst the many approaches, Stephens identifies the common thread of maternalism as ‘an assertion of the public, social importance of motherhood and the nurture and care of children’. Throughout her critique, Stephens is careful to conceptually separate maternalism from feminism(s), but concludes by imagining an ‘alternative feminist maternalism’ that rejects contemporary strains of the ‘new and regressive’ maternalism. It is this ‘new and regressive’ maternalism that I identify as Australia’s neo-maternalism.

---

165 Ibid 7.
166 Ibid 2–5.
168 See ibid Conclusion.
169 Ibid xiii.
As is already made clear, neoliberal rationality and ideology feature prominently in the construction of neo-maternalistic productivism. Situating neo-maternalistic productivism within contemporaneous accounts of neoliberal law and policy distinguishes it from a more general patriarchal time that pre-existed neo-liberalism. Rather, neo-maternalistic productivism relies on neoliberal laws and policies to shape the individual within marketised, gendered spheres.

However, the prefix ‘neo’ is also a temporal term used to reflect the ideology’s temporal character. Accordingly, it slots into the temporal progressivism and processualism of the hegemonic temporalities of Australia. Neo-maternalistic productivism is both gendered and gendering — it genders time in ways that promote and elevate quantifiable productivism over other experiences such as care, while simultaneously rendering these actual experiences of care-based temporalities as gendered. Under neo-maternalistic productivism, the time of the ideal worker, focused as it is on productivistic and quantifiable endeavours, is normatively and ideologically preferred, while child care-related (and indeed any care-related) time is treated as a possible distraction to the ideal worker and, as such, a time to be dealt with by secondary, supportive and largely invisible agents (e.g., wives). This then allows the ideal worker the luxury of more productive time — and the ability to commit to overtime, which he will inevitably need now that his previously income earning partner is on extended unpaid parental leave or transitioned to part-time work.
Implicit in neoliberal thought, time is subservient to the market, while the market relies on the state to maintain its primacy. Neo-maternalistic productivism, describes a hegemonic temporality as it relates to individuals within the neoliberal state, where the individual is expected to serve the market, and embody and enact market-based practices, principles, and temporalities. Neoliberal rationalities further perpetuate a hierarchy and distinction between market as public and home as private, while expecting neoliberal temporalities to apply within all aspects of this artificial hetero-capitalistic divide.

For our purposes, the implications of neo-liberalism in Australian society are exemplified by the persistence of the heteronormative household. Such a household is made up of usually heterosexual, two-parent family with children; women provide the majority of care, and men are ‘bread-winners’ providing the majority of household income. Under this household, the woman’s labour is unpaid care work, while the man’s is paid labour. However, what we saw emerging most clearly in political rhetoric in the Howard Government and that which endures today as Australia’s neo-maternalistic productivism is a view of women’s labour as a delicate mix of primary care and secondary income earning. This dual role captures women’s service to productivity – women both complete the vast majority of caring duties so that the male of the household may continue his waged work unimpeded by caring concerns or demands, but also engage with an employment policy that seeks to mobilise women into the waged workforce. This household
structure would seem to place the woman at an economic disadvantage, but it is presumed that there is adequate sharing of resources within the relationship, namely financial, and that this household will remain intact and endure as is. The heteronormative household is premised on and supported by a number of neoliberal assumptions, including the public-private divide and the gendered division of labour. Furthermore, neo-liberalism’s and, in turn, neo-maternalistic productivism’s model of the life cycle is centred around waged labour. These assumptions in turn inform Australia’s dominant norms and practices of motherhood and care. Importantly for this project, these norms and practices are further circumscribed by legislation spanning across economic policies, family law, tax law, labour law, and government benefits. Arguably, these normative restrictions are most explicit in the worker-mother laws of parental leave, flexible work, and superannuation.

**The Public-Private Divide**

In a neoliberal capitalist state such as Australia, it is typical for the public and private realms to be constructed as separate. The public-private dichotomy tends to dictate that the male identity and material contribution is rooted in his activities outside the home, while the female role is to be the wife, mother, and primary caregiver—which, as noted above, is today known as the heteronormative family structure.

---

This distinction between the public and private realms can be traced back through the English common law to the classical liberal thought of Thomas Hobbes and John Locke, and the romantic thought of Jean-Jacques Rousseau.\(^\text{171}\) In each case, the public-private divide implies a hierarchy, in which the man is elevated over the woman, using this as a source of dominance over her.

The idea of the public–private divide (and its implicit elevation of man) endured for centuries into the neoliberal era. In the 1970s, three hundred years after John Locke wrote of the ‘father of the family’,\(^\text{172}\) John Rawls in his *A Theory of Justice* declared the man to be still the head of the family and, indeed, of all morality.\(^\text{173}\) According to Rawls, the formative figure of humankind, the one who is most capable of meaningful political thought, morality and persuasion, is the ‘reasonable man’ in the original position. This person operates in Rawls’ theoretical, economised moral space and makes decisions without communal, societal, familial, or transgenerational connections or encumbrances, but


\(^{172}\) See, eg, Locke, above n 141.

with basic understandings of physical science, neoliberal economics, and basic laws.\textsuperscript{174} Though purporting to be gender neutral without knowledge of being male or female, Rawls’ ‘reasonable and rational’ person implicitly excludes women and bases morality on an enduring public-private divide firmly rooted in a gendered, public arena of knowledge and skill. This ‘reasonable and rational’ standard is the exemplary individual for whom the law should be written and justice afforded.

Law has played a crucial role in the institutionalisation of this public-private divide.\textsuperscript{175} In recent decades, the ‘reasonable man’ evolved into the purportedly gender neutral ‘reasonable person’ standard, which is used as the threshold of acceptable legal conduct across a number of Australian laws.\textsuperscript{176} By using the word ‘person’ instead of ‘man’, the phrase was meant to become gender neutral. However, unsexing the


\textsuperscript{175} See, eg, Regina Graycar and Jenny Morgan, \textit{The Hidden Gender of Law} (Federation Press, 2002); Catharine A MacKinnon, \textit{Feminism Unmodified: Discourses on Life and Law} (Harvard University Press, 1987); Caroline Forell and Donna M Matthews, \textit{A Law of Her Own: The Reasonable Woman as a Measure of Man} (NYU Press, 2001).

phrase did nothing to remove the gendered connotations in law and legal decision-making, nor did it rectify enduring issues of defining reasonableness.\textsuperscript{177} The gender neutrality of the law’s language, including that found in the context of the laws examined in this thesis, belies the gendered nature of the law’s outcomes.

**Gendered Division of Labour: Ideal Mother and Ideal Worker**

The public-private divide in neo-liberalism makes it possible to assign men and women complementary ideals to fulfil. In this way, the separation of spheres supports the heteronormative household’s gendered division of labour. Elizabeth Freeman tracks the time and tempo of domesticity and situates this within her critique of the heteronormative household.\textsuperscript{178} Domestic time, according to Freeman, is a class-inflected temporal manifestation of this public-private divide, synchronising household work to the efficiency and discipline of industrial capitalism.\textsuperscript{179}

Domestic manuals such as Catharine Beecher’s *A Treatise on Domestic Economy* (1841) stressed the need for order and efficiency in the home, at the same time that women’s labor was naturalized into feminine influence through the figure of the angel in the house who magically kept things clean and people fed without seeming to lift a finger. In other words, middle-class

\textsuperscript{177} See also Graycar and Morgan, above n 145, 390–398; Finley, above n 146, 64; Forell and Matthews, above n 145.

\textsuperscript{178} See Freeman, above n 71, 39–44.

\textsuperscript{179} See ibid 39; for a brief discussion of Freeman’s account of domestic time as it relates to gender and class, see also Starla Hargita, ‘Australia’s Parental Leave Pay Scheme: Temporal Disruption and “Genuine” Attachment to Waged Work’ (2017) 7(2) *Feminists@Law* 24-25.
femininity became a matter of synchronic attunement to factory rhythms, but with the machinery hidden.\textsuperscript{180}

In Australia, the two ideals that heavily shape gender norms, particularly with respect to labour and, relatedly, time, are the ideal mother and the ideal worker. The ideal mother, also known as the intensive mother, embodies Australia’s dominant ideology of motherhood, fulfilling a role of primary care. She not only spends vast quantities of time on her mothering; she also engages in high-quality mothering as a hands-on and intensive practice of care. By contrast, the ideal worker is keen to satisfy the needs of his employers by working longer hours and overtime (albeit without penalty rates) when that is needed, but also equally satisfied with reduced hours when requested. Rather than resting on a full-time employment contract, the ideal worker narrative relies on an \textit{employment relationship} that goes beyond contractual or legal obligations. (The role of the employment relationship is expanded upon in Chapter 3.) These two ideals, the ideal mother and the ideal worker, reinforce the gendered division of labour. These ideals also locate the gender-time gap in an enduring ideology with a long history in the common law.

The gendered division of labour in Australia, in which men are waged workers and women are unpaid providers of care labour, represents what Barbara Pocock refers to as a work/care regime.\textsuperscript{181} Pocock

\footnotesize
\textsuperscript{180} Ibid.

\textsuperscript{181} Barbara Pocock, above n 121, 241.
recognised that Australia’s work/care regime relegates men to the ‘ideal worker’ norm and women to the ‘ideal mother’ norm; she reminds us that the male breadwinner in Australia ‘has stood for so long at the centre of the workplace and social welfare systems, and at the heart of the definition of masculinity itself.’ 182 And the role of women as homemakers and caretakers is intertwined with Australia’s legal and social interpretation of capitalism, replicating this gendered social order.

Pocock introduced the concept of the work/care regime to explain how social, political, and economic structures push individuals into certain types of labour. A work/care regime is made up of the relevant culture, institutions, and collective actions, preferences and behaviours of those in paid and unpaid labour and care. The culture influences and is constructed by the actions, preferences and behaviour of individuals and institutions. 183 Pocock explained that a society’s work/care regime operates within its gender order, which is ‘[c]onstructed by the division of labour and gendered social and power relations’. 184 The work/care regime is subject to the external super-structures of industrial relations (the ‘balance of forces between employers and employees’) 185 and the

182 Ibid.
184 Ibid 38 citing also Connell 1987 116.
185 Ibid 39.
role of the political state—incorporating Esping-Andersen’s welfare state typology to understand the state and industrial systems.\(^{186}\)

Australia’s work/care regime has endured even through the past four decades of efforts to disassemble it. As discussed in the Introduction chapter, up to the 1970s women’s employment in Australia was largely based on marital status, class, and economic need, and women suffered legally sanctioned job discrimination and lower rates of pay.\(^{187}\) As legal hurdles were increasingly addressed, the employment of married and unmarried women, regardless of class, increased significantly from the 1970s. However, despite these advances, labour surveys have demonstrated that the male head-of-household have prevailed in two-parent families in Australia; mothers of young children have averaged the least amount of waged labour, while fathers of young children have averaged the most hours of waged labour in Australia.\(^{188}\)

Neoliberal theories suggest that the gendered division of labour is both an appropriate economic response to the exigencies of waged work and care responsibilities, as well as a morally appropriate reflection of accepted heteronormative family mores.\(^{189}\) But the heteronormative

---


\(^{187}\) See Strachan, above n 11.


\(^{189}\) Hartman, above n 104, 59; see also Joan C Williams, ‘Deconstructing Gender’ (1989) 87(4) *Michigan Law Review* 797; Brown, above n 105, 104-05; Simon Duncan and Rosalind Edwards, ‘Lone Mothers and Paid Work-Rational
family model that is so prevalent in neoliberal Australia is problematic: both of the ideals on which it is based—the intensive mother and the ideal (male) worker—are incongruous with the reality of many who live in Australia.

In the case of the motherhood ideal, the cultural expectation that a woman will become a mother and spend her time caring for her children shapes the ways in which women experience motherhood by demanding unrealistic expectations of women and their time. In Pocock’s analysis of Australia’s work/care regime, she identifies an individual and social conflict in the gap between the ‘ideal’ mother and what women can realistically do—leaving women highly stressed and overwhelmed.190 Thus, a gap emerges between what women are culturally expected to do and what they are actually able to do.191 This gap has the effect of dramatically increasing the guilt and shame felt by women as they inevitably fall short of this ideal of motherhood.192

In contrast, men’s experience of fatherhood and the ideal of ‘proper fatherhood’ are radically different. In neoliberal Australia, the empirical

---


191 Barbara Pocock, above n 121, 239.

evidence demonstrates that very few fathers are as heavily involved as mothers in child care, and those fathers who are not as heavily involved in parental care do not share the same level of shame and guilt as women. This, despite the fact that survey data demonstrate that over 90% of participants report that a father should be ‘as heavily involved in the care of his children as the mother’. This discrepancy is in part a reflection of cultural attitudes toward the ‘proper’ role of men and women, and a gendered orientation towards time and (paid and unpaid) labour.

Like the motherhood ideal, the ideology of the ideal worker is also problematic. The pattern of work idealised in the narrative—an uninterrupted life cycle of labour in employment for an employer—reflects neo-liberal capitalist labour preferences. It orients itself toward retirement as neo-liberalism’s privatised and individualised achievement of productive output. The ideal worker narrative draws heavily on employers’ idealised conceptions of labour in employment in an uninterrupted male life cycle. As such, the narrative does not account for interruptions for disability, illness, care of one’s children or other family members, or any unpaid leave for holiday, tertiary or post-graduation education, work-related education certificates, or other activities. Situated within neo-liberalism, it is an imagined labourer

---

193 Ibid 240.
with no dependency ties, atomistic and fully flexible to prioritise work above all else.\textsuperscript{196} The ideal worker exists as such only as a corollary to a supportive partner—a ‘wife’.\textsuperscript{197} It is this relationship between the ideal worker and mother that gives rise to the heteronormative ideology of neo-maternalistic productivism.

When calling on legislators, politicians, and other legal actors to be more sensitive to the ways in which legal temporalities disproportionately impact women’s economic security, we need more than an uncritical reliance on dominant ideologies and gendered narratives. To address the disproportionate impacts on women, we need a more compelling investigation, understanding, and representation of time in law and society. This thesis contributes to these discourses by critically analysing across a number of disciplines to more accurately and robustly conceptualise time in law and society. The following section investigates the critical temporalities that inform this thesis’ understandings of time and temporality.

\textsuperscript{196} These conceptions of labour also invoke class by reflecting paradigmatically white male earning patterns for middle- and high-income earners who have outsourced any caring responsibilities. Grabham, ‘The Strange Temporalities of Work-Life Balance Law’, above n 1; see also Emily Grabham, ‘Dilemmas of Value in Post-Industrial Economies: Retrieving Clock Time through the Four-Day Work Week’ (2009) 42 Connecticut Law Review 1285.

\textsuperscript{197} I use the term ‘wife’ here in the same way that Crabb does in Crabb, above n 115 to mean someone who completes the necessary duties of daily life besides (or in addition to) waged work.
III. Critical Temporalities as Theory and Method

This section provides an overview of critical temporalities in feminist, queer, and temporal literature. I use the phrase ‘critical temporalities’ to refer specifically to the critical approach taken by certain scholars analysing and theorising time and temporalities. It then gives an overview of Bourdieu’s theory of temporal embodiment and applies this theory to consider the construction of parenthood in Australia. Where the previous two sections helped address the relevant methods and approaches to answer my first research question: What is the dominant conception of time underlying Australian work and parenting laws and policies, and in what sense is that conception gendered, particularly as it relates to women with children? This section addresses the second research question: What alternative conceptions of time are possible? Overall, the section further demonstrates the critical interdisciplinarity of this thesis and works toward a conception of how the mother-worker’s life cycle, and the associated labour transitions, can be reimagined outside the mandates of neo-maternalistic productivism.

Though contemporary scholarship in critical temporalities and critical time studies is expanding, for the purposes of this thesis I am most interested in work applying a feminist socio-legal approach to time. With notable exceptions, there are few scholars working in this specific research area. Generally, research on critical temporalities seems to be concentrated in feminist and queer literatures, and only tangentially in socio-legal and feminist labour law research. Contemporary research on
critical temporalities in feminist literature generally falls into one of two
categories with some overlap: empirical time-use studies and labour-
and-work related feminist scholarship. The first uses empirical time-use
data to demonstrate and analyse the gendered division of labour,\textsuperscript{198}
whereas scholars falling into the second group focus pointedly on
feminist analyses of the gendered division of labour.\textsuperscript{199} Because their
scholarship has been directed elsewhere, neither category provides a
robust body of literature theorising temporalities in the feminist
tradition.

Though there are a number of socio-legal scholars engaging in temporal
research, temporalities appear tangentially, rather than centrally, as
methodological inquiry or minor referents alongside other fields, such
as in work by Davina Cooper,\textsuperscript{200} Karin van Marle,\textsuperscript{201} and Stacy

\textsuperscript{198} See, eg, Lyn Craig, ‘Parental Education, Time in Paid Work and Time with
Children: An Australian Time-Diary Analysis’ (2006) 57 The British journal of
sociology 553; Barbara Pocock, Natalie Skinner and Philippa Williams, Time

\textsuperscript{199} See, eg, Kathi Weeks, The Problem with Work: Feminism, Marxism, Antiwork
Politics, and Postwork Imaginaries (Duke University Press, 2011); Nancy Fraser,
‘Feminism, Capitalism, and the Cunning of History’ in Winfried Fluck, Donald
E Pease and John Carlos Rowe (eds), Re-Framing the Transnational Turn in
American Studies (Dartmouth College Press, 2011) 374 <http://halshs.archives-
ouvertes.fr/halshs-00725055/>; Nichole Shippen, Decolonizing Time: Work,

\textsuperscript{200} See, eg, Davina Cooper, ‘Time against Time: Normative Temporalities
and the Failure of Community Labour in Local Exchange Trading Schemes’ (2013)
22 Time & Society 31.

\textsuperscript{201} Karin van Marle and Isolde de Villiers, ‘Pretoria: Space, History and the
Everyday’ (2013) 38 Australian Feminist Law Journal 129; van Marle, Karin,
‘Law’s Time, Particularity and Slowness’ 19 South African Journal on Human
Rights 239.
Douglas.\textsuperscript{202} Cooper, for example, has used normative time as a methodological inquiry into cooperative economic practices, while van Marle and Douglas have used time as a narrative window to situate a cultural critique of site-specific law. These scholars use time to further their substantive argument—for Cooper, this substantive argument is based around cooperative practices, for van Marle it is around particularity and place, and for Douglas it is the use of history in building political community. However, neither sought to directly theorise the development, construction, or experience of time.

Though there has been a marked increase in research and critical analysis of time and temporalities across a number of fields both tangentially and substantively, there remains a gap in feminist scholarship on labour law. Feminist labour lawyers and legal scholars provide important research and scholarship on labour law, but few feminist labour lawyers are engaging in a directly theoretical examination of the temporal turn.\textsuperscript{203} As this thesis demonstrates, time, labour, and law are inextricably bound together and reflexively impact on gendered outcomes. Therefore, critical temporalities would seem a


fertile ground for feminist labour law critique and scholarship. Failing to account for time in law is failing to account for a significant aspect and factor in the gendering of labour. In consideration of this, this thesis seeks to contribute to this nascent feminist labour law discourse by adopting a critical stance on the temporalities of work and labour relations found in particular aspects of Australia’s parental leave, flexible work, and superannuation systems.

**Critical Temporalities**

This sub-section introduces the key feminist and queer literature on critical temporalities informing this thesis. It begins by referencing Julia Kristeva’s influential essay, ‘Women’s Time’\(^\text{204}\) which is Kristeva’s attempt to create a gendered model of time that prioritises maternal experience. This section then addresses the work of Elizabeth Freeman and Judith/Jack Halberstam who each reveal the ways in which a mainstream approach to time in fact reflects a dominant heteronormativity, a critical approach that I use in this thesis to show that law and government policy are themselves dependent on an invisible heteronormativity in ways that undermine women’s use and experience of time and temporalities. Aligning with queer time, this section then segues to the research of Kathi Weeks and her sense of ‘life against work’. I link these theorists back to the foundational work of Kristeva and her theorising the role of maternity in conceptualising a

politics of time. This allows me to take a political and feminist approach to time in analysing the gendered nature of Australian worker-mother laws.

In 1979, Julia Kristeva’s influential essay, ‘Women’s Time’ was first published in France, and was later translated in 1981 for English-language audiences.\footnote{\textit{Ibid.}} ‘Women’s Time’ offers a dialectical approach to identifying and interrogating the gendering of time and specifically considers the workforce participation of women with children. In the article, Kristeva makes three important moves: she dialectically engages in the divisive issue of maternity in feminist discourses;\footnote{The question of maternity in feminist discourses was arguably at its height in the 1970s and 80s. See, eg, Shulamith Firestone, ‘The Dialectic of Sex (1970)’ \textit{[1979] Excerpted in Kolmar and Bartkowski 224}; Adrienne Rich, \textit{Of Woman Born} (Norton, 1976); Marilyn French, \textit{Beyond Power: On Women, Men, and Morals} (Olympic Marketing Corp, 1985); Lucinda M Finley, ‘Transcending Equality Theory: A Way Out of the Maternity and the Workplace Debate’ (1986) 86 \textit{Columbia Law Review} 1118; Robin West, ‘Jurisprudence and Gender’ (1988) 55(1) \textit{The University of Chicago Law Review} 1; see also Linda MG Zerilli, ‘A Process without a Subject: Simone de Beauvoir and Julia Kristeva on Maternity’ (1992) 18(1) \textit{Signs: Journal of Women in Culture & Society} 111.} she directly critiques patriarchal, capitalist-based hegemonic temporality; and as an alternative, she theorises ‘women’s time’ centred on maternity as a cyclical temporality of gendered care. Kristeva thus provides a clear, reproducible meta-method with which to critique the enduring hegemony of hetero-capitalist time. I adopt Kristeva’s three-part approach as a standard in analysing existing scholarship on critical temporalities and use it as a benchmark for developing my own
approach to critical temporalities within the context of feminist socio-
legal methodologies. My approach to ‘women’s time’, however,
incorporates theoretical insights as provided by Bourdieu, Freeman, and
Felski, amongst others, while conceptualising an alternative to singular
‘women’s time’ through multiple temporalities undulating through
moments of care, vulnerability, and paid and unpaid labour.

Though coming from a queer perspective, the work of theorists
Elizabeth Freeman\textsuperscript{207} and Jack/Judith Halberstam\textsuperscript{208} also engages with
hegemonic time and theorises alternate, queer temporalities.

Halberstam’s queer time privileges the transgender body and
subcultural spaces,\textsuperscript{209} and Freeman’s concept of chrono-normativity\textsuperscript{210}
speaks directly to the ways in which time uses the gendered body to
maximise productivity. This is important given my project’s emphasis
on unpacking the gendered temporal implications of Australia’s
worker-mother laws. Both scholars agitate against hegemonic time by
deconstructing the ways in which dominant ideologies of time-use,
gender, and heteronormativity as technologies of control. By
highlighting this exploitative nexus, Halberstam and Freeman position
themselves in contrast to hegemonic time by providing queer

\textsuperscript{207} Freeman, above n 71.

\textsuperscript{208} Judith Halberstam, \textit{In a Queer Time and Place: Transgender Bodies, Subcultural
Lives} (NYU Press, 2005); Judith Halberstam, \textit{The Queer Art of Failure} (Duke

\textsuperscript{209} Carolyn Dinshaw et al, ‘Theorizing Queer Temporalities: A Roundtable

\textsuperscript{210} Freeman, above n 71.
alternatives to heteronormative and chrono-normative time. I link these theorists to my own work in dismantling hegemonic time in Australia and its emphasis on heteronormative capitalist structures.

Kathi Weeks, too, challenges the established hegemonic temporal institutions when she proposed a shorter hour work week, which is couched in terms of ‘getting a life’ as a ‘provocation’ to capitalism’s hegemony. Weeks’ reference to a ‘life’ is broadly construed beyond social reproduction, and in doing so she draws on queer time. A shorter hour work week, Weeks argues, provides the freedom to explore and reshape our intimate relations and socialities beyond chrono-normative practices and orientations, while rejecting the confines of capitalist-imposed ‘repro-time’. Child or child-related care fell within this ‘repro-time’ seen as part of the hegemonic temporal order.

**Bourdieu’s Theory of Temporal Embodiment**

In Pierre Bourdieu’s conception, temporality is embodied and expressed through individuals’ actions and choices. Individuals are ‘social agents’\(^{211}\) in that their agency is conceived as a series of socially constructed actions and normatively constrained choices.\(^{212}\) Those actions and choices, according to Bourdieu, constitute the *habitus*: the

\(^{211}\) See Lois McNay, ‘Meditations on Pascalian Meditations’ (2001) 30(1) *Economy and Society* 139, 149.

embodiment and expression of temporalities. Bourdieu defines the habitus as the conscious and unconscious practices, linguistics, mannerisms, and appearances that identify the agent as part of a specific group or social space.213 The habitus is embedded within a specific space, or field, which further constrains the individual’s agency.214 In Bourdieu’s theory of the habitus, the mechanisms by which an agent locates himself or herself within the field (eg, social group) include dress, language and accent, mannerisms, and outward affects.215 Agents can exist in multiple fields simultaneously, and fields may be large or small, including, for example, class, family, work organisation or discipline, educational cohort, mother’s group, and urban areas. Inclusion in a field can be ‘implicit,’ when the agent makes no deliberate or voluntary commitment or contract for inclusion.216 Temporality is embodied and expressed via the habitus both consciously and unconsciously.

In Bourdieu’s conception, the past, present and future all contribute to the habitus: the body is inscribed upon by the past; it enacts shifts through choices and actions within the present moment; and it is oriented toward the future. Regarding the past, Bourdieu understood

213 See Bourdieu, above n 2, 138–43.


215 See Bourdieu, above n 2, 11.

216 Ibid.
the body to carry within it, to inscribe, perform and *embody* multiple histories—collective, familial, individual, social.217 He wrote, ‘The unconscious is history’, specifically, ‘the collective history that has produced our categories of thought, and the individual history through which they have been inculcated in us’.218 Regarding the present, Bourdieu wrote that this is when the practices that construct and reconstruct the habitus occur. Although some aspects of the outward demonstration of habitus may be immutable, others may consciously or unconsciously change in relation to a field.219 These shifts depend on the moment or practice, just as an agent may speak and act differently around her rabbi than she might around her younger sister. These shifts are possible because the habitus is inherently temporal, and time is experienced through practice. Finally, regarding the future, Bourdieu understood the practice of the habitus to be future-oriented: social agents are able to construct habitus through practice precisely because of their ‘capacity to anticipate’.220 This orientation to the future is both an explicit motivator (to learn something, work towards goals, accumulate), but also as an unconscious artefact of embodiment. In short, an individual’s habitus accumulates over time, while also being

---

217 See McNay, above n 181, 149 who discusses Bourdieu’s reflexive embodiment in contrast to Foucault’s theory of somatisation.

218 Bourdieu, above n 2, 9.

219 See ibid 153–55.

220 Ibid 213.
reflexively changed by orientations in time—to the future and the past, manifested in the present.  

This corporeal approach sees the body as a temporal agent anticipating systems of power through modifying behaviours and dispositions.  

This is explained through the habitus as corporeal experience:

> The agent engaged in practice knows the world but with a knowledge which … is not set up in the relation of externality of a knowing consciousness. He [sic] knows it, in a sense, too well, without objectifying distance, takes it for granted, precisely because he is caught up in it, bound up with it; he inhabits it like a garment [un habit] or a familiar habitat. He feels at home in the world because the world is also in him, in the form of habitus, a virtue made of necessity which implies a form of love of necessity, amor fati.  

Through the habitus and the field, Bourdieu crafts a temporal dimension to his understanding of the body.  

The habitus, mediated as it is by the field, is actively manifested of the ‘whole past’.  

The habitus is embodied by individuals through ‘durable, transposable dispositions’; these dispositions, albeit reflexive, are predominantly reflective of dominant norms and institutional demands as a result of the habitus constituted by all that came before (the ‘whole past’).

Although the habitus is manifested of the accumulation of experienced

---

221 See, eg, ibid 148, 150–154; see also McNay, above n 181, 149.

222 Bourdieu, above n 2, 135.

223 Ibid 142–43.


225 Ibid 102.
temporal norms and actions, it is also shaped by the anticipation of future-oriented practice. By reference to the forthcoming, the body is also subject to the future. However, Bourdieu’s theory of embodiment provides space for the fluidity of identity and embodiment, providing that ‘the embodied subject is constituted through dominant norms but is not reducible to them’.226

Applying a Bourdieusian approach, agents’ experience of time and how they practice it should not be imposed from without, but instead be reflexively constructed by agents themselves.227 Habitus is inherently temporal because it is emergent, continually being (re)enacted and (re)constructed in time. The nature of habitus at a given moment is the outgrowth from all that came before; the habitus is informed and constructed by the ‘whole past’ of its agents, as over time, the social group absorbs new elements into its accepted norms and practices. Just as the habitus contains and encodes the past, it also points toward the future, as the shape it will take on tomorrow is being created today through agents’ conscious and unconscious attempts at new vocabulary, mannerisms, and practices. New elements become accepted as part of the habitus through the passage of time and repetitive adoption in the group; the habitus is based on all that came before as well as on agents’ future-oriented practice. Through agents’ process of embodying the

226 Ibid 99.

227 Bourdieu, above n 2, 213.
habitus, their practical action actually shapes and creates their experience of temporality. Thus, the habitus is necessarily reflexive.

The relationship between the habitus and practical action is the basis of Bourdieu’s theorisation of the embodiment of temporalities. For Bourdieu, time is constructed through the enacting of the habitus: a living out of multiple histories in a way that, paradoxically, is inherently future-orientated.

Bourdieu understood the body to carry within it – to inscribe, perform and embody – multiple histories that are collective, familial, individual, social.228 Echoing this view of multiplicity, Rita Felski suggests that time unfolds across three simultaneous levels.229 Felski conceptualises time as a plurality across the everyday, the life scale and larger scale expansions. Everyday time, Felski argues, is the phenomenological sense of time as we experience it on a day-to-day basis.230 Though the unit is delimited to a ‘day’, everyday time goes beyond a unit-based conception of time to include the real, lived experiences of practice, habit, and surprise, incorporating the minutiae and vicissitudes of daily life. Life time expands beyond the everyday to include life as a temporal project that connects the ‘random segments of daily

---

228 See also McNay, above n 181, 149.


230 Ibid 17.
experience’ into an ongoing creation of the subject self.\textsuperscript{231} Large-scale time, then, expands the relevance of life time to incorporate a reference to the long-term processes of time.\textsuperscript{232} In this sense, large-scale time collectivises the everyday and life time toward a monumental time that allows for the linear as well as cyclical nature of large-scale processes and movements. I understand this to connect the everyday and life time to the collective unit, as temporalities coalesce to inform and shape large-scale, collective projects and units. This pluralistic understanding of time views multiple temporalities as existing simultaneously across three levels, so that practices reflexively construct everyday time, life time, and large-scale time.

Reading Felski’s pluralistic time across Bourdieu’s embodiment of time crafts an understanding of practice as temporalising acts both constructing and manifesting across each level of time. Temporality, according to Bourdieu, is embodied through the habitus, linked to the forth coming, to a future-orientated approach to act upon the ‘objective potentialities in the present structure’.\textsuperscript{233} He wrote that, ‘The unconscious is history’, meaning that we are shaped unconsciously by both collective and individual histories – ‘the collective history that has produced our categories of thought, and the individual backgrounds

---

\textsuperscript{231} Ibid.

\textsuperscript{232} Ibid 18.

\textsuperscript{233} Bourdieu, above n 2, 213.
and history through which they have been inculcated in us’. According to Bourdieusian scholar Beverley Skeggs, ‘[e]mbodiment is the product of the composition and volumes of capital that can be accrued and carried by the body and the fit between the habitus (the disposition organising mechanism) and the field’. Temporality is linked to that which is forthcoming; he conceptualises a future-orientated approach to acting upon the ‘objective potentialities in the present structure’.

To conceive of time as reflexively constructed across multiple temporalities agitates against neo-maternalistic productivism, suggesting instead an alternative temporal orientation that cyclically radiates between individual and group. As social agents, we are constantly relating to others, consciously and unconsciously accepting, adjusting, shifting, and reflecting on practical actions as they impact upon us as individual members of a group—while also reflexively noting the impact of these collectivisations of actions as they impact on the construction of the group. Conceptualising time as a plurality

---

234 Ibid 9.
236 Skeggs, above n 184, 22.
237 Bourdieu, above n 2, 213.
238 See Bourdieu, above n 2.
across multiple levels captures the day-to-day time of the everyday
minutiae and vicissitudes in the individual, but then carries this across
the lifetime and into the collective, expanding from an individualised,
atomistic concept of time to one that is also collectively embodied and
experienced.

In short, for Bourdieu, time is embodied and enacted, not hegemonically
imposed. Thus, he provides a conceptual framework for imagining an
alternative approach to legal temporalities in Australia. Bourdieu’s
approach to time provides a way to question the assumption that the
power to control time is or ought to be centralised in the state. He
suggests instead that that power can be dispersed among individuals
operating within social settings, who may live non-linear, unscripted
lives of interruption, disruption, and creation outside the mandate of
maximising economic productivity.

Accordingly, Bourdieu understands a source of power in controlling
time. The underlying foundation of this illustration of temporality as
future-orientated practice is based on an alignment of field and habitus
as it occurs in a capitalist economy. Bourdieu accepts capitalism and
productivism as structural factors constraining and constructing the
habitus and fields of agents in contemporary late modern societies. He
references the very constraints and constructs of a late modern

---

239 Lisa Adkins, ‘Sociological Futures: From Clock Time to Event Time’ (2009)
14(4) Sociological Research Online 8, [2.5].
capitalistic labour context of productivism when he writes of the expression of power through waiting, ‘of delaying without destroying hope’ that seeks to keep people motivated without driving them to despair.\(^\text{240}\) Bourdieu recognises a significant exercise of power in ‘controlling time and the rate of fulfilment of expectations’.\(^\text{241}\)

By contrast, Bourdieu recognises the powerlessness of not being able to control time. He elaborates on just what powerlessness might be in relation to time in his analysis of the ‘subproletarian’. The subproletarians, according to Bourdieu, are those who are ‘excluded from the ordinary (economic) world’ through chronic unemployment or underemployment.\(^\text{242}\) The experience of time for the subproletarian is described by Bourdieu as ‘dead-time’.

Bourdieu is suggesting that where both material capital and immaterial capital are lacking for the subproletarian, it is clock-time that is ‘dead’. Because their relationship to the objective universe is stalled and stunted by chronic under-employment, their relationship to free time is transformed as well, as if the one relies on the other to orientate the agent. It is this chrono-normativity that a parent potentially agitates against. And, like the subproletarian, this relationship to time depends on the parent’s relationship to waged labour.

\(^{240}\) Bourdieu, above n 2, 228.

\(^{241}\) Ibid 222, 228.

\(^{242}\) Bourdieu, 2000, 223.
Although Bourdieu accounts for class, sociality, temporality, and individual agency, he does not account for gender, parenthood, or law in any specific or extended form. That is, Bourdieu’s earlier work on law explains the interaction of what he calls the ‘juridical field’ with the habitus, and further disambiguates the role of power in society, but it fails to specifically address the role of gender and the ways in which gender interacts with the habitus and fields. In my use of Bourdieu’s theory of time, I articulate how experiences and constructions of time are deeply gendered in maternity, and how legal constructs interact intimately with the habitus to give rise to such gendered temporalities. The following section synthesises the forgoing insights to develop my methodology.

IV. Formulating a Feminist Methodology

This is a socio-legal project using a variety of sources including statutory text, parliamentary debates, time-use surveys, and social indicators to critically analyse the underlying conception of time and its gendered manifestation in Australia’s worker-mother laws. Being ‘socio-legal’ means that this thesis combines sociological critique with legal analysis, and it does so through reference to empirical data as well as theoretical sources, claims, and concepts. By reference to empirical research, the thesis looks to qualitative and quantitative data to

understand the context of work,\textsuperscript{244} labour, time-use, and gender in Australia.\textsuperscript{245} As a theoretical work, it critiques how dominant narratives of work and care treat maternity in Australia, with specific regard to the gender-time gap in the narratives of the ideal worker and the ideal mother. Despite its reference to maternalism, neo-maternalistic productivism treats care as the necessary but inferior task of women done in support of productivistic labour. Accounting for the temporal hegemony of global capitalism and neoliberal policy platforms in Australia, this thesis suggests a counter-narrative of care-based temporalities in disruptive time. That is, rather than treating care as inimical to neo-maternalistic productivism’s linear, financialised, output-based trajectory, disruptive time conceptualises care as central to

\textsuperscript{244} I use the term ‘work’ to specify waged employment. I make no distinction between employment in a ‘career’ or a ‘job’, although this distinction is explored briefly in Chapter 3. Other jurisdictions, such as Great Britain, distinguish between a worker and an employee, but because Australian law does not, I use the terms interchangeably.

\textsuperscript{245} Throughout this the remainder of this thesis, I use the term ‘labour’ to refer to all forms of labour, paid and unpaid, including domestic, caring, emotional and organisational labour. Emotional and affective labour refers to the cultivated labour of managing the feelings, experiences, and psychological care of the self and others. See Arlie Russell Hochschild, \textit{The Managed Heart: Commercialization of Human Feeling} (Univ of California Press, Twentieth Anniversary, 2003); Nancy Folbre, “‘Holding Hands at Midnight”: The Paradox of Caring Labor’ (1995) 1(1) \textit{Feminist Economics} 73; Kathi Weeks, ‘Life within and against Work: Affective Labor, Feminist Critique, and Post-Fordist Politics’ (2007) 7(1) \textit{Ephemera} 233. In this same sense I use the phrase ‘organisational labour’ as it relates to emotional labour; accordingly it refers to the efforts taken to imagine, plan, prepare, construct, and coordinate the logistics of quotidian life and the emotional landscapes of daily life. see, eg, Alison J Clarke, ‘Making Sameness: Mothering, Commerce and the Culture of Children’s Birthday Parties’ in Emma Casey and Lydia Martens (eds), \textit{Gender and Consumption: Domestic Cultures and the Commercialisation of Everyday Life} (Routledge, 2007) 79; Nicky James, ‘Care= Organisation+ Physical Labour+ Emotional Labour’ (1992) 14(4) \textit{Sociology of Health & Illness} 488.
a temporality with potential to subvert Australia’s prevailing ideologies of gendered time-use. It concludes by analysing transitional labour markets as a gender-sensitive approach to legal temporalities of labour law and labour relations.

This project relies on feminist approaches to women’s experiences of time and labour. In doing so, I consider a number of theorists that expand on sociological inquiry, temporality, and gender. The work of Pierre Bourdieu and, most especially, his concept of the habitus, feature prominently in this thesis, as does Lois McNay’s, Elizabeth Freeman’s, and Lisa Adkin’s feminist interpretations and analyses of Bourdieu. I consider, also, the critical work on labour and gender by Kathi Weeks, and the marriage of cultural critique and time provided by Rita Felski. I also turn, repeatedly, to the work of Barbara Pocock and Lyn Craig and their respective sociological critiques of gendered work and time paradigms.

**My methodology**

In this study, I conduct doctrinal analysis of the worker-mother laws governing Australian parental leave, flexible work, and superannuation by employing critical interpretation to specifically analyse the relevant acts and sections.\(^{246}\) My goal in doing so is to understand the statutory

\(^{246}\) These acts include Paid Parental Leave Act 2010 (Cth); Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measures) Act 2012 (Cth); certain provisions of the Fair Work Act 2009 (Cth) addressing parental leave and flexible work; Workplace Relations Amendment (Work Choices) Act 2005 (Cth); Superannuation Guarantee (Administration) Act 1992
text as an initial starting point of analysis. Without this foundational understanding of the relevant laws, subsequent analyses could easily fail to relate specifically to the statutory actions and powers conferred under the relevant acts. However, the boundaries of doctrinal analysis stop at the legal text, and this research project incorporates interdisciplinary methods to expand my inquiry beyond the relevant acts and provisions.

This thesis considers empirical data, most predominantly time-specific labour statistics, including income and wages, as provided by the ABS and often broken down by gender or sex. Labour force statistics and income-related data are supplied specific to a given time-period (eg month, year). Conducted by the ABS, the Labour Force Survey is a monthly survey done throughout Australia that measures labour market activity of civilian residents aged 15 years and over.247 I have referenced employment statistics to understand what the relevant levels of part-time, full-time, and casual work are in relation to gender in Australia. Furthermore, I have referenced quantitative economic data

---

on superannuation accumulation and savings levels across gender and age.248

However valuable the time-use surveys, HILDA data, and labour indicators are, there are two broad limitations associated with them. First, they over-represent urban, non-Indigenous, and more affluent residents. Despite being of leading global-standards, the surveys did not extend to very remote or Aboriginal communities.249 Second, these surveys reproduce and mirror the neoliberal ideology of marketisation of time. Time is ‘used’ or ‘spent’ rather than lived and constructed. However, these surveys continue to be the only reliable source of time-use data representing a large proportion of residents in Australia completed in a methodical manner and according to global standards. They therefore provide an important aspect of time in this research project without being the only representation of time relied upon.

Together, these socio-legal analyses help me construct a picture of time-use along gender lines, particularly with respect to paid work and unpaid care labour. By critically re-evaluating and re-reading empirical data on the gendered division of care in Australia, I understand temporalities manifesting primarily through maternal care labours.

248 These data are often done by superannuation funds and the like. See, eg, Clare and Association of Superannuation Funds of Australia Limited, above n 93.

This re-interpretation of the data situates the practices and actions of maternal care labours as potentially disruptive practices agitating against a hegemonic temporal norm, discussed in more detail in the final chapter.

What emerges from the data is a disjunction between law, policy, and practice: a gender-time gap underlying the law and policies. Australian leave provisions and policies lag behind what women are actually doing as primary carers, but race ahead of what men are actually doing in terms of care. Women are completing more combined labour hours of paid work and unpaid caring responsibilities than ever before, while men are still not taking comparable parental leave despite having it available to them and having two-weeks set aside especially for them. This policy and legal lag results in a gendered disparity in time-use that demonstrates a disparity not just in the quantity of child care provided by each parent, but the quality of that care. This is in addition to the quantity and quality of time used in other activities, be they paid, unpaid, leisure, and volunteer or other. I refer to this as the gender-time gap.

---


251 Ibid; If eligible, fathers and partners may take some or all of the federal paid parental leave after the birth or adoption of a child. Dad and Partner Pay is a two-week payment set aside specifically for fathers and partners. See generally Paid Parental Leave Act 2010 (Cth) s 4. However, see Chapter 3 for additional critique and analyses on the gendering of paid parental leave.
Understanding and Situating Ideological Influences

A society’s dominant ideologies are those that work most powerfully to persuade the agents within it, both consciously and unconsciously, by setting out their objective chances and subjective choices. Following Bourdieu, it is possible to argue that a society’s ideologies influence the way its agents construct their habitus, and the ways in which the habitus manifests through time. Thus, we can see how Bourdieu’s concepts of temporality, habitus and field are useful for understanding the construction of parenthood in neoliberal Australia. Here, as in any society or culture, ‘parenthood’ is the manifestation of a set of cultural and physical norms of gendered care—in this case the ‘mother’ as caregiver and the ‘father’ as economic provider. And like any habitus, the concept of ‘parenthood’ is an expression shaped by past, present and future. Its dominant norms are made up of the ‘whole past’ of Australian and colonial visions of gendered care, tempered by each individual embodiment of ‘parental care’. For many women, parenthood is continually (re)constructed in the present moment through embodied experiences of copulation, pregnancy, childbirth, and breastfeeding, as well through the ongoing cultural norms and ideologies of gendered care that impact women regardless of ability or experience with pregnancy, childbirth, or breastfeeding. For fathers, parenthood emerges as gender-specific pressure to increase their take-home earnings, especially where their female partners have decreased or paused any waged work. Finally, parenthood is future-oriented in that it is social reproduction—a phase in the life cycle that invokes
legacy and cyclical references to future generations. Parental practices become modified, in part, through a reference to the future—the future of the child, the parent, the parental unit, family unit, community, and/or broader society.

Although individuals’ habitus can be shaped by the dominant ideologies in the field(s) they occupy, that influence need not be total or inevitable. Individuals are social agents, capable of choosing and responding to a multitude of inputs, accumulating an array of various kinds of capital. Bourdieu acknowledges the individual agent’s capacity for resistance in the face of institutional values and dominant norms:

I do not see how relations of domination, whether material or symbolic, could possibly operate without implying, activating resistance. The dominated, in any social universe, can always exert a certain force, inasmuch as belonging to a field means by definition that one is capable of producing effects in it...

Bourdieu’s concept of habitus helps us envision how the habitus (the temporal experience) of parenthood can exist distinct from, and even at odds with, the chrono-nuclear norms of the ideal worker: the concept of habitus helps us see, among other things, how labour is contingent upon multiple factors, and it shifts over time as the individual undergoes labour transitions. Two tools for understanding how agents construct

\[\text{252 I am deliberately avoiding any argument regarding legacy vis-à-vis inheritance, although Halberstam provides a timely critique at Judith Halberstam, In a Queer Time and Place: Transgender Bodies, Subcultural Lives (NYU Press, 2005); see also Chapter 5, section II of this thesis.}\]

\[\text{253 Bourdieu and Wacquant, above n 182, 80 (emphasis in original).}\]
the habitus of parenthood in neoliberal Australia are described below: a new life cycle model that acknowledges the importance of child-care in the worker’s life, and the concept of transitional labour markets.

First, as a tool for understanding the construction of parenthood-as-habitus in neoliberal Australia, we have the modified model of the worker life cycle proposed by Patricia Apps and Ray Rees. Unlike the hetero-capitalist norms of the ideal worker, or the impossible life cycle of the ideal worker-mother (which as discussed above, is embedded in the current laws regarding parental leave, flexible work and superannuation), Apps and Rees’s model acknowledges the impact of child care work on the life cycle. The model grew out of the authors’ dissatisfaction with research and policy that defined individuals merely by their labour force participation. Apps and Rees’s concept of the ‘life cycle’ does not simply describe the age of the (male) worker in a work-cycle, but instead uses existing demographic and household data to conceptualise labour as contingent on multiple forces. Specifically, Apps and Rees define the stages of life according to the presence and age of children in a household.254 In their model, the adult life cycle has eight phases:

Phase 1: of child-bearing age but without children;

Phase 2: with children of pre-school age;

Phase 3: with children of primary school age;

---

254 Apps and Rees, above n 72, 440.
Phase 4: with children predominantly in the age range 13-15;
Phase 5: with children aged 15 and over and living at home;
Phase 6: of working age where the children have left home;
Phase 7: approaching retirement age;
Phase 8: of retirement age.\(^{255}\)

Though Apps and Rees do not explicitly invoke Bourdieu, their conception of the life cycle rests on an assumption that the underlying perspective of the individual can be interpreted as a unit of the social. This aligns with Bourdieu’s understanding of the individual and the habitus. Further, this life cycle approach accounts for non-normative family forms including sole women with children.\(^{256}\) As compared to previous life cycle models, the Apps and Rees model better encapsulates the phases of labour in life in relation to those with child care responsibilities and provides a more diverse account of what the ‘household’ is than traditional accounts.

In addition to this life cycle model, another tool for understanding the construction of parenthood-as-habitus in neoliberal Australia is the concept of transitional labour markets.\(^{257}\) Implicit in any life cycle model is the existence of transitions in between the various stages or

---

\(^{255}\) Ibid.

\(^{256}\) This approach, however, is focused on explaining the life cycle of those with children and does not adequately represent the life cycle of those without children.

\(^{257}\) Transitional labour markets are discussed at more length in Chapter 5.
phases in the model. In the course of a life cycle, a worker may move periodically between unemployment and employment, or between different working-time statuses (part-time, full-time). The neoliberal, ideal worker life cycle model fails to acknowledge and account for these transitional moments in the labour and employment relationship. However, we can infer from Apps and Rees’s counter-narrative life cycle model above that there are many moments in the course a life when transitions may be prompted by any number of personal and public circumstances. Moreover, work may take forms other than that provided by the employer/employee relationship. To understand the construction of parenthood-as-habitus, we need to understand the types of transitions a worker may go through over the course of the life cycle.

The quality and type of transitions available to workers in a given economic regime make up its transitional labour markets (TLMs). Transitional labour markets represent the temporal and economic space between waged labour and other life cycle activities. Transitional labour markets are important because they demarcate the relationships between waged and unwaged labour that all agents experience over a lifetime. Each transitional pathway marks a moment within the life course that an agent-labourer’s relationship with employment changes,

---

whether moving into or out of employment, or moving between
different working-time statuses.259

Without the proper supports and structures, these transitions have the
capability to profoundly change the habitus of a worker-parent, with
potential for substantial damage arising from unplanned and
unexpected transitional outcomes. Mark Freedland argues that the
employment relationship encompasses unarticulated expectations and
obligations between employers and employees that lack statutory
protection and legal backing.260 For example, a common employee
expectation might be for continuity of employment after unprotected
leave, while common employer expectations might be for the employee
to be willing to work uncompensated overtime or take responsibility for
work functions while on leave. Workers and employers have a series of
expectations that go beyond the written words captured in a statute or
workplace agreement, and these expectations often extend to
transitional periods between contracts and employment relationships.

259 Immaculada Cebrian, Michel Lallement and Jacqueline O’Reilly, above n 22, 2.

260 Mark R Freedland, The Personal Employment Contract (Oxford University
Press, 2006) 6.; Although Freedland was writing from the British perspective,
his argument is especially applicable to the Work Choices paradigm of labour
relations, where ‘flexibility’ favoured the bargaining position of employers and
confined the employment relationship to exclusionary labour transitions.
Schmid, ‘Transitional Labour Markets’, above n 22; See Sue Williamson and
20(1) Australian Journal of Labour Law 53; see also Commonwealth of Australia;
Human Rights and Equal Opportunity Commission, ‘Stretching Flexibility:
Enterprise Bargaining, Women Workers and Changes to Working Hours’
(HREOC, 1997).
As Schmid notes, significant conflicts can arise in the employment relationship during transitional periods in an individual’s work history\textsuperscript{261} if, during those transitions, the worker and employer have differing expectations of what each one owes to the other. Without statutory and common-law protections, this conflict tends to favour employers.

Bourdieu’s theory helps us conceptualise the construction of parenthood and parental labour in neoliberal Australia. By reference to the temporal aspects inherent in habitus, as well as the life cycle labour transitions experienced by actual worker-parents in Australia, we can better understand how parenthood emerges in relation to its socio-legal context. This is a crucial step in imagining alternatives in my second research question because it provides us with the gaps, misalignments, and conflicts in need of attention and substantive responses. Chapter 5 of this thesis further elaborates on alternative approaches to time in relation to parenthood in Australia.

**V. Looking Forward: Orientations in Time**

This thesis is fundamentally future-oriented. Like Bourdieu, I emphasise the embodied present, as inscribed upon by the past, while looking with a certain cautious optimism toward a future of social and legal transformation. Specifically, I consider how past, present and future are held together within the embodied temporalities of

---

transformative experiences in motherhood.\textsuperscript{262} For me, as for Bourdieu, the prioritisation of the present is important because it creates the space of agency, change, and praxis. This prioritisation allows for temporal reflexivity, unlike neo-maternalistic productivism’s self-referential hyperfixation on the present moment as a \textit{utility} of a processual historicism and neo-liberalism’s future orientation. The cultural critic Lauren Berlant argued in \textit{Cruel Optimism} that the job of historians, including cultural and literary critics, is to illuminate the present with an eye toward the future: to first expose the present as ‘a history of the forces that bear on the everyday and [to] interrupt its appearance of apparent homogeneity to reveal cracks in the local experience of life,’ and, after that, to (re)organise that present toward alternative imaginaries.\textsuperscript{263} Berlant measures the present as an opportunity to produce some better ways of mediating the sense of a historical moment that is affectively felt but undefined in the social world … so that it would be possible to imagine a potentialised present that does not reproduce all of the conventional collateral damage.\textsuperscript{264} Berlant suggests that we can find alternatives to the economisation and financialisation of the neoliberal life cycle within imaginaries of intimacy and sociality. Berlant’s reference to critique and alternative imaginaries captures two important aspects of this thesis: first, it

\textsuperscript{262} I see motherhood as one such transformative experience; see chapter 5 for discussion of the transformative experience.

\textsuperscript{263} Lauren Gail Berlant, \textit{Cruel Optimism} (Duke University Press, 2011) 68.

\textsuperscript{264} Ibid 263.
highlights that it matters how time is conceptualised in society, and second, it uncovers the potential social transformations available in that orientation.

Like Berlant, the feminist scholar Kathi Weeks also locates resistance to neoliberal work-based paradigms of living within an affective temporality of the present. Weeks’s orientation, though, is self-avowedly utopian. Resisting the idea of an immutable, processual future, Weeks declares that a more hopeful temporality thus requires that we can first wrestle a viable present from the past, that we can alter our relationship to a past that threatens to render us not the authors of the present but merely its artefacts.

Writing from a deeply hopeful perspective on political futures, Weeks argues that hope requires a cognitive orientation of ‘affirmation’ as a wilful interpolation toward the past so as to enable a different future. This affirmation, according to Weeks, relies on agentic change as ‘an active intervention into our ways of inhabiting the past’. Weeks wrestles with the imprint of temporalities in agents, and aims at collectively mobilising life and sociality against work. Work, as Weeks sees it, is problematic as the constant orientation to waged work obstructs the ability to ‘get a life’ — and by that she means a socially and

---

265 Weeks, above n 169, ch 5.
266 Ibid 199.
267 Ibid ch 5; 200-01.
268 Ibid 201.
communally meaningful life beyond the paradigm of wages.\textsuperscript{269} Weeks’ approach and critique is important to this thesis in two ways. First, it presents a deeply theoretical and ultimately hopeful critique of the work-based paradigm presented by neoliberal ideologies of labour and work. Second, Weeks’ is clear that her understanding of ‘life’ in the sense of ‘getting a life’ refers not to an individual life, but to ‘a life of singularities rather than individualities, a life that is common to and shared with others without being the same as theirs’.\textsuperscript{270} These threads of critique and social connection work to sharpen the answers to my research questions by guiding my ethos and approach throughout this thesis. Importantly for this thesis, Weeks orientates her work toward understanding how time interacts with society through identifying and critiquing the political-economic structures pressuring agents toward work-based life cycles; Weeks, too, finds the potential for change through collective efforts toward sociality.

Ultimately, this thesis relies on a vision of futurity that resists neoliberalism’s processual, linear conceptions of time and upward mobility while developing a novel approach to time and temporalities that account for the subversive potential of a care-based paradigm of time. My approach to legal temporality sets a feminist politics against the gendering function of dominant time and temporalities. This thesis goes beyond simply uncovering how time is conceptualised in law to

\textsuperscript{269} Ibid 231–32.

\textsuperscript{270} Ibid 232 internal citations omitted.
acknowledge and emphasise maternal temporalities of care. The result
of this is a deeper understanding of the relationship between law and
time emerging within the worker-mother laws.

The works of Bourdieu, Berlant, and Weeks all bring together a
prioritisation of the present whilst accounting for temporal reflexivity.
However, what is missing is an extended engagement with the law and
legal temporalities. The socio-legal aspect of this study contributes this
legal material and analysis, combined with sociological critique and
informed by empirical data. In this thesis, by examining both political
economic ideology and care, I have further resisted the divide between
the personal and political, providing that the public/private divide is a
constructed establishment of governmentality to further the aims of
dominant ideologies. This work requires a temporal confrontation with
the prominent neoliberal ‘solutions’ as posed by contemporaneous legal,
political, and social manifestations of parental leave, flexible work, and
retirement income.

Conclusion

As I seek to uncover the underlying conception of time in Australia’s
worker-mother laws, I resist essentialising the woman as mother.
Throughout this thesis, I address and critique the related laws and
dominant ideologies used to describe, dominate, and influence the time
of women with children. In fact, a central tenet of this thesis is
engagement in an anti-essentialist ethic while recognising how law, in
part, contributes to gendered experiences of time.
This thesis contributes to this evolving body of work by re-reading social science empirical work on labour from a feminist perspective to deconstruct and agitate against the heteronormative temporal hegemony. By referencing the specific temporal experience of maternity within the intersection of law and time, I apply Kristeva’s meta-methodology in the Australian labour context with reference to Pierre Bourdieu’s *habitus*.

In sum, this socio-legal project uses doctrinal analysis and empirical evidence to better understand the social impact of legislative acts and their gendered relationship to time and temporalities. Further, this thesis applies feminist and temporal theories to analytically challenge neo-maternalistic productivism through the care-related temporalities of disruptive time. I forge my own theories and critiques to three legal frameworks in Australian society: parental leave, flexible work and superannuation. My emphasis is on the intersection of time and gender through the everyday practices and actions of paid and unpaid labour, with a view to the potentially subversive and disruptive practices of maternal care.
Part I
Legal Temporalities
Chapter 2
Gendering Care: Parental Leave

This chapter considers paid and unpaid parental leave in Australia. As the beginning of this thesis’ discussion on substantive laws and policies, the chapter starts with the birth or adoption of a child. As I have addressed in the preceding chapters, the legal regime relating to parental leave is the starting point in this thesis to examine new care-based temporalities that are alternative to the ideal of full-time and uninterrupted waged work found in law, policy, and discourse. This marks a period of transition in the life cycle—that from full-time waged worker to carer. The transition to full-time carer (that is, not combined with waged work) may be for weeks, months, or years, or it may initiate new combinations of waged work and unpaid care. It nonetheless marks the period in the life cycle of transition into care-based temporalities. The chapters following discuss how these care-based temporalities manifest in subsequent stages in the life cycle. Chapter 3 addresses the transition back into waged work by focusing on flexible work in Australia and Chapter 4 investigates the outcomes of waged work and retirement in Australia through analysis of the superannuation system.

These care-based temporalities may be crafted and experienced in virtually endless informal and formalised variations of paid and unpaid labour, but our discussion begins with its initiation in parental leave. Unlike flexible work, which is a rearrangement of working time and
patterns, and unlike retirement, which marks the end of the waged work life phase, parental leave provides a temporal suspension from waged work, indicating a resumption in the future. Parental leave demarcates a pre-set period of time away from waged work, but with the legislative intention to provide a segue back into waged work.

This chapter focuses on three main arguments addressing my research questions in relation to parental leave: ‘What is the dominant conception of time underlying parental leave?’ and ‘In what sense is that conception gendered, particularly as it relates to women with children?’ By initially setting out the eligibility criteria for both paid and unpaid parental leave, the first argument relates to the duration of paid parental leave, which is 18 weeks at federal minimum wage. However, the policy documents largely informing the paid parental leave legislation expressly enumerated that 26 weeks is the ideal minimum period of leave for parents. Therefore, this first argument focuses on the funding gap between the 26 weeks minimum suggested leave and the 18 weeks of statutory parental leave pay and how this gap is justified in the policy literature through ‘co-funding’. The second main argument in this chapter addresses who the leave is targeted at and how that demographic is actually excluded by eligibility criteria related to ‘genuine’ ties to the waged workforce. This legal regime leaves women outside of the traditional labour market, or those with closely spaced children, ineligible for paid parental leave. By drawing on the above two arguments and critically examining the legal and policy documents
informing the paid parental leave system, this chapter then argues, thirdly, that the legal temporalities of parental leave construct parental leave as a neoliberal, heteronormative institution that perpetuates the dual ideologies of the ideal worker and intensive mother. This chapter will explain the legal regime relating to parental leave, establish the reasons for, and effects of, co-funding of parental leave, and explore how the legal regime sets up assumptions and practice of time that create material difficulties for a diverse range of women. Effectively, the underlying construction of legal temporalities in parental leave relies on neo-maternalistic productivism. This construction of time heavily contributes to the gendered uptake of care responsibilities and waged labour.

**Introduction**

In Australia, having children has been identified as a pivot point for women’s economic parity with men. Although the gender pay gap narrows before children, after having children women earn significantly less than their male counterparts with children, and this inequality compounds over the life cycle.271 Successive Australian governments have responded to this enduring disparity by adopting a series of laws and policies designed to rectify the gender inequalities associated with

---

having children. One such set of legislation provides for parental leave and parental leave pay. The purpose of having a system for parental leave is multi-faceted: it ensures women can have enough time to recover from childbirth (where applicable), it allows for parental bonding and early care of an infant or child in the earliest stages, and it provides a temporally defined labour shift into infant or child care. But in Australia, the system that has emerged for providing parental leave is deeply problematic. As a system centred on waged work, neo-maternalistic productivism privileges productivity over care and builds a system of parental leave to reflect this hierarchy through the legal construction and control of time. By privileging productivity and waged work, the parental leave scheme ignores the ways in which care work permanently disrupts the experience and construction of time by those with caring responsibilities.

This construction of time takes on an additional problematic dimension when analysing the expectations and realities of men as fathers. Despite surveys showing that most Australians think that a father should be ‘as heavily involved in the care of his children as the mother’, few Australian fathers are actually so involved.272 When a couple has a child, the Australian trend is for an increased, longer-hours working time load for fathers as women decrease their working time to provide primary

---

The quantity of time that a man spends alone with his children is dramatically less than the time that women spend alone with their children, with one study showing the figure to be just over 40% of women’s alone time with children. However, the quality of time-use is also markedly different: men tend to spend much more time in leisure (e.g., doing hobbies, socialising, and in entertainment activities) than women, and this leisure time is much less likely to be in the presence of children. This pattern begins at birth and in early childhood, where women experience extended periods of parental leave that cannot be shared with a father or partner. Women are often left as sole carers, without assistance, because they are either the only parent eligible to take parental leave or they are left with the constrained choice to become the primary carer. The legal structures of parental leave do not provide for both parents to be equally involved in the care and raising of their young children, and relegate care largely to women without extended assistance from fathers or partners. The legal temporalities of

---


275 Craig and Powell, above n 234; Craig, ‘Does Father Care Mean Fathers Share?’, above n 5; Craig and Mullan, ‘Shared Parent–child Leisure Time in Four Countries’, above n 234.
parental leave reflect the state’s attempted control of time and its preference for neo-maternalistic productive uses of time. This chapter suggests wrestling that control of time away from the state and its emphasis on productivity, instead recognising how time is embodied in social agents and transformed by care. Law and policy should instead construct parental leave based on maternal rhythms of care.\textsuperscript{276}

At present, the parental leave system in Australia comprises two statutory components:

(a) \textit{statutory parental leave}, which is protected absence from waged work for 12 months after childbirth, extendable up to 24 months, as governed by the \textit{Fair Work Act 2009} (Cth); and

(b) \textit{statutory parental leave pay}, which is the provision of the federal minimum wage for up to 18 weeks for the primary carer.\textsuperscript{277}

These two components of the parental leave system operate independently, are subject to separate eligibility criteria, and take different approaches to confining and defining time around maternity and caring responsibilities. For example, the \textit{Fair Work Act 2009} (Cth)

\textsuperscript{276} See also Chapter 5 for a detailed discussion of these care-based temporalities.

\textsuperscript{277} \textit{Paid Parental Leave Act 2010} (Cth); the \textit{Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measures) Act 2012} (Cth) provides up to two weeks of paid leave at the minimum wage for eligible fathers or partners. Employers may, and many do, provide more generous entitlements. However, because these are often negotiated in workplace agreements and awards, there are innumerable variations. Currently existing in tandem with the statutory system, but operating above and beyond the statutory minimum, these additional entitlements are workplace-specific. Because the statutory system applies to all eligible workers and is not workplace-dependent, this thesis will focus on the entitlements provided by statute.
provides for up to 24 months of leave, while the *Paid Parental Leave Act 2010* (Cth) provides 18 weeks of pay. The legislated objectives of the Paid Parental Leave (PPL) scheme are to: (a) signal that taking time out of the paid workforce to care for a child is part of the usual course of life and work for both parents; and (b) promote equality between men and women and balance between work and family life. However, in their current form, parental leave provisions in Australia construct gendered uptake of caring responsibilities by relegating care in the earliest months to one parent, usually the mother.

Although the parental leave provisions were enacted with the intent of promoting gender-time parity and softening the economic burden of motherhood, in fact, they disproportionately handicap certain groups of women. The centrepiece of parental leave pay legislation, Australia’s *Paid Parental Leave Act 2010* (Cth), came into effect 1 January 2011 and grants eligible parents 18 weeks of parental leave pay at federal minimum wage. The authors of the Act use gender-neutral language around parental leave, as seen in its reference to the ‘primary carer’ of a child as ‘the person [who] meets the child’s physical needs more than anyone else in that period.’ Yet the gender neutrality of this language

---

278 Paid Parental Leave Act 2010 (Cth) s 3A(1B).

279 Ibid.

280 To be eligible for parental leave pay, the applicant must be a ‘primary carer’ who meets the work, residency, and income tests. Ibid pt 2-2. These are described in detail below.

281 Ibid s 47.
belie the statute’s heteronormative preference for birth mothers found in Part 2-2 of the Act and further obfuscates Australia’s gender-specific norm of women as mothers and primary carers. Indeed, Australia remains a society where the overwhelming majority of primary carers are women.282 As I argue in this chapter, the legislation regarding parental leave pay (‘PLP’) rewards workers who spend more time working for wages, and penalises those workers who take time for unpaid care work. In short, the framing of these parental leave provisions sidesteps the very sharing of care that it purports to enable.283 What is more, the provisions ultimately fail to promote gender-time parity for the reasons outlined in this chapter.

The gender-based inequality in Australian parental leave—the exclusion of (mostly female) unwaged primary carers from the benefits provided to those who engage in more waged work—rests on the assumption that hetero-capitalistic, productivistic uses of time ought to be rewarded financially. That is, women with ‘genuine’ ties to the waged workforce


who are the secondary earners in a household are eligible for parental leave. But women who diverge from this neo-maternalistic productivism, either prior to parental leave or during extended parental leave, are penalised by non-payment and loss of work entitlements. This draws a line with neoliberal value systems that reflect the priority of capital and view time as a commodity. According to this hegemonic perspective, time should be productively ‘used’ or rationally ‘spent’ rather than lived and experienced. And those persons who spend their time in steady productivistic waged labour receive parental leave pay, whereas those who allow their waged labour to be displaced or disrupted by unpaid care and other unpaid or disrupted labours do not.

The legal construct of parental leave pay is anchored to ‘clock-time’, but not simply to ‘clock-time’ as anything that can be measured by the clock. If that were the situation than most activities including care could be measured by a linear, quantifiable clock-time. Rather, the legal temporality of statutory parental leave pay refers to time-disciplined activities, ‘genuine’ uses of time as those that are subject to ‘objective time’ as that which the clock can regulate. Think of the starting and ending of the work day as provided by the punching-in and punching-out of a shift, dictated by the clock; productivity targets, subject to delivery times and output timelines; global financial markets subject to the time zones of dependent stock exchanges; and other forms of

---

284 See, eg, Brown, above n 105.
285 See Adkins, above n 209.
quantifiable productivity. This neoliberalisation of clock-time focuses on the individual labour inputs and outputs, rather than any other social construction of time. As discussed in the preceding chapter, domestic time, too, became subject to the same rationalities of neoliberalism. As the housewives of the 1950s became increasingly self-reliant through various cleaning and cooking technologies, this allowed for ‘efficiency’ to rule domestic time as well as industrial time.

As I proposed in Chapter 1, Elizabeth Freeman’s ‘chrono-normativity’ refers to the use of time to orientate human bodies toward institutional values and forces. Neo-maternalistic productivism, also mentioned in the preceding chapter, refers to the specifically neoliberal and heteronormative values and expectations of time-use that emphasise maximum productivity as the dominant goal. Though chrono-normativity can privilege any dominant conception of time, the contemporaneous approach identifies time as the primary tool to structure human relations of power to maximise individual bodies’ productivity and future-orientation to waged work. In this chapter, I argue that Australia’s framing of their parental leave pay laws rests on neo-maternalistic productivism. The laws rest on the assumption that people should spend their time engaging in the neoliberal economy in

---


287 See Freeman, above n 71, 39–44.

288 Ibid 3.
modes that privilege waged work and minimise the impact of care-based transitions. Doing so requires parents to remain wholly within the legal temporalities enumerated by the Paid Parental Leave Act.

The concept of chrono-normativity as advanced by Freeman interprets the work of Pierre Bourdieu. As discussed in more detail in Chapter 1, Bourdieu understands time to be constructed as a future-oriented practice that does not simply take place in time, but actually creates time through the temporal referents of practice that simultaneously look forward in time and backwards to social signals of time to create the present. This understanding of practice as a temporal mechanism is anchored in Bourdieu’s concept of the habitus. This relationship between the habitus, practical action, and temporalities is what Bourdieu calls on when he theorises the embodiment of temporalities.

In this chapter, I expand on Bourdieu’s theorisation of temporal embodiment to conceptualise the construction of time for labouring parents. Identifying the problematic issues in the existing legislation as ones based on time, I suggest an alternative temporal model drawing on a Bourdieusian analytics of care-based temporalities that wrests control of time from neo-liberalised institutions and re-installs that power in the bodies of social agents.

In examining Australia’s parental leave pay laws, this chapter explores what these laws reveal about subsequent Australian governments’ hegemonic understanding of time, and imagines an alternative in which economically ‘productive’ uses of time are not privileged over all
others—an alternative in which value is also placed on forms of time, such as care-based temporalities, that are disruptive, ‘disingenuous’, and transformative. Doing so would challenge the existing structure of parental leave from one based on a singular absence from waged work to one based on enduring relationships with employment over multiple, undulating engagements across the waged-work and care life phase.

The chapter unfolds as follows. First, in Section I, I briefly describe the Australian parental leave systems of leave and pay as codified by the legislation, particularly the eligibility requirements that individuals must meet to qualify for parental leave pay. I also provide an overview of the Productivity Commission’s report which largely informed the construction of the Paid Parental Leave Act 2010 (Cth). In Section II, I focus on addressing my research questions by analysing the reports and legislation to show their basis in hetero-capitalist assumptions and their consequent shortcomings. By focusing on the co-funding model promoted by the Productivity Commission and codified in the Paid Parental Leave Act 2010 (Cth), and the work test as an exemplar, this section constructs claims about the underlying conception of time in the Act. This section goes on to consider the Productivity Commission’s

---

289 See Chapter 5 for an in depth discussion of disrupted temporalities and transformative experiences. See also Laurie Ann Paul, Transformative Experience (Oxford University Press, 2014).

290 See also Chapters 5 for a discussion of alternatives to hegemonic time in transitional labour markets.
recommendation report and its prioritisation of ‘genuine’ attachments to waged work to demonstrate the reflexive reliance on and construction of neo-maternalistic productivism. Identifying this ‘genuine’ attachment as being about gendered notions of time, I investigate the notion of the disingenuous in terms of labour, time, and chrono-normativity. In doing so, I suggest a framework of three temporal transitions around parental leave and waged work, applying this framework to critique ‘genuine attachment’ to waged work. Recognising ‘disingenuous’ attachments as connections to the labour market that do not meet the temporal requirements of neo-maternalistic productivism, this sub-section uses disingenuous attachments to highlight the nature of who is excluded from the scheme. This section concludes by drawing on the two arguments above to demonstrate how the terms of parental leave pay in Australia are dictated by neo-maternalistic productivism and uses chrono-normativity as the preferred mode of social inculcation. I examine how problems arise with the legislation when parental practices of care disrupt waged work-based trajectories through the proliferation of the dual narratives of the ideal worker and intensive mother. I conclude with the outcomes of the chapter, namely, that the current legal construction of parental leave in Australia provides the temporal foundation for the gendered uptake of particular labours, specifically care and waged work.
I: Legislation on Parental Leave in Australia

Eligible parents in Australia are provided unpaid parental leave by the *Fair Work Act 2009* (Cth)\(^{291}\) and paid parental leave by the *Paid Parental Leave Act 2010* (Cth). Claimants for PLP must be the birth mother or an eligible secondary claimant, must meet residency and visa requirements, must satisfy the work test, and must fall within enumerated income limits.\(^{292}\)

The paid parental leave (‘PPL’) scheme arose out of the 2008 Productivity Commission Report\(^{293}\) recommending a more coherent federally mandated parental leave pay system, discussed below.

In Australia, eligible parents have 12 months of parental leave (extendable up to an additional 12 months), 18 weeks of ‘parental’ leave pay (usually taken by the birth mother), and 2 weeks of ‘Dad and Partner’ pay (‘DAPP’).\(^{294}\) These components are legislatively and operatively independent. As of November 2011, Australian women took, on average, 32 weeks of leave from paid employment upon the birth of a child.\(^{295}\) Where eligible, 18 weeks of that leave would have

\(^{291}\) See esp *Fair Work Act 2009* (Cth) s 70.

\(^{292}\) DAPP has the same eligibility criteria. See *Paid Parental Leave Act 2010* (Cth) pt 2-3 and s 115BL. See also Chapter 1 for a brief overview of the parental leave scheme’s requirements for employment hours.

\(^{293}\) Commonwealth of Australia, Productivity Commission, above n 243.

\(^{294}\) *Fair Work Act 2009* (Cth) ss 70, 76; *Paid Parental Leave Act 2010* (Cth) s 4; *Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measures) Act 2012* (Cth), respectively.

\(^{295}\) Australian Bureau of Statistics, ‘4102.0 Australian Social Trends’ (4102.0, 20 November 2013)
been paid at federal minimum way by the PPL scheme. Though unpaid parental leave is available to all eligible parents, mothers are more likely than fathers to take unpaid leave. Nevertheless, over 80% of fathers and partners take leave related to the birth or adoption of a child – albeit this leave is more likely to be short and paid. In cases where both members of a couple meet the eligibility requirements for unpaid parental leave, then both may take a maximum of eight weeks concurrently. The length of leave taken by fathers varies significantly by sector; a great majority of private sector employees took two weeks or less (70%), but public sector employees tend to take longer leave. Statistics on take-up of DAPP are still being calculated, but the first financial year in operation (1 Jan 2013 - 30 June 2013) saw 27,240 claimants access DAPP. DAPP can only be taken in conjunction with


298 Fair Work Act 2009 (Cth) s 72.


300 Department of Social Services, ‘PPL Evaluation: Final Report’ (Institute for Social Science Research, November 2014) 1
unpaid leave (thus barring double payments from paid leave and the DAPP scheme).\textsuperscript{301} Although the introduction of DAPP marks an important change in parental leave entitlements for couples and two-parent families, my analysis will focus on the temporality of PLP as it is predominantly taken by women.\textsuperscript{302}

**Parental Leave Pay Scheme: A Product of the Productivity Commission Report**

The current parental leave system in Australia, as codified in the *Paid Parental Leave Act 2010* (Cth), arose in large part from a report commissioned by the government and conducted by the Productivity Commission.\textsuperscript{303} The report considered the ‘economic, productivity and social costs and benefits of providing paid maternity, paternity and parental leave’ in Australia.\textsuperscript{304} To develop the report, the Productivity Commission investigated how women could ‘balance’ employment with the ‘important job’ of child-rearing, and identified child and maternal health and welfare as the primary goal of the parental leave pay.\textsuperscript{305} As a government agency, the Productivity Commission advises

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{301} This is in direct contrast to PLP which is crafted to exist concurrently with existing employer-funded parental leave pay. See *Paid Parental Leave Act 2010* (Cth) 3A(3).
  \item \textsuperscript{302} See, eg, Australian Bureau of Statistics, ‘Women’s Participation in Paid Work Lower than Men’s (Media Release)’, above n 242.
  \item \textsuperscript{303} Joint Media Release Treasury Portfolio Minister Wayne Swan No. 010 2009).
  \item \textsuperscript{304} Commonwealth of Australia, Productivity Commission, above n 243, XVI.
  \item \textsuperscript{305} See ibid XXV.
\end{itemize}
\end{footnotesize}
the Government on matters related to ‘industry, industry development, or the productive performance of the economy as a whole’. The statutorily mandated policy guidelines instruct the Commission to give specific regard to reducing regulation of industry and improving ‘overall economic performance of the economy through higher productivity in the public and private sectors’. When the Productivity Commission completed its report in 2008, its charge was not only to ‘ensur[e] strong and sustainable economic growth’, but also to protect care work: specifically, investigate how ‘to make it as easy as possible for working mums to balance their employment with the important job of raising a new generation of Australians’. However, in this report we see how the Productivity Commission is particularly concerned with hetero-capitalist values specifically expressed by parents’ ‘genuine attachment to the labour market.’

As previously mentioned, leave provided under the Fair Work Act 2009 (Cth) operates independently from pay provided by the Paid Parental Leave Act 2010 (Cth). The Productivity Commission explicitly rejected efforts to bring the work eligibility schemes of unpaid and paid parental leave into harmony: ‘The Commission found that 12 continuous months with a single employer has been accepted as a reasonable qualifying

---

306 Productivity Commission Act 1998 (Cth) s 6(2).


308 Productivity Commission Act 1998 (Cth) s 8(1)(a).

309 Joint Media Release Treasury Portfolio Minister Wayne Swan No. 010 2009).
period for unpaid parental leave to balance the burden on the employer to provide a significant period of leave and return to work guarantee’.\textsuperscript{310}

Rather than address the eligibility and temporal discrepancies, the Commission noted that parents can simply negotiate employment contracts directly with their employer for unpaid leave and a return to work guarantee\textsuperscript{311} — though the Commission also noted that only about half of employees managed paid parental leave as a result of privately negotiating with their employees.\textsuperscript{312} In fact, the Commission conceded that low-income, financially constrained families are particularly at risk of unpaid leave absent a statutorily mandated system, given their ‘low representation in privately negotiated paid parental leave schemes’.\textsuperscript{313}

Further, employers are under no legal obligation to agree to an employee’s proposal for paid or unpaid leave, subject to discrimination limitations.\textsuperscript{314}

This privileged approach to parental leave leaves lower-income workers who have children even more precariously placed. It also, however, may leave families that have subsequent children within a relatively

\textsuperscript{310} DSS at 44.

\textsuperscript{311} DSS at 44.

\textsuperscript{312} PC Report, xv.

\textsuperscript{313} PC Report, xxii.

\textsuperscript{314} However, refusal to provide any leave may constitute indirect sex discrimination under the \textit{Sex Discrimination Act 1984} (Cth), as well as under certain state legislation. Additionally, it may raise the issue of carers discrimination under those acts as well. See also Caroline Lambert, ‘Reproducing Discrimination’ in Margaret Thornton (ed), \textit{Sex Discrimination in Uncertain Times} (ANU Press, 2010) 153.
short period of time in precarious financial and employment positions. As of March 2014, parents who have children closer together may count previous periods of PPL towards ‘work’ for the ‘work’ portion of the eligibility test for subsequent PLP. This was not the case prior to March 2014, and unpaid parental leave still does not count towards the ‘work’ test for PLP. Accordingly, a woman who has children relatively close together may not meet the ‘work’ test, despite acknowledgement by the Rudd Government that childrearing is ‘an important job’.315

While receiving PLP, the claimant must be ‘caring’ for the child and cannot be engaged in waged labour—nor can the PLP be stopped and then started again; it must be paid in one continuous block. This effectively puts a block on waged work during periods of parental transition, and disallows any sort of experimentation combining patterns of waged work and care. Paid parental leave (as both PLP and DAPP) is based on birth mothers as the ‘primary claimant’, meaning that the eligibility test begins first with the birth mother; even where she is not taking any of the parental leave pay, or only a portion of it, she must first pass the eligibility criteria before the secondary applicant can even begin the process. This is most evident in the way the income tests are structured: first, the birth mother’s income is tested, and only if her income falls below the cut-off amount is her partner’s income tested.

315 Joint Media Release.
Under ordinary circumstances (ie barring death or serious illness), only birth mothers are eligible as ‘primary claimants’ for PLP purposes.\textsuperscript{316} In practice, more than 99\% of all recipients of PLP are female if we take the 2012-13 financial year as indicative.\textsuperscript{317} If the primary claimant (birth mother) returns to waged work, then the following people may qualify as ‘secondary claimants’ given both the primary claimant and the secondary claimant meet the same eligibility requirements:

4) · the birth mother’s partner (e.g. the birth father), or
5) · the child’s other legal parent where the birth parents are not a couple, or
6) · the partner of the child’s other legal parent.\textsuperscript{318}

The income threshold for PPL eligibility is tied first to the birth mother’s income, and then to the income of any secondary claimant. This requirement reflects an assumption that birth mothers will be earning less than their partners or other secondary claimants.\textsuperscript{319} In other words, if a secondary claimant would like to take PPL, the scheme looks first at the birth mother’s income; if her income falls below the stated threshold, then the scheme will consider the income of the secondary claimant. As of 2015, the income threshold is set at AUD $150,000. Anyone earning

\begin{itemize}
\item \textsuperscript{317} Department of Social Services, above n 260, 28.
\item \textsuperscript{318} Ibid 52.
\item \textsuperscript{319} Statistically, women with children earn, on average, less than any other group. ABS
over $150,000 is not eligible for PLP. By setting the income threshold at $150,000 tied first and foremost to the income of the birth mother, this assumes that women are secondary earners in double income households; a woman who earns more than $150,000 as a secondary earner in a dual-income household is presumably sufficiently supported by virtue of her and her partner’s high combined incomes (and can thus ‘co-fund’ as the PC put it). However, the threshold takes no account for high income-earning, single-income households, or households where the birth mother is the primary earner.

In constructing this income test, the Productivity Commission identified ‘genuine’ attachments to waged work as a ‘critical’ prerequisite to any parental leave pay. Defining this ‘genuine’ attachment to waged work in hegemonic temporal terms, the subsequent Paid Parental Leave Act 2010 (Cth) retained the recommended work test for pay eligibility. The work test averages out to just over 8 hours of waged labour a week. To the unencumbered worker in a maintenance transitional labour

---

320 Though she or he may be eligible for unpaid parental leave or parental leave pay as provided privately by her employer.

321 I am intentionally ignoring an argument that late-capitalist economies may commodify these higher-earner households to an even more extreme degree, and defer instead to the evidence that demonstrates these households may have access to generous parental leave provisions provided by private employment contracts; see also Commonwealth of Australia, above n 259.

322 Admittedly, these are a minority of Australian households; see Australian Bureau of Statistics, ‘4102.0 Australian Social Trends’, above n 255.

323 Commonwealth of Australia, Productivity Commission, above n 243.
market, this is a low threshold and speaks to the successes of hetero-capitalistic chrono-normativity in shifting societal norms of time. Time experienced in any other form of labour would not receive PLP. Disrupted temporalities around care and other precarious labour situations are effectively treated as ‘dead time’—unproductive and unremunerated—unless ‘genuine’ work ties are maintained, signalling the future orientation of chrono-normative workforce attachment after ‘reasonable’ parental leave time is taken. But in order to qualify for leave at all, the worker must be engaged in waged labour. Characterising time away from waged labour as ‘leave’ renders the time impermanent and transient, while ignoring the ways in which temporalities become disrupted by caring. The concept of ‘leave’ normally signals a temporary absence from paid work, and the concept of remunerating that absence remains a legal construct. The bracketing of legal time for paid and unpaid parental leave is most starkly illuminated by the way time interacts with eligibility for PLP for subsequent children and other women outside of the traditional labour market. These women, for whom much of the PPL Act was constructed, are most likely to suffer life-long consequences that

---

324 See Chapter 1 for an introduction to transitional labour markets and Chapter 5 for additional discussion.

325 See Chapter 1’s discussion of Bourdieu and dead time.

326 For the Productivity Commission’s argument for ‘reasonable’ absence from work and ‘genuine’ workforce ties, see Commonwealth of Australia, Productivity Commission, above n 243, esp 2.25.

327 This is discussed in more detail in the following subsections.
compound over the life cycle as a result of being less likely to re-enter the workforce after extended absence from waged labour, or to re-enter at a position with lower pay and benefits than what they otherwise would have had they remained engaged in a maintenance-based transitional labour market. The PPL scheme will not apply if a parent cannot demonstrate a ‘genuine’ and future-orientated attachment to waged work.

The ‘anxiety’ around compensating a worker that is not engaged in waged work, one who is on parental leave, is reflected in the legislation: first, strict eligibility criteria were established and subsequently reinforced, second, the paid leave period is for only 18-weeks—the lowest of all OECD countries offering paid parental leave, third, the compensation for parental leave is the lowest possible minimum wage. However, once the parent shifts beyond the protected federal leave period (if she qualifies at all), she shifts into precarious parental leave within the established chrono-normative framework. Compare parental leave to paid sick leave or annual leave. During sick leave or annual leave, there is no implicit assumption, expressed expectation, or popular rhetoric surrounding work or labour occurring during this

328 See preceding chapter for additional discussion on transitional labour markets.

329 The USA remains the only OECD country that does not offer universal paid parental leave.

330 This was outlined in the legal-temporal relationships to parental leave at the beginning of Section II.
period away from waged work. Workers are presumed to be out sick or on holiday (respectively), and are paid at a full wage to do so. However, parental leave, which is a care-based leave, is characterised and valued very differently despite demonstrated affiliations and commitments to waged work and financial markets. The workers, despite established affiliations and despite being expected to engage in care work, are not paid at full pay but instead at the federal minimum wage.

II: Parental Leave as Neoliberal and Hetero-Capitalist

Set within the political economic context of contemporaneous Australia, parental leave pay provides an opportunity for eligible women to receive federal minimum pay during a period of parental leave. The Productivity Commission accepted 26-weeks of parental leave as the ideal minimum for the health and welfare of the child, but ultimately proposed funding 18 weeks at federal minimum wage. As a result, waged workers will shift through multiple legal-temporal relationships when transitioning into the care-based temporalities of providing care in early childhood. The swing out of waged work and into unpaid care work, then, gives rise to three legal-temporal relationships to parental leave in Australia:

1) **Statutory paid parental leave.** This type of leave (PLP and DAPP) only exists where the applicant parent is also a waged labourer to a sufficient degree to satisfy eligibility requirements, as discussed above. This type of leave has been legislatively designed as a bracket set out from the broader context of waged labour.
2) **Unpaid parental leave.** In this type of leave, financial remuneration is not provided. Instead, the parent accrues immaterial capital in the form of parental care. Parents will usually transition into unpaid parental leave either from or to paid parental leave. This type of leave is taken by parents who have the financial, social, and employment capital to afford unpaid parental leave. Like the paid parental leave, this type of leave has also been legislatively designed as a bracket set out from the broader context of waged labour; it is unavailable to workers without sufficient and sustained workforce ties.

3) **Disrupted and precarious parental leave.** This type of leave is separate from the waged work trajectory and refuses an ideal worker paradigm framed around waged work. This ‘leave’ is not legislatively mandated or protected and consist of other leave entitlements (if available), negotiated unpaid leave, or accepting periods of unprotected absence from employment. These periods of non-employment may be for undefined periods of time resulting from a move to casual or precarious labour. This will be the type of leave if parents either do not qualify for either of the two other leave types, or if they have exhausted their above leave allotments. Parents who take this type of leave do not qualify for protected leave, or have exhausted the other types of leave—it therefore can begin as soon as the birth or adoption, or begin once another type of leave is exhausted. Being precarious necessarily renders the claimant more vulnerable to the preferences of her workplace. As a result, she is more reliant on her workplace to grant her leave and work. This type of leave becomes precarious without statutory protections of employment.

**Figure 1: Legal Temporalities of Statutory Parental Leave**

- (1) Statutory Paid Parental Leave (18 weeks)
- (2) Statutory Unpaid Parental Leave (up to 24 months)
- (3) Disrupted and Precarious Parental Leave (varies)
Figure 1 depicts the three types of leave on an imagined parental temporal trajectory. It demonstrates how disrupted and precarious leave can begin either when one of the other two types of leave ends or from birth or adoption if the applicant is ineligible for statutory parental leave.

A parent on leave from waged labour will necessarily experience at least one of these temporal shifts. For the parent who experiences two or all three types of parental leave, the transition between them may not be linear or sequential. Although disrupted parental leave occurs only after the other parental leaves have been exhausted, paid and unpaid parental leave may be exchanged in time—a parent can start out on unpaid parental leave, transition to PPL, then transition back to unpaid parental leave. Unpaid parental leave is the most temporally flexible—it may be shifted around, taken in chunks around paid parental leave. But it may not, at the time of writing, be stopped and started again. Once a parent commences statutory parental leave—either paid or unpaid—they must remain on parental leave until they return to work in an agreed upon full or part-time capacity. Any leave taken after resumed waged work would be in other forms of leave, either carers’ leave, holiday, sick leave, and the like. This ‘take all at once’ approach does not allow for disrupted temporalities, nor does it allow for other unexpected transformative experiences and temporalities of care. Instead, in setting the boundaries of the legal-temporal relationships as a ‘take all at once’ approach, it privileges waged work above care,
regardless of how that characterisation may impact on waged work and care obligations in the future. Furthermore, it does little to alleviate the financial burden of funding early parental care between 18 weeks of federal minimum wage and additional unpaid or precarious parental leave.

‘Co-Funding’ the Gap?
The Productivity Commission defended the provision of an 18-week pay period because parents (note the plural form) were expected to ‘co-fund’ parental leave arrangements through savings, reduced consumption, and ‘borrowing on the basis of housing equity’. The latter funding source, ‘housing equity,’ is presumed to rely on a distinctly chrono-normative approach to parental leave—time is used as an economic tool to maximise productivity and is closely aligned with household debt. In assuming co-funding through housing equity and other sources, the Commission concluded, without reference to financial data or evidence, that an 18-week period of leave would allow most parents the opportunity to extend leave to 26 weeks. This conclusion presumes a household that is not simply heteronormative two-parent and double-income, but also home-owning, in possession of significant savings, and consistently living a comfortable lifestyle with sufficient

---

331 Department of Social Services, above n 260, [4.6].
332 Ibid.
buffer to ‘reduce consumption’. The Commission suggested that because parents ‘already use many co-funding options’, 18 weeks of parental leave pay would allow the ‘overwhelming majority of parents the option of taking at least 26 weeks of leave without undue financial stress’. However, the Commission’s assumption that parents can and do co-fund their parental leave seems to miss the point. Of course parents were self-funding their leave at the time that the Commission did their report because at that time there was no federally funded parental leave pay. Without a funded parental leave system, parents had no choice but to cobble together their own arrangements in order to provide parental care and to allow for maternal recovery (where necessary). To suggest that these improvisations amounts to a sort of ‘co-funding’ scheme is to ignore the temporality of care prior to a funded leave system without high quality, accessible, and affordable child care, a system preferencing women’s return to work required parents be left with no choice but to privately fund what little leave they could afford on their own or with the assistance of employers and/or family resources. Additionally, constructing a leave system that continues to rely on the previously used co-funding model ignores how it relies on a classed

---


334 Commonwealth of Australia, Productivity Commission, above n 243, [4.6].
heteronormativity perpetuating gendered norms around waged work and unpaid labour.

The statistics on home ownership belie the assumption that many families can use their home equity to co-fund parental leave. Although the median value of purchased dwellings increased from 2011-12 to 2013-14, relative data for home ownership remain largely stable.\(^{335}\) In 2011–12, less than half of young couples owned their home, with or without a mortgage.\(^{336}\) When presenting the statistics on homeowners with dependent children, the ABS breaks home ownership (with and without a mortgage) into four groups: \(^{337}\)

1. Couple-household with children, eldest child aged under 5
2. Couple-household with children, eldest child aged 5-14
3. Couple-household with children, eldest child aged 15-24
4. One-parent with dependent child(ren)

---


\(^{337}\) See Australian Bureau of Statistics, ‘Changes to ABS First Home Buyer Statistics, Australia, 2016’ (Information Paper 5609.0.55.004, 4 October 2016) <http://www.abs.gov.au/ausstats/abs@.nsf/mf/5609.0.55.004> showing that previous statistic over-estimated the number of first-time home buyers prior to August 2016, suggested that the following data are higher than actual first time home purchases.
Further, couple-households with and without children make up the majority of first-time home buyers with a mortgage in 2011 - 12 (65%),\textsuperscript{338} and nearly one-third of all first-time homebuyers with a mortgage in 2011 - 12 were couples with dependent children.\textsuperscript{339} Data demonstrates

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure2.png}
\caption{Home Ownership (with and without a mortgage) of households with dependent children}
\end{figure}

\textsuperscript{338} ABS Housing Occupancy and Costs, 2011-12, \url{http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4130.0Main%20Features22011-12?opendocument&tabname=Summary&prodno=4130.0&issue=2011-12&num=&view= First Home Buyers with a Mortgage

\textsuperscript{339} 30\%; Extrapolated from the statistics provided in ABS Housing Occupancy and Costs, 2011-12, couple-households with and without children make up the majority of first-time home buyers with a mortgage in 2011-12 (65%), with 47\% of these couples constituting couples with dependent children \url{http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4130.0Main%20Features22011-12}
that the median amount of mortgage outstanding remains high for these first-time home buyers at $300,000.\textsuperscript{340} Although there is no recent data on housing equity, the available data suggests severe constraints on the ability of these households to draw on home equity to finance any ongoing, unpaid parental leave to reach the 26-week benchmark. By setting a benchmark at 26 weeks, but only funding leave to partially cover that period further demonstrates the neoliberal rationality of the policy and law. The unit of the couple is tasked with providing for their own economic security (and that of their young child), rather than rely on PPL as any adequate statutory support for care. A system predicated on co-funding where data increasingly demonstrates the difficulty for young families to adequately do so, leaves a gap from 18 weeks to 26 weeks and after, and often forces families to return to waged work both before they otherwise would have and before it is recommended by health experts (and the Productivity Commission).\textsuperscript{341}

\textsuperscript{340} This amount is not adjusted for the increase in housing costs in capital cities such as Sydney and Melbourne, Australian Bureau of Statistics, ‘Housing Occupancy and Costs, 2013-14’, above n 295.

\textsuperscript{341} In addition to Commonwealth of Australia, Productivity Commission, above n 243; see also Australian Nursing and Midwifery Federation, ‘Paid Parental Leave’ (July 2015) <http://www.nswnma.asn.au/wp-content/uploads/2015/08/Paid_Parental_Leave_Survey_Report.pdf> where the Australian Nursing and Midwifery Federation agreed that 6 months of parental leave is the minimum optimum amount of leave, and also demonstrating that 90% of survey participants cited financial constraints as the main reason they returned to work, 3.
However, a second serious issue arises in terms of eligibility for parental leave: who is actually eligible for paid parental leave, and how does this indicate the underlying conception of time in Australia’s parental leave scheme? The following section addresses this very issue with reference to the Productivity Commission’s distinction between women who have ‘genuine’ workforce ties (and thus are eligible for paid parental leave), and those who do not.

**Disingenuous and Other Attachments to Unwaged work**

Tying paid parental leave’s dichotomy of genuine and disingenuous attachments to waged work, this section highlights the gendered implications of this dichotomy in terms of who has access to the benefits of parental leave pay. It then considers who defies neoliberal rationalities in their decision around care and waged work and how this exposes problems in the PLP scheme. A system built on ‘genuine’ attachments to waged work as a prerequisite for parental leave payments excludes those with ‘disingenuous’ attachments to waged work.

Through adequate planning and future orientation, the ideal family can reap the rewards of this legislation: 18 weeks of federally funded parental leave combined with co-funding by the family allowing for the mother to provide primary care for six months. She is then expected to promptly return to work (in a part-time capacity because care is now her primary and ‘important job’) to work for at least another ‘sufficient’ and ‘durable’ amount so as to pass the work tests for the birth or
adoption of the family’s second or subsequent child. The majority of women of reproductive age without children in Australia work full-time and thus have a sufficiently ‘genuine’ attachment to waged work, so it is not these women that the legislation is targeting.

Notwithstanding, the existing PLP scheme is problematic for those women at whom the scheme is most directly targeted – those who defy neo-maternalistic productivism. These women fall into one of two groups: women in precarious, disrupted relationships with waged labour and women who have children to ‘too closely’ spaced for neo-maternalistic productivism. Yet, it is these women that the parental leave scheme was explicitly constructed to address – to ‘encourage women to continue to participate in the workforce’ and address the consequent disengagement from the waged workforce that often occurs after subsequent children are born or adopted. These women’s engagement with neo-maternalistic productivism’s mandate for full-time waged work is disrupted, failing to reflect a ‘genuine’ attachment to waged work simply because it lacks continuous enough payments to meet the work tests for either the parental leave pay scheme or the unpaid parental leave system.

342 Paid Parental Leave Act 2010 (Cth) s 3A(1)(c).

343 Commonwealth of Australia, Productivity Commission, above n 243, sch J.
Group 1: Women in Precarious Labour outside the Traditional Labour Market

The first category of women is those outside of the traditionally waged labour market due to unremunerated, under-paid, or alternatively valued labour. Women in precarious labour are those engaged in various forms of labour and who may or may not receive some form of remuneration. If remuneration is received, it is either not often enough so as to represent ‘genuine’ attachment according to the temporal definition provided by the Commission or in a form unrecognised by the Commission as waged income. Let me be clear that I am discussing women who are labouring—but these women’s ‘disingenuous’ attachment arises either because they lack actual ‘wages’ for the labour or those wages are not continuous enough. These include:

a. women who provide care to another adult or child, either as primary-carers or shared-carers (these women may also fall into the second category if this role arises out of having children ‘too’ closely together for neo-maternalistic productivism’s purposes);

b. students with scholarships, grants, awards, or fellowships;

c. interns who may be labouring with or without remuneration or who receive in-kind remuneration in the form of facilities or otherwise;

d. creative workers and artists operating under grants, residencies, fellowships, or sporadic sales or leases of their artworks; and

e. certain migrants who would otherwise qualify for PLP but work outside of documented or legally sanctioned systems, or the recently arrived.

In response to this group of disrupted labourers, the Commission simply reported that waged work is a ‘critical prerequisite’ for parental
leave pay. The Commission concluded that granting parental leave pay to women with precarious links to waged work would ‘create perverse incentives’ and would cause women to get a job merely for the minimum-wage benefits of PLP. So though these women are engaged in labour and in the practices of care, knowledge, or creative arts, they fail to demonstrate ‘genuine’ attachments to the waged labour market. Without meeting the work tests, if and when they have or adopt a child they are unable to avail themselves of the legislative benefits.

Group 2: Families with Closely Spaced Children

The second type of women defying neo-maternalistic productivism most adeptly exposes flaws in the PLP scheme. When a woman has a second or subsequent child, especially if closely spaced to the first, she is vulnerable to enduring precariousness and subject to compounding economic insecurities. The woman who has children spaced ‘too closely’ for neo-maternalistic productivism violates the primacy principle of waged work in becoming eligible for parental leave pay. In addressing the birth or adoption of the first child, the legislation easily provides parental leave and pay to most women taking time away from

344 Ibid 2.22.

345 Ibid 2.25.

346 Except those falling within the prescribed legislative category of the self-employed.

waged work to provide primary care to the child. However, if subsequent children are born too soon for neoliberal, capitalist purposes, then the primary carer, usually the mother, will be refused one or both parts of the parental leave systems (pay or leave).

In addressing the issue of women with subsequent children, the Commission explicitly identified these women as a target of a parental leave payment scheme. In so doing, the Commission reported that a successful paid leave scheme should ‘help reduce the disincentives faced by mothers outside the labour force to re-enter work on at least a part-time basis’. 348 It aimed to do so by crafting a work test that rewarded timely re-integration according to the dictates of neo-maternalistic productivism and avoided ‘undesirable outcomes’. 349 The Commission described these ‘undesirable outcomes’ as:

i. Women providing less than 6 months of care to their child(ren)

ii. Women significantly delaying subsequent children, especially women having children later in life

iii. A ‘large group of mothers’ failing the work test due to closely spaced children.350

However, these undesirable outcomes can and do occur. For example, imagine a woman who falls pregnant six months after the birth of her first child (see Figure 3). Let us assume she has worked full-time for

---

348 Commonwealth of Australia, Productivity Commission, above n 243, 2.23.


350 Ibid.
several years prior to the birth of her first child. She had planned to take 52 weeks of leave after the birth of her first child, 18 of which qualified as statutory paid parental leave. At the end of her 52 weeks of leave, she is six months pregnant and returns to work full-time for the remainder of her subsequent pregnancy. Even if she works until the day of birth, she can only work for up to 3 months.\textsuperscript{351} Because the unpaid parental leave she took following the 18-weeks of parental leave pay does not count toward the work test, she would not be eligible for statutory parental leave pay after the birth of her second child. Unless she carefully plans when she takes statutory, unpaid parental leave and when she takes statutory, paid parental leave, she could quite easily fail to qualify as ‘genuinely’ attached to the waged labour market, despite returning to waged work full-time after the birth of her second child.

Even assuming this woman requested to return to work immediately after discovering she was pregnant again, she still might not meet the requisite working hours threshold because the statute requires a 4-week notice period to return to work prior to the intended date.\textsuperscript{352}

\textsuperscript{351} One year is calculated as 52.18 weeks because 365.25/7 = 52.18. An average month is 4.35 weeks because only February (in a non-leap year) has exactly four weeks, while all remaining months have an additional 1-3 days.

\textsuperscript{352} Fair Work Act 2009 (Cth) s 74(4).
This mother will have worked for 32 weeks of her pregnancy (out of an average of a 40-week gestation) but she will not qualify for statutory paid parental leave with her second child. This is despite the earliest possible detection of pregnancy as well as prompt resumption of waged labour upon discovering her pregnancy. She would be ineligible for paid parental leave because she would fail the legislation’s work test: assuming she works up to 40 weeks of her pregnancy she will have violated the 8-week bar on a gap between 2 consecutive working days. This is because she took 14 weeks of unpaid leave (10 weeks of unpaid parental leave plus the four additional weeks after she submitted her return-to-work application) after she took her 18 weeks of PPL — meaning that there were 14 weeks of non-work time in between the time she finished her 18 weeks of paid parental leave and the time she resumed work again, 8 weeks pregnant. Paid parental leave qualifies as ‘work’ time to meet the work test for PPL — but unpaid parental leave
does not qualify. As the DSS Review Report cautions,\textsuperscript{353} had she taken unpaid leave \textit{first}, and only then taken statutory paid leave, she would have qualified for paid parental leave with her second child.

Where children are closely spaced, one might argue that qualifying for subsequent PLP requires meticulous timing, luck, and forethought and that this is not actually how many parents experience pregnancy, family timing and spacing.\textsuperscript{354} But this meticulous timing, luck, and forethought is actually in relation to paid labour and a financialised, future-based orientation. Instead, this orientation toward ‘properly’ spaced family formation is a chrono-normative one that prioritises a financialised, hegemonic orientation to time, labour, and family planning. Further, the work test, as presently legislated, pays no attention to employer actions, including dismissals, that affect a woman’s ability to engage in waged labour—it does not even allow for extenuating circumstances where a woman is terminated from employment due to pregnancy-based discrimination.\textsuperscript{355} Further, it requires a high level of literacy regarding the laws and policies that govern leave. For example, it requires the parent to carefully plan and parse out which leave she will

\textsuperscript{353} DSS at 60.

\textsuperscript{354} See Sara Holton, Jane Fisher and Heather Rowe, ‘To Have or Not to Have? Australian Women’s Childbearing Desires, Expectations and Outcomes’ (2011) 28(4) \textit{Journal of Population Research} 353, citing research showing that 1/3 to 1/2 of all pregnancy in Australia are unintended (citing Hewitt et al. 2010; Maher et al. 2004; Marie Stopes International 2008; Weisberg et al. 2008).

\textsuperscript{355} Commonwealth of Australia, Department of Social Services, above n 256, Submission 43, 18.
take at what point in time. PLP cannot be stopped and restarted, but it also need not be taken immediately following the birth or adoption, so long as care has been continuously provided by a parent since birth. Just as the DSS Report cautioned, a high level of legal leave literacy is required in order to retain certain legal entitlements and benefits.

So, when it comes to parental leave, it is not how the time is used, but rather how the time is statutorily characterised and allocated by the claimant. As a result, how that time is rendered legally, and valued thus, depends very much on its statutory characterisation, not on actual experiences of transformative and disrupted temporalities of care.

The Commission repeatedly referred to the availability of the Baby Bonus for those without workforce ties. At the time that the Commission was writing, the Baby Bonus was a series of payments paid fortnightly to the parent upon the birth/adoption of a child totalling $5,000 per first child, and $3,000 for any subsequent children. It was abolished in 2014[^356] and was replaced by the Newborn Upfront Payment and Newborn Supplement as part of the Family Tax Benefit Part A, with a combined maximum of $2,097.32 that decreases with subsequent children. Thus, my argument remains: parental leave pay’s work test and its reliance on ‘genuine’ attachment excludes women who labour outside of the dictates of neo-maternalistic productivism. By

[^356]: Family Assistance and Other Legislation Amendment Act 2013 (Cth) sch 2A.
reference to the disingenuous, a reliance on chrono-norms emerges, highlighting neo-maternalistic productivism’s emphasis on waged work and ignorance of care-based temporalities of day-to-day time, life time, and collectively embodied time.

Temporality of Gendered Division of Labour: Chrono-normativity and Neo-maternalistic Productivism

Chrono-normativity, as discussed in Chapter 1, refers to the use of time to organise human bodies toward institutional mandates. The effect of chrono-normativity is to subtly naturalise a privileged temporal experience and expectation so that new temporalities become somatic facts.357 According to Freeman, individuals are born, made, crafted, and transformed by time in the habitus, meaning that time is used as a mechanism to group, regulate, and maximise productivity, and through that process, people are bound to one another and ‘made to feel coherently collective’.358 Freeman illustrates her point with the temporal example of waged work: the shift from agriculture-based labour reliant on seasonal and climatological rhythms to waged work of the industrialised, productivised era ‘entailed a violent temporalisation of bodies’.359 And so the masses of people sharing in the labour of waged work, made temporally possible through the forces of chrono-normativity, are a constructed collectivity, a socio-economic inculcation

357 Freeman, above n 71, 3.
359 Freeman, above n 71, 3.
of new temporal norms and practices. Chrono-normativity as we see it today sells time that privileges the legal and ideological temporalities of the neoliberal state. This state is ‘formally’ equal in gender-neutral statutory language, but relies on a gendered division of labour that belies heteronormative preferencing. This is most evident in the hegemonic view of ‘domestic time’, discussed in Chapter 1. Domestic time, as Freeman saw it and as I use it here, is a heterogendered and class-inflected temporal ideology. It arose in its enduring form in the mid-20th century when middle class femininity was portrayed in popular media as highly attuned to the standardised, efficient synchronicities of the factory, but with invisible machinery. Feminine domestic labour was meant to be invisible, thus erasing the time it took to complete it. As women shifted from the home to the waged labour market, these home rituals of domesticity were left to endure without disruption by waged work. Indeed, increasingly in middle class homes, this domestic work is now completed by unseen workers—cleaners and other domestic workers who come into the home while the inhabitants work out of the home. This view of heteronormativity aligns it with capitalist productivism, using bodies as tools for the capitalist trade and privileging financialised and productivised spaces and temporalities.

---

360 Ibid 3–5.
361 Ibid 39.
362 Ibid.
The hetero-capitalist legal construct of Australia’s parental leave is a result of the combined heteronormativity and emphasis on productivity and financialised capital. Rather than emerging from an underlying conception of time based on care-based temporalities, the time of parental leave is based on neo-maternalistic productivism. As an illustration, consider the Productivity Commission’s report on the PLP system. The Commission was tasked with evaluating the effect of paid parental leave on the health of the mother and the development of young children, ‘including the particular development needs of newborns in their first 2 years’. The report does contain many references to child welfare and development, yet the predominant language of the report’s conclusions and findings are constructed not around care or welfare but around ‘work’ (eg an ‘appropriate length of absence from work’ expressed in chronological units of time (weeks/months)). The Commission’s reference to ‘clock time’ in reference to ‘work’ reflects a chrono-nuclear approach to time. The Commission chose to revert to chronological units of time and money rather than expand on the literature of maternal and child welfare, or the empirical evidence of parental experiences of work and care transitions. Women whose labour falls outside of this hegemonic, hetero-capitalist approach – those who engage in labour in disrupted or precarious forms – are ‘disingenuous’ in their attachments to the waged labour market and therefore do not qualify for parental leave pay. The

\[363\] Terms of Reference in Joint Media Release
legislation supports social reproduction through financial assets and instruments such as home equity and mortgages. Such an approach relies on market attachment through savings, home equity, and a second income.

Another example of this emphasis is seen in the Commission’s treatment of leave length. The relationship between the leave ‘time’ and money began to falter when the Commission failed to establish a direct relationship between parental leave and parental leave pay by harmonising the schemes. Though six months was accepted as beneficial for ‘child and maternal health’, as discussed above, with longer periods also acknowledged, the Commission supported the legislative decision to restrict PLP to 18 weeks. This means that the Commission calculated parental leave pay to allow the ‘overwhelming majority’ of families to reach 26 weeks of parental leave so long as they ‘co-fund’. This reflects an approach to work and care that co-implicates the financialisation of time.364

The extent to which the Commission referenced and relied on the financialisation of social reproduction is further elucidated by the disjunction between eligibility requirements for PLP/DAPP and unpaid parental leave. Though the Commission advocated for parental care in the first six months of a child’s life, it failed to grasp how a disjunction between PLP/DAPP and unpaid parental leave would render this

---

364 See also Allon, above n 293.
impossible for some parents. For many parents, 18 weeks of parental leave paid at the minimum wage may be the maximum amount of time they can afford to take off from waged work. When assessing the income and housing costs associated with households, we see that lower-income earners spend more on housing costs, with an average 34% of their gross weekly income spent on housing costs. It is unlikely that these parents can ‘co-fund’ the remaining 8-9 weeks of parental leave to achieve a minimum of 26 weeks (6 months) of parental child care, especially as they are likely to already be ‘co-funding’ the first 18 weeks beyond the minimum wage entitlement. However, there are also a significant minority of parents that are simply ineligible for unpaid parental leave, even if they met the eligibility requirements for PLP.

To keep the leave relatively short (18 weeks), and the remuneration also quite low (at federal minimum wage), it keeps precarious labourers and lower-income families focused on re-entry to the labour market, with a future-orientated perspective on wage earning again. Federal paid parental leave is payable for up to 18 weeks and must be taken within the first year of the birth or adoption of a child. It cannot be taken at half-pay or reduced pay for a longer duration of time. Eighteen weeks of

---

365 In its most recent published report, the ABS analysed rental stress in lower-income populations in Australia. Rental stress is defined as occurring when more than 30% of household income is spent on housing costs. In 2013-14, 50% of lower-income Australians suffered from rental stress. Australian Bureau of Statistics, ‘Housing Occupancy and Costs, 2013-14’, above n 295. Housing costs are much higher in Sydney and Melbourne.
paid leave was the minimum at which the Productivity Commission speculated would allow the ‘overwhelming majority’ of parents the opportunity to ‘co-fund’ 26 full weeks of parental care with a new child. Eighteen weeks seems to have been chosen as a length of time that strikes the balance of neo-maternalistic productivism and parental care in the earliest months, but ignores other constructions of temporality. This serves the explicitly accepted goal of six months of parental care; after six-months, families will be in a financial situation so as to need to go back to waged work.

In Australia’s existing PLP scheme, both paid and unpaid parental leave are strictly structured around the temporal confines of waged labour. To promote hetero-capitalist and neoliberal objectives, the legislation relies on specific constructions of labour and time, but without harmonising eligibility criteria for unpaid and paid parental leave. These specific constructions of labour and time rely on ‘genuine attachment’ to waged work, and the disharmony in the eligibility criteria means that women may be eligible for parental leave pay but not unpaid parental leave. The result of this disharmony is that women in more precarious employment or vulnerable situations suffer from increased time pressure as they navigate the transitions between parental leave and remuneration. This reality is most starkly illuminated by the work test of the eligibility criteria and how time taken away from waged labour while on parental leave interacts with eligibility to take paid parental leave.
In order to constrain parental leave, the Productivity Commission recommended a number of limiting and containment measures, namely: continuous block payment; rate of pay; bar on half-pay or reduced pay; residential requirements, and employment status requirements. While on leave, the parent has the right to adjust the date of return only once before the employer recaptures the power of waiting. These containment measures attempt to minimise employers’ anxiety and tightly orientate the practical relation to the forth-coming as one focused on productivity rather than care.

This has the added complication of perpetuating the gendered division of labour. The hierarchy of the family is set against that of the hierarchy of the market and based on productivity and earnings. Emerging from this, we see that the legislation is predicated on the notion of an ideal family and an ideal worker. An ideal family is made up of a heteronormative, able-bodied, middle-or-upper class, two-parent family who have sufficient and enduring workforce ties so as to have embodied the ideals of neo-maternalistic productivism in their everyday and long-term lifetimes. An ideal worker is presumptively male, one who is ever-present and flexible for workplace and employer demands without any encumbrances outside of waged labour.

---

366 *Fair Work Act 2009* (Cth) s 75. The employee has the right to request one extension (s 75[4]), but employers may agree to additional extensions (s 75[5]).
In Australia, the ideal worker narrative relies on the construct of the ‘one-and-a-half income-earning’ family. Such a family typically comprises a male partner who works longer hours and overtime, and a female partner who works part-time and/or irregular hours -- but not too irregular lest they be construed as disingenuously attached to the labour market. This allows for the necessary care work to begin first with wives or female partners, and where there is no partner, the fathers’ mothers (grandmother care), often in conjunction with formal child care facilities as the child ages. The primary carer, who is the woman in a heteronormative couple as the ideal mother, is the secondary earner but has sufficient workforce ties so as to meet the work tests of both the unpaid parental leave and the parental leave pay.

**Conclusion**

Australia’s paid parental leave scheme, created to provide time for care in the waged work and care life phase, fails to reference or incorporate the cumulative and reflexive embodiment of care-based temporalities. Any scheme based on neo-maternalistic productivism will always agitate against the actual care labour that the scheme purports to enable. This is because care is outside and irreverent of the hegemonic temporality of financialised labour and individualised productivism.

---


368 Barbara Pocock, above n 121, 29–30.
and consumption; to treat it as just another unit of neo-maternalistic productivism ignores the disruptions of care-based temporalities. In their current form, parental leave provisions in Australia penalise women who engage in unwaged labour outside of the strictures of neo-maternalistic productivism. The construction of time between parent and child is reflexive, based on a number of factors beyond legal temporalities and employers demands. Because of the unplanned and unknowable nature of care, disruptions will occur. Where these disruptions are based on care and other unpaid labours, they should not preclude women from PLP.

As mentioned above, the construction of time as ‘leave’ renders it transitional and temporary. As a legal construct and an organisational tool for human resource management, ‘leave’ signals a temporary absence; though leave can be contemporaneously extended in certain circumstances (such as sick leave), it is constructed as a pre-selected and planned absence from work parsed out in hours, days or weeks. These periods of leave are flagged in advance as intended absence from work, signalling that once it finishes, the worker will return to the waged work status quo. Remunerating that period of absence remains a legal construct and workplace benefit. Leave is oriented to waged work because it is a construct of waged work. As presently constructed, it pays no regard to the ways in which temporalities become disrupted and altered by care work.

This chapter has addressed my research questions as they relate to
Australia’s parental leave scheme and analysed how the terms of PLP are based on hegemonic dictates and chrono-normative assumptions. It further identified how the scheme’s reliance on ‘genuine’ work as labour market connections belies its disparate treatment of gendered labour and time. This chapter suggested that a gender-sensitive approach to time in parental leave incorporates a Bourdieusian approach to time as embodied and enacted, especially where care of subsequent children is at issue. There is a fundamental incompatibility between care work and neoliberal rationalities. Although it seems almost too obvious to state, a child’s care needs do not change depending on how her parent’s time is statutorily characterised. Rather, a child’s care needs change over time, and the expectation of care needs change with the passage of time. Therefore, it follows that a parent’s experience of time does not change when the time is characterised as ‘paid parental leave’ or as ‘unpaid parental leave’, made especially salient because a parent can simply change the order of leave to meet future needs. However, a high level of technical and legal understanding of the legal temporal regimes of parental leave is necessary, coupled with implacable foresight, planning and timing. These are not characteristics or luxuries of many working parents.

---

369 I do not wish to engage in an analysis of expectations, but note here that expectations of care are subject to social construction; although largely objective, some aspects of actual care needs are also, to some degree, subject to social construction.
Parental leave, as currently constructed in Australia, creates the temporal foundations for the gendered division of this care work. The legislation presumes that mothers are secondary earners in middle class households with the means to co-fund parental leave. This hetero-capitalist paradigm reflects neo-maternalistic productivism’s underlying construction of Australia’s parental leave scheme and ignores other experiences of family and time. Even where women are secondary earners in middle class households, predicating a parental leave scheme on this assumption perpetuates the gendered uptake of care and waged work. Rather than relying on neo-maternalistic productivism, parental leave should instead be constructed on the child-paced rhythms of care-based temporalities.

Having discussed the transition out of waged work and into care-based temporalities with parental leave, the following chapter discusses the transition toward combining care and waged work. In analysing flexible work, it investigates the gendered impact and enduring legacy left behind by the Howard Government’s rhetoric of flexibility.
Chapter 3
The Enduring Temporality of Flexible Work in Work Choices

This chapter addresses the gendered temporality manifesting under the Howard Government (1996 – 2007) in its interventions in the work-care regime, and the enduring legacy of this intervention. By specifically considering Work Choices, it analyses the Howard Government’s interpretation and application of ‘flexibility’ for working parents in the 2000s. It discusses how the Howard Government implemented a change in legal policy which decreased entitlements in ways that disproportionately impacted women and marginalised gendered forms of work patterns. By applying Bourdieu’s concept of the *habitus*, explored in previous chapters, as well as previously discussed understandings of collective and individual agency, this chapter argues that the gendered distribution of labour in Australia under the Howard Government was further entrenched by the flexibilisation strategy adopted in Work Choices, that is, the decentralising efforts of Howard Government legislation on labour relations. This chapter addresses the use of the ideal worker narrative, intensive mothering norms, and working time transitions in understanding labour and ‘flexibility’ as constructed by the legal temporalities of Howard Government laws and policies.

---

370 Workplace Relations Amendment (Work Choices) Act 2005 (Cth).
Under the Howard Government’s approach, laws and policies were enacted on the expectation that women would leave the waged labour market once they had their first child. Maternity leave, as discussed elsewhere, was not a federally protected paid entitlement and, although nearly every other OECD country had paid maternity leave, the Howard Government persisted in a commitment to not implement such an entitlement. The Howard Government failed to acknowledge and resolve the conflict of women’s expectations and preferences arising in the habitus of motherhood, and it failed to address the resulting economic insecurity arising from its policies.

Drawing on the account of Work Choices and labour relations presented in Chapter 1, this chapter further discusses the gendered outcomes of the decollectivisation under the Howard Government and illustrates how Work Choices gave legal structure to the ideal worker narrative and further entrenched the ideal, intensive mother norm. It begins by discussing the theoretical and conceptual models of gender and care introduced in earlier chapters to analyse how Work Choices shifted gendered temporalities in Australia. With specific application of Barbara Pocock’s work/care regime and Bourdieu’s concept of the habitus, section I analyses the gendered temporal relationships developed under

---

Work Choices through reference to the intensive mother and the ideal worker narratives. Section II elaborates on the intersection of parenthood and labour by further investigating the materialities and impacts of working time transitions. By applying this analytical framework to the Australian system, section II examines how the Howard Government adopts a specific, exclusionary normative definition of flexibility in line with an exclusionary working time transition and transitional labour market. Finally, section III explains the persistence of the Howard Government’s conception of ‘flexible’ time and labour into contemporary Australian labour approaches to paid and unpaid labour and the dominant conceptions of time in flexible work today.

I. Theoretical and Conceptual Models

Ten years before the Howard Government’s Liberal-National coalition won the 1996 Australian federal election, Lucinda Finley argued that America’s ideology of ‘separate spheres’ perpetuated the gendered division of paid and unpaid labour. She wrote:

Assumptions and stereotypes about the emotional and physical effects of pregnancy and motherhood, about the appropriate role of women in society stemming from the physical fact of children bearing, and about the perceived response of women to childbearing have contributed more than any other factor to the discriminatory treatment of women in the workplace.

---

372 Finley, above n 176.
and to the maintenance of the ideology of separate spheres.\textsuperscript{373}

Though written from an American perspective, Finley’s argument resonates with Australian gender relations, especially those entrenched during the Howard Government. The Howard Government, through a series of reforms, endorsed and facilitated a particular vision of gendered ‘separate spheres’\textsuperscript{374}. In the ‘separate spheres’, entrenched under \textit{Work Choices}’ rhetoric of flexibility, two conceptual illustrations implicating flexibility emerge: the intensive mother and the ideal worker. This section further discusses the relationship of these with the habitus of women with children, in other words, women who experience simultaneously conflicting expectations and experiences of motherhood, and Australia’s enduring work/care regime.

Barbara Pocock has developed a model to explain the inputs and outputs of waged work and unwaged care in a given state and society, which she termed the ‘work/care regime’.\textsuperscript{375} The work/care regime operates within an existing society’s gender order, which is ‘[c]onstructed by the division of labour and gendered social and power relations’.\textsuperscript{376} In her analysis of Australia, Pocock finds a dissonance between the expectations and preferences of women and the available

\textsuperscript{373} Ibid 1119.

\textsuperscript{374} For an argument applying a similar analysis to European Community sex equality law, see McGlynn, above n 131.

\textsuperscript{375} I will use her phrasing ‘work/care regime’ without detracting from the work that care labour is, Pocock, ‘Work/Care Regimes’, above n 114.

\textsuperscript{376} Ibid 38.
leave provisions and labour policies. This is largely reflected in
Australian labour relations and expressed in the gendered norms of care
between ‘proper fatherhood’ as ‘male breadwinner’ and ‘proper
motherhood’ as ‘primary carer’. A time disparity emerges as a result,
organised principally by gender: women engage in far longer hours of
unremunerated labour and take extended transitions from and between
waged work, while men increase the time spent in waged employment
in both short term and long term accounts of time-use.

A given society’s work/care regime is subject to the external super-
structures of industrial relations, which Pocock aptly describes as the
‘balance of forces between employers and employees’ and the role of
the political state. Pocock conceptualised the work/care regime as the
relevant culture, institutions, collective actions, preferences and
behaviours of those in paid and unpaid labour and care. Interpreting
Pocock and Bourdieu, we can see how this reflexivity reflects an

Ibid.

Ibid.

113; Australian Bureau of Statistics, ‘Pregnancy and Employment Transitions,
Nov%202005?OpenDocument> showing that fathers have twice the level of
regular overtime compared to mothers, and the percentage of fathers working
overtime increased over the Howard Government leadership, from 46% in
1993 to 50% in 2003.


I rely, in part, on Esping-Andersen’s welfare state typology to understand
the state and industrial systems. Esping-Andersen understood capitalist states
to fall within one of three categories on social welfare based largely on labour
relations and state-provisioning. Esping-Andersen, above n 156.
exchange flowing between social agents, institutions, and cultures, mirrored in individual and collective actions, preferences, and behaviours. This reflexivity can also be found in Bourdieu’s concepts of the habitus, as well as its relationship to the field, discussed in more detail below.

Working from an empirically-informed model, Pocock situates her analysis on qualitative surveys, interviews, statistics, and time-use data. From these methods, Pocock determines that preferences of women are deeply in conflict with cultural and social norms of ‘proper motherhood’ in Australia. Pocock identifies a temporal and legal gap between what she calls ‘realistic mothering’ and ‘intensive mothering.’ Through interviews, survey data, and secondary analysis of qualitative studies, Pocock describes a contemporary rendering of ‘proper’ mothering through intensified time-heavy obligations of care. Intensive mothering describes both the quality of time spent ‘mothering’ as well as the quantity—that is, care-based temporalities. The cultural norm of intensive mothering constructs gendered temporalities of care, since under this paradigm, women are expected to focus intently on anticipating and meeting every possible need and interest of their children, and in ways that are displayed and manifested publicly. In the intensive mother model, childhood ‘needs’ are socially constructed,

---

382 See Chapter 3 for a general discussion of Bourdieu’s field and habitus.


384 Ibid; Pocock, The Labour Market Ate My Babies, above n 233, 239.
while the ‘proper’ mother is one who accepts an intensification of care-based temporalities, and the attendant time-stress that results.

Bourdieu’s theory, which captures how the social is incorporated into a durable yet dynamic corporeal body, helps to explain the persistence of the ideology of intensive mothering in Australia.\textsuperscript{385} His approach acknowledges that autonomy and agency exist as a dialectic between the individual and the collective: ‘Because the social is also instituted in biological individuals, there is, in each biological individual, something of the collective’.\textsuperscript{386} Gender identity is not an atemporal expression of dominant norms, but instead deeply temporally reliant. That means that despite the increase in women’s participation in the paid workforce, the internalised sense of ‘proper’ motherhood as ‘intensive’ mothering remains ‘firmly wedded to the traditional notion that averrable, nurturing mothers should take primary responsibility for care’ in the turn of the twenty-first century Australia.\textsuperscript{387} This seeming anachronism is explained by providing the temporal embodiment of motherhood as the inculcation of institutional demands, existing relations of power, and values mediated by the habitus and the field, that is, the specific groups or social spaces experienced by the woman.

\textsuperscript{385} See McNay, above n 194, 95.

\textsuperscript{386} Bourdieu, above n 2, 156.

\textsuperscript{387} Pocock, ‘Labour Market “Deregulation” and Prospects for an Improved Australian Work/Care Regime’, above n 23, 58.
That the norm of ‘intensive mothering’ influences the choices, or objective chances, available to parents of any gender does not provide that it will be accepted and adhered to by all parents as an immutable gender norm. Lois McNay is careful to point out that Bourdieu is not arguing that conformity to social norms is ‘reducible to the idea of rule following’ but instead argues that ‘it is a more uncertain and dynamic process where the enactment of norms results in their reproduction and transformation on a collective level’.\footnote{McNay, above n 181, 149.} Ultimately, the habitus is dynamic, reflexively subject to the pressures of actions, preferences, and conflicts from social agents.

One such conflict arises in the habitus of the mother. Surveys of general attitudes of what mothers should do are different, and temporally lag behind, what women as mothers actually do.\footnote{Pocock, ‘Labour Market “Deregulation” and Prospects for an Improved Australian Work/Care Regime’, above n 23, 41; Pocock, The Labour Market Ate My Babies, above n 233, 239; Pocock, ‘Work/Care Regimes’, above n 114, 32; see also Barbara Pocock, above n 121.} Pocock references Belinda Probert’s study of women in the 1950s and the 1990s which showed that ‘attitudes to motherhood itself, and beliefs about what children need, are remarkably unchanged’ despite a massive shift in women’s participation in waged work activities.\footnote{Pocock, ‘Labour Market “Deregulation” and Prospects for an Improved Australian Work/Care Regime’, above n 23, 58; quoting Belinda Probert, “Grateful Slaves” or “Self-Made Women”: A Matter of Choice or Policy?’ (2002) 17(37) Australian Feminist Studies 7, 8.} This interview-based study demonstrates women’s beliefs that children ‘need’ their mothers
as the primary carer and in a time intensive way.\textsuperscript{391} Formal childcare remains expensive and mostly privately provided in Australia, and maternal attitudes reflect a disfavour for formal care centres over mother and family provided care, reflexively contributing to the pervasiveness of intensive motherhood.\textsuperscript{392} One clear manifestation of the gendered outcomes and impacts of intensive mothering emerge in the data addressing leisure time.

On average, women spend more time with their children than men do and more of their total leisure time is spent with children.\textsuperscript{393} In a comparison of Australia, the USA, Denmark, and France, fathers averaged significantly more leisure time across all countries, particularly more child-free leisure, than mothers.\textsuperscript{394} Compared to mothers, fathers averaged longer unbroken periods of relaxation and were much less likely to have their leisure immediately followed by childcare.\textsuperscript{395} More of women’s leisure occurs in the home with children.

\textsuperscript{391} Probert, above n 351.


\textsuperscript{393} Craig, ‘How Employed Mothers in Australia Find Time for Both Market Work and Childcare’, above n 5, 84; Craig and Mullan, ‘Shared Parent-child Leisure Time in Four Countries’, above n 234, 222.

\textsuperscript{394} Craig and Mullan, ‘Shared Parent-child Leisure Time in Four Countries’, above n 234.

present, impacting on the ways, means, and quality of women’s leisure and their ability to schedule their leisure-time.\textsuperscript{396} Mothers are more likely than fathers to be the sole adult present during periods of shared parent–child leisure, so by default must be the one to respond to children’s needs as and when these arise.\textsuperscript{397} In addition, women are more likely to be responsible for organising and managing shared family leisure activities.\textsuperscript{398} So even when partners are both present, mothers are more likely to have planned and to monitor the leisure event, actively managing the mutual enjoyment for all participants.\textsuperscript{399} These factors all potentially prevent women’s leisure being an opportunity for unencumbered relaxation.

Mothers engage in more routine childcare, more physical care, and more solo care than men. Whereas women provide all forms and qualities of care-based activities including transportation, feeding, changing, chaperoning for appointments, teaching, playing, disciplining, as well as having children present for more of their leisure and working time

\begin{footnotesize}
\textsuperscript{396} Craig, ‘How Employed Mothers in Australia Find Time for Both Market Work and Childcare’, above n 5, 84; see also Craig, above n 353; Craig and Mullan, ‘Shared Parent–child Leisure Time in Four Countries’, above n 234.

\textsuperscript{397} Craig and Mullan, ‘Shared Parent–child Leisure Time in Four Countries’, above n 234; see also Craig and Mullan, ‘How Mothers and Fathers Share Childcare A Cross-National Time-Use Comparison’, above n 4; Craig, ‘How Employed Mothers in Australia Find Time for Both Market Work and Childcare’, above n 5.

\textsuperscript{398} Craig and Mullan, ‘Shared Parent–child Leisure Time in Four Countries’, above n 234, 212.

\textsuperscript{399} Ibid.
\end{footnotesize}
than do men.\textsuperscript{400} This gendered time disparity of leisure, routine childcare, and physical care, as well as which activities are done in the presence of children, contributes to the time intensification of motherhood.

This gendered disjunction of care-based temporalities leads to what Pocock identifies as ‘instability’ in the work/care regime, working specifically on analysing the instability that occurred during the Howard Government. By ‘instability’, Pocock means the mismatch between institutionalised structures and personal attitudes and preferences, what Bourdieu has elsewhere identifies as the gulf between objective chances and agent expectations.\textsuperscript{401} Though Pocock identifies the norm of the intensive mother, she also identifies that women are increasingly working outside of the home, giving rise to a mismatch between expectations of women’s paid work and care.\textsuperscript{402} The reflexivity of the work/care regime is subject to instability and contradiction; this instability, in combination with the mismatch of institutions, culture, and actions, produces ‘personal troubles and, beyond them, public troubles’.\textsuperscript{403} Drawing on qualitative data demonstrating that Australian social attitudes toward parental care are in conflict with social norms

\begin{footnotesize}
\begin{enumerate}
\item Bourdieu, above n 2.
\item See Pocock, ‘Work/Care Regimes’, above n 114, 34.
\item Ibid 39.
\end{enumerate}
\end{footnotesize}
and practices of care and labour, Pocock notes that this division is largely along gendered lines relegating women to intensified care while struggling to also meet the expectations of an increase in paid work participation, while men experience intensified paid work hours with a minimal increase in normative expectations of paternal care. These normative expectations epitomise the impact of neo-maternalistic productivism. Referring to Dana Luciano’s concept of chronobiopolitics as ‘the sexual arrangement of the time of life’ of entire populations, Freeman’s chrono-normativity also speaks to these sex-based and sexualised norms. What we see emerging from these imposed norms is a conflict between the norms and the actions of social agents. Pocock suggests that these ‘personal troubles’ within individuals and groups reflect and reverberate as ‘public troubles’ through political and cultural conflict.

These ‘troubles’ in men’s and women’s waged work and unwaged care, can be best understood as a form of temporal tension between what Bourdieu calls ‘objective chances’ and subjective expectations. The objective chances available to any one agent depends on several factors, including how that person embodies time through her experience of her field(s) and relations of power. The field is likened to the social groups in which we operate—be it family, workplace, cohort, or community-

---

404 Freeman, above n 71, 3.

based groups. As members of multiple groups, agents move between fields, shifting behaviours and interactions depending on the reflexive social norms inherent to the field.

Objective chances are shaped by the existing power relations in Australia, reflected in the work/care regime. The ‘practical relation to the forth-coming, in which the experience of time is generated,’ described Bourdieu, ‘depends on power and the objective chances it opens’. Applying a Bourdieusian interpretation, this tension is experienced fully ‘when the correspondence between expectations and chances is broken’.

The instability of Australia’s work/care regime became even more entrenched as the Howard Government, through public rhetoric and legislation, altered the correspondence between expectations and objective chances by politically and legislatively supporting two gendered work and care models: what the literature calls the ‘male breadwinner model’ and what John Howard coined the ‘policeman and part-time sales assistant’ model. The male breadwinner model reflects societal norms for a heterosexual, two-parent family with children where the male works outside the home in full-time (and largely

---

406 Bourdieu, above n 2, 231.

407 McNay, above n 181, 150.

408 John Howard, ‘John Howard Speech to the Liberal Party Women’s Conference, 7 June, Adelaide’ (Speech, Adelaide, SA, 7 June 2003); see also Craig and Mullan, “‘The Policeman and the Part-Time Sales Assistant’”, above n 328.
overtime) waged labour, while the female remains in unpaid labour in the home and community. Howard’s ‘policeman and part-time sale assistant’ model exemplifies the modified breadwinner model where the male in a heterosexual, two-parent family works full-time, while the female engages in part-time waged labour while predominantly caring for the children of the couple. This model speaks to neo-maternalistic productivism, furthering the time intensification of women with children who are tasked with running the home, raising the children, and engaging in waged work.

From a Bourdieusian perspective, these models act as normative forces, influencing how social agents behave, interact, speak, dress and act, and these forces accumulate over time, reflecting back on previous norms to create current and future norms. At the same time, the anticipation of future outcomes influences contemporaneous practices and norms. As an individual within fields, the social agent is constantly anticipating and adjusting her place amongst the social. But it is this anticipation that can be ‘overdetermined’ by power relations through ‘the shaping of the agent expectations and orientation toward the future’. That is, expectations are inevitably informed and shaped by an agent’s habitus, personal inclinations, and field. But these expectations can starkly mismatch the objective chances available to a given agent who was an employee under Work Choices.

409 McNay, above n 181, 150.
Imagine an employee who had enjoyed union-negotiated working hours prior to *Work Choices*. Her expectations of negotiated flexibility, set by previous experience in the workforce, came into conflict with the new objective chances set out by *Work Choices*. Instead of union-bargained terms, *Work Choices* allowed employers to unilaterally change these terms in some circumstances. Further, *Work Choices* allowed employers to trade flexible working times, amongst other terms, for an adjustment in wages—so an employee that had previously enjoyed flexible working hours without any decrease in her pay may face diminished wages as a trade-off for flexible working patterns.

Instability could, and did, emerge in the transformed labour relations of the gendered work/care regime under *Work Choices*.

These instabilities locate the social, political, and legal areas most in conflict and therefore most in need of change and Pocock suggests that instability can act as a compass for public reform.\(^{410}\) In part, Pocock is suggesting that public reforms will impact on personal actions by providing vehicles for social change. In other words, by changing the ways in which work and care are treated by social, political, and legal institutions, Pocock argues, individuals have the wherewithal to change their relationships to care. Instead of redressing these conflicts, the Howard Government sought to use labour law and regulation as a mechanism to control the formation of the employment relationship in a

\(^{410}\) Pocock, ‘Work/Care Regimes’, above n 114, 42.
way that exacerbated instability. The following section analyses how transitional labour markets interact with the gendered temporalities of the work/care regime.

II. Parenthood, Labour, and the Employment Contract becomes the Employment Relationship

*Work Choices* sought to statutorily enshrine a new, broader relationship between employers and employees. This is best described as a shift from an employment contract with specifically enumerated rights and entitlements, to an employment relationship where employers hold the balance of power. Mark Freedland describes the shift from an employment contract to an employment relationship as encompassing far more than the contractual obligations set by industrial bargaining and legal constraints. Freedland argues that the employment relationship expands beyond a contract to include unarticulated obligations between employers and employees who often lack bargaining power or legal protections. For example, some common expectations might include continuity of employment after unprotected leave, willingness to work uncompensated overtime, or to perform work functions while on leave. Under the employment relationship, workers and employers have a series of expectations that go beyond the written words captured in a workplace agreement and often extend to transitional periods between contracts and employment relationships.

---

411 Mark R Freedland, above n 229, 6.
A significant point of instability arises during transitional periods in an individual’s work history; the employment relationship enters a grey area where a worker or employer anticipates the employment relationship to extend beyond that which the other party expects. Without statutory and common law protections, this conflict tends to favour employers. Although Freedland was writing from the British perspective, his argument is especially applicable to the Work Choices paradigm of labour relations, where ‘flexibility’ favoured the bargaining position of employers and confined the employment relationship to exclusionary labour transitions.

**Working Time Transitions and Transitional Labour Markets**

The quality and type of transitions available to workers make up the transitional labour markets (‘TLMs’) of a given economic regime. TLMs are economic, social and labour supports established to facilitate multiple transitions into and out of the waged labour market over a life course. TLMs are important because they are shorthand for understanding the landscape of work and labour over a lifetime. The move towards Work Choices had profound impacts on transitional labour markets and, despite using ‘flexibility’ to describe industrial relations, it entrenched gendered working patterns.

Günther Schmid has identified four main transitions in an agent’s labour trajectory.\(^{412}\) These pathways incorporate transitions within the

---

employment relationship by agents moving between different working-time statuses (part-time, full-time). Whether a person is moving from unemployment or non-employment depends on the employment contract and the working-pattern transition maintained by government policies and laws. Schmid identified these transitions as:

1. School-to-waged labour: this marks the transition from vocational, technical, university, or post-graduate education or training into waged labour, whether related or not to the previous field of study.

2. Unemployment-to-waged labour: This occurs when someone has been identified as ‘unemployed’ and seeks to transition back into the waged workforce.

3. Non-employment-to-waged labour: ‘non-employment’ is a specific term Schmidt uses to identify employment relationships that are not exemplified by a recognisable working time status, i.e. full-time or part-time. ‘Non-employment’ most usually refers to someone on leave.

4. Transition to retirement.

The ideal worker narrative, discussed in Chapter 1, presumes that the only transitions occur from school, education, or training to the waged workforce and then to retirement. In reality, all workers will likely experience multiple labour transitions throughout their working lives. Parents occupy a space outside of the ideal worker-narrative by taking time off paid work for infant and maternal health and wellbeing.

---

413 Immaculada Cebrian, Michel Lallement and Jacqueline O’Reilly, above n 22, 2.

414 Schmid, ‘Transitional Labour Markets’, above n 22. See also Chapter 5 for additional discussion.

415 Joan Williams, Unbending Gender: Why Family and Work Conflict and What to Do about It (Oxford University Press, 2001).
Further, based on labour force statistics, women remain more likely to take longer leave from waged labour for care-related activities.\textsuperscript{416} Parental leave, by definition, is followed by another transition: back to the waged workforce. These transitions mark a temporal shift from one set of labours to another, marking it, essentially, as ‘parental labour transitions’ rather than as a singular, monolithic parental leave; parents on leave from waged labour to care for young children are largely engaging in unpaid care and domestic labours, and when they return to waged work they are transitioning back to paid labour often in a reduced or flexible working arrangement. In a well-coordinated TLM, employer-set flexible working would be fully integrated and supported. It is important to highlight here that the gender-neutral wording of ‘parental’ leave fails to accommodate the reality of the Australian work/care regime. More women than men experience parental labour transitions, and these transitions are typically longer for women than for men.\textsuperscript{417} Despite gender-neutral language around care-related leave, parental leave remains largely feminised in Australia; this was true during the Howard Government and remains true today.\textsuperscript{418} even


\textsuperscript{417} Commonwealth of Australia, above n 259 see esp ‘Partners’ Leave Arrangements’.

\textsuperscript{418} See Chapter 2 on parental leave.
following the introduction of two weeks of ‘Dad and Partner Pay’\textsuperscript{419} in 2013.\textsuperscript{420}

This parental labour transition speaks directly to the variable ways that an average Australian parent—a mother—and waged worker weaves into and out of the waged workforce, with the weight of the ‘whole past’ of gendered parenting ideology embodied in the habitus of motherhood. Although all workers experience multiple transitions in a lifetime, women with children as a class of habitus embody a unique temporality. The ‘whole past’ of gendered parenting ideology in Australia combine with reference to the forth-coming, including intergenerational concerns for child welfare (itself in part socially constructed) to create the individual and collective temporalities of women with children.

The quality of the labour market transition is reflected by the policies that support transitions to paid employment, and supports available when out of waged employment.\textsuperscript{421} Cebrian et al identifies three key types of working-time transitions:

\textsuperscript{419} Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measures) Act 2012 (Cth).


\textsuperscript{421} Immaculada Cebrian, Michel Lallement and Jacqueline O’Reilly, above n 22, 3.
1) integrative transitions: these transitions focus on integrating people coming from outside waged work (unemployed or non-employed, in education or training) into waged work: ‘the extent to which they could be integrated into and remain in paid work’. Although Cebrian et al describes integrative transitions that integrate people into full-time waged labour through part-time work, I take a broader approach to integrative transitions as any working pattern to integrate agents into a sustainable employment relationship (either part-time or full-time).

2) maintenance transitions: these transitions apply to people already in waged work who experience life cycle changes or other changes to their lives necessitating alterations in their relationship with and patterns of paid employment. These transitions aim to maintain workforce ties and includes leave, alterations in working hours, flexible stop/start times, flexible work locale, etc.

3) exclusionary transitions: these transitions occur where periods of work break-up long spells of non-employment or unemployment; ‘where periods of part-time or temporary employment, or unsociable working hours, are merely interruptions of long patterns of non-employment or unemployment’. These transitions do not support long-term social integration into waged labour. This relies on the conditions of work as well as working time patterns, while also relating closely to skills and education levels.

Cebrian et al approaches labour from a full-time perspective. The goal with these transitions is chrono-normativity: to craft policies that construct full-time work as the preferred paradigm, thus facilitating agents into full-time waged work and then maintaining these full-time attachments. Part-time work and flexible work patterns appear in this theory as transitional, assisting the worker into eventual full-time work. Such an approach fails to appreciate the gendered ‘time-bomb’

---

422 Ibid.
described by Pocock et al: that the dominant Australian work/care regime is not built for a sustainable and equal combination of full-time working hours and child-rearing.\textsuperscript{425} It becomes clear that reducing working hours for both parents and increasing the share of care from mothers to fathers are key to remedying the work/care instability. However, instead of facilitating this, the Australian working hour culture increased to become a ‘long hours’ culture amongst international standards during the Howard Government, averaging 41.3 hours per week in 2001.\textsuperscript{426}

While working hours were declining in many countries, they continued to grow in Australia, as the spread of hours between women and men lengthened: men were working longer hours, while women were increasingly taking up shorter hours, part-time waged work. This gender-time gap widened due, in large part, to the shift in power toward employer demands, the increase in precarity, and unfavourable tax provisions to secondary earners, all created by \textit{Work Choices}. In a gender regime where intensive mothering infiltrated the gendered habitus of agents, a long hours work regime was incompatible with the parenting expectations of women with children. Part of the social-conservatism of the Liberal-National Coalition included the perpetuation of gendered expectations of work and care. Mothers of


\textsuperscript{426} Pocock, ‘Work/Care Regimes’, above n 114, 35.
babies and toddlers were expected to be primary carers and non-earners, but mothers of school-aged children were expected to return to work part-time as secondary earners while maintaining primary care giving responsibilities.\textsuperscript{427}

However, the Howard Government failed in two ways: to acknowledge and resolve the conflict of expectations, norms, and preferences arising in the habitus of motherhood, and to address the resulting economic insecurity arising from their policies. Despite social norms and institutional factors shaping the habitus of motherhood, individual parents retain some agency in how each one inhabits their practical expectations and chances. Instability arises in the work/care regime when individual agents and, in this specific case, mothers and fathers, find the practical expectations of their labour transitions starkly mismatched with the objective chances available within the operational transitional labour market.

**Labour Transitions**

Where the habitus reflects chrono-normative expectations based on gender, an agent’s temporal experience is necessarily influenced by this. The dominant political rhetoric during the Howard Government reflected a gendered approach to work and care: women were expected to leave the workforce to care for their young children, then return to part-time work six years later, but without a work/care regime that

\textsuperscript{427} See, eg, Interview with Doyle and Baretta, above n 18.
supported lower levels of waged work despite an increase in unremunerated labour activities (largely in the form of care and domestic labours).428

Individual and collective agency and longer-term perspectives on work and care were eschewed by policies in lieu of a largely exclusionary-based transitional labour market for parents. To better account for agency and reconcile objective chances with the transitioning social attitudes toward gendered caregiving, the Howard Government could have crafted Work Choices to foster greater temporal flexibility and fluidity for parental labour transitions through supportive, maintenance transitional labour market. Rather than take part-time work as the preferred status or established male patterns of full-time and overtime work as transitional (for example, prior to family formation), the Howard Government maintained a heteronormative approach to work and care with the established gender care norms. For all its rhetoric on ‘choice’, the Howard Government did not afford parents much choice. A work/care regime that honoured the agency of individual parental units to choose the labour patterns best suited to their work and care preferences would require establishing transitional labour markets to better address the disruptive time of care-based temporalities over a life-course. This means standardising benefits regardless of working time

428 See, eg, ibid where Howard PM describes women staying at home until their youngest child is six years old as ‘a very good idea’, and to then return to part-time work; see also Howard, above n 368.
status and providing labour transitions to allow for fluid transitions between part-time, full-time, and over time work. However, the Howard Government failed to address any gendered transition beyond the chrono-normative, two-parent, heteronormative transition model, more fully explained in the following section.

In addition to changing the way employment relations were decided and established and weakening the bargaining position of workers, Work Choices changed the durability of employment relations by removing protections for unfair dismissal. This had the effect of decreasing the bargaining power of workers, and increasing the power of employers, thereby stymying the fluidity between working time status and weakening bargaining leverage for leave provisions. This power disparity was further enhanced by Work Choices because it enshrined the employer’s ability to coerce new employees to sign AWAs. Non-employment to work transitions gave way to unemployment to work transitions, belying an emergence of exclusionary transitions.

These exclusionary transitions were exacerbated by the Howard Government’s promotion of two gendered work and care models, introduced above: the male breadwinner model and the modified male

---

429 See, eg, Workplace Relations Amendment (Work Choices) Act 2005 (Cth) s 94Q allowing employers to terminate employment during maternity or paternity leave, so long as any required notice is given.
breadwinner model. Neither model adequately addressed the waged work and care issues and conflicts experienced by parents.

Under the Howard Government, the male breadwinner model applied to families with children under school age, and the modified breadwinner model applied to families with children in school. Under both models the male of the family remained the ideal worker and primary breadwinner employed in full-time waged labour. Though his work and social groups may change, his chrono-normative habitus remains static: the male in the two-parent, heterosexual family remains the primary earner and waged labourer despite any changes in his family status or composition. He became educated and trained, entered the workforce as a full-time worker, and remained such despite any marriage, children, or fluctuated family care needs. This maximally productive stance is made possible by the women of this two-parent model family norm who, under the Howard Government’s dual-regime approach, shifted her values, expectations, and behaviours multiple times over a life cycle.

**Waged Work and Care for the Two-Parent**

**Chrono-normative Family over the Life Course**

**Fathers: Education/Training → FT work → Retirement**
Mothers: Education/Training  $\rightarrow$ FT labour  $\rightarrow$ Children: No Paid Labour (transition from non-employment while on leave to unemployment after leave was exhausted and she did not return to her waged work)  $\rightarrow$ unemployment  $\rightarrow$ school-age children; PT labour  $\rightarrow$ ?  $\rightarrow$ retirement

This gendered approach to work and care presumed the durability of the original two-parent family. Although this ignores the realities of many Australian families who experience a variety of family structures, it further ignores the gender disparity of retirement income and savings and mounting economic vulnerability of women with relationship breakdown.\footnote{See Chapter 4.} The flow-on effects of encouraging more caring work to accrue to the women in heterosexual partnerships leads to more precarious economic status for women through reduced pay equity, lower superannuation balances, and increased vulnerability to poverty with relationship breakdown.\footnote{See, eg, Australian Human Rights Commission, ‘Accumulating Poverty? Women’s Experiences of Inequality over the Lifecycle’ (Australian Human Rights Commission, 2009); Australian Human Rights Commission, ‘Investing in Care: Recognising and Valuing Those Who Care’, above n 50; Millbank, above n 109.}

Remaining with the original models as presented and promoted by the Howard Government, it failed to achieve even that which it promoted. There was no TLM to facilitate women’s parental labour transitions from unpaid caring labour to part-time waged labour. Further, the transition of women beyond part-time work after their children had left
home went largely undiscussed in government policy or laws. The Howard Government’s TLM policies and laws did not support a transition from part-time work to full-time work, and there was no maintenance transition to support workforce attachment from a mother’s original place of full-time labour before she had or adopted children. Fathers were also constrained in their choices. Although they formally had the option to take short or long paternity leave,\(^{432}\) any leave they took would be subtracted from their partner’s ordinary maternity leave.\(^ {433}\) This had the effect of preferencing women’s leave arrangements around birth, and further attaching men to an ideal worker narrative. No transitions existed for fathers to transition out of full-time work into part-time work to share caring responsibilities and there was no option of shared extended parental leave.\(^ {434}\) The Howard Government omitted to initiate or sustain any meaningful public discussion of male workers on paternity leave, extended care-related leave or flexible working patterns.\(^ {435}\) The publicly communicated norms for male workers lacked any sort of temporal resonance encouraging

---

\(^ {432}\) Workplace Relations Amendment (Work Choices) Act 2005 (Cth) s 94T.

\(^ {433}\) Ibid s 94D(3).

\(^ {434}\) These problems persist today.

work and care flexibility,\textsuperscript{436} while women’s expectations around transitioning between work and unpaid care became constrained and prescribed by TLMs under the Howard Government.

The Howard Government’s approach to flexibility failed to address how chrono-normativity conflicted with expectations and experiences of care. This is most clearly illustrated by time-use data, which was contemporaneously conducted during the Howard Government in 1997 and 2006.\textsuperscript{437} The time-use data demonstrated the extreme disparity of labour between parents—waged and unwaged. The average amount of combined paid and unpaid labour the average Australian completed increased over the course of the Howard Government by about two hours from 1997 to 2006 reaching a high of nearly 53 hours (52:58) of labour for women a week and nearly 52 hours (51:55) for men.\textsuperscript{438} However, the amount of time spent on domestic labour increased during that time only for women, reaching 36 hours, 31 minutes of domestic labour per week for women; men continued to spend, on

\begin{flushleft}
\textsuperscript{436} See Pocock, ‘Work/Care Regimes’, above n 114; Craig and Mullan, ‘“The Policeman and the Part-Time Sales Assistant”’, above n 328; Craig, above n 353.


\end{flushleft}
average, 20 hours 4 minutes on domestic labour in 2006 as they did in 1997.\textsuperscript{439}

If the expectation that women were to leave waged work once they had their first child was not always explicit in public rhetoric, the lack of legal protections around employment and maternity leave clarified it. Without statutory paid parental leave, under \textit{Work Choices}, workers could take up to 52 weeks unpaid parental leave.\textsuperscript{440} However any leave taken ‘because of the expected birth’ would be subtracted from the 52 weeks; any long service leave, special maternity leave, annual leave would be deemed to be ‘other authorised leave’ and deducted from any remaining time on ordinary maternity leave.\textsuperscript{441} This meant that if the spouse or partner of a mother took any leave ‘because of the expected birth’ that would also have been deducted from the 52 weeks of maternity leave.\textsuperscript{442}

Without the addition of a supportive maintenance-based TLM, maternity leave appears almost irrelevant under the dominant work/care regime, which presumed long periods out of work for caregiving.\textsuperscript{443} The years out of the paid workforce to care for a child would

\textsuperscript{439} Ibid.

\textsuperscript{440} Workplace Relations Amendment (Work Choices) Act 2005 (Cth) s 94C.

\textsuperscript{441} Ibid s 94D(3).

\textsuperscript{442} Ibid.

\textsuperscript{443} Bearing in mind that it was the Howard Government’s Treasurer, Peter Costello, who urged parents to have ‘one for your husband, one for your wife,
be extended upon the birth of any subsequent children, until the youngest reached school age.

At the same time, the tax institutions under the Howard Government were contradictory in their approach to work and care. The tax policy adopted under Howard promoted the male breadwinner model, but ongoing policy and rhetoric advanced a modified breadwinner model. The 2000 budget lowered the marginal tax rate for secondary earners. As a result, in a two-parent household, secondary earners were subject to a high effective marginal and average tax rate, edging out the financial benefits of secondary earners and promoting longer-hours for primary earners. This endures in amended form today. In the 2004 budget, allowances were made for families with dependent children and

444 See, eg, Interview with John Howard, ‘Transcript of the Prime Minister the Hon John Howard MP Radio Interview with Alan Jones Radio 2UE’ (16 March 1998) <http://pmtranscripts.pmc.gov.au/release/transcript-10678> where Howard spoke of the family tax policy, stating that ‘if they want one of the parents to be at home when children are young, either part-time or full-time, that to the maximum extent possible everybody who wants to do that ought to be able to do it and not just the well-off’; Howard, above n 368 where Howard promoted his ‘police officer and the part-time sales assistant’ model; Liz Van Acker, ‘The Howard Government’s Budgets: Stay-at-Home Mothers Good–Single Mothers Bad’ (2005) 31(2) Hecate 90; Craig and Mullan, ‘“The Policeman and the Part-Time Sales Assistant”’, above n 328; Probert, above n 351; Australian Government, above n 10.

benefits included the maternity allowance, maternity immunisation allowance, Family Tax Benefit (‘FTB’) Part A and Part B, child care benefits, and the baby bonus. Family Tax Benefit Part A and Part B were introduced to address family tax systems in Australia. For mothers to receive the full benefits of the baby bonus as a refundable tax offset, primary carers would have to stay at home for five years. By 2005, the Howard Government’s budget increased the income threshold for FTB Part A to $37,500 so that low-income earners could also transition into the preferred work/care regime without cutting family assistance. Labour laws and work entitlements preferred the full-time earner, and working hours and patterns were largely shaped for the unencumbered, ideal worker. John Howard was explicit and unapologetic in promoting gendered work norms. The public rhetoric and the legislative changes had the effect of promoting a male breadwinner chrono-normative regime.

The Howard Government publicly encouraged a shift from a male breadwinner model to the ‘policeman and part-time sales assistant’ model once the children became school-aged. This work/care regime provided for a full-time male worker and a female carer and part-time

---

446 Van Acker, above n 404, 93.
447 Ibid.
448 Ibid 95.
449 Ibid 100.
450 Interview with Alan Jones, ‘Radio Interview with John Howard’ (20 June 2003).
The culture, as made up of dominant values and social norms, provides that middle-class women continue to be the primary carers, contributing to waged labour in small, part-time chunks of the day when their caring labour can be postponed (ie when her male partner is at work and her children are in school). However, nothing was said to reconcile the time norms around unpaid labour in a two-parent family, to say nothing of sole parents. The role of fathers became further essentialised as income-earners not care-givers, as working hours lengthened, further entrenching the gendered division of labour.

As a result, the work/care regimes under the Howard Government suffered serious and considerable contradictions. The labour market changes introduced under the Howard Government did not address the transitional labour market required to maintain a mother’s dual-carer/part-time worker role under the modified-breadwinner model and did not allow for dual-carer/part-time worker roles for fathers. Instead, Work Choices stripped many positions of the entitlements previously provided by industrial tribunals, further marginalising part-time work. Without legal standards enshrining part-time work with the same basic entitlements as full-time work, workers were left to bargain for the working patterns and conditions necessary to meet their employment and care needs. The result, however, was that more women were relegated to precarious and insecure employment, with

---

wages subject to a higher marginal tax rate under the Howard tax policy. For women who were secondary earners, they were subject to higher tax rates despite low earnings or shorter-hour jobs.

Under the Howard Government, the institutions of law, regulation, and policy shifted, but without the temporal flexibility that parental labour transitions require and maintenance transitional labour markets incorporate. Women heard the political rhetoric sending them back to work once their children were school aged, saw the reduction in welfare and state supports marking the transition time, but encountered employment relationships (established by legal and regulatory institutions) hostile to such transitions. Fathers found no maintenance-based approaches to support a transition from full-time work to part-time work or any fluidity of working time status during early childhood years (or at any other time). Thus, the habitus reflects temporal instability embodied as a tension between gender-neutral expectations and deeply gendered norms of care and work. These mark the serious contradictions within the Howard Government’s work/care regime, where these embodied ‘personal troubles’ reflect ‘public troubles’.452

Had the Howard Government analysed the temporal qualities of parental labour transitions, it would have identified how best to support transitions between parental labours – both paid and unpaid. Instead, flexibility under the Howard Government adopted a specific,

452 Ibid 39.
exclusionary normative definition, demonstrated through empirics of exclusionary labour transitions and disparate working hours. TLMs went unexamined and unsupported, even while Howard was campaigning and promoting neo-maternalistic productivism through the transition to a modified breadwinner work/care regime.

Toward the end of the Howard Government leadership, the ABS conducted a survey in November of 2005 of birth mothers with children under the age of two.\(^\text{453}\) Most of these Australian women (52\%) transitioned from employment to unemployment after the birth of their children.\(^\text{454}\) However, by the time their children reached school age, most women (82\%) re-engaged in waged labour in a part-time capacity, with nearly half (45\%) working 15 hours or less.\(^\text{455}\) Despite increased calls for greater involved with their children,\(^\text{456}\) fathers, too, experienced negative impacts on their work and care responsibilities under the Howard Government as the number of fathers working overtime

---


\(^{454}\) Ibid showing 52\% of women with children under the age of two years were not engaged in waged labour.


\(^{456}\) Goward, above n 405.
increased from 46% in 1993 to 50% in 2003, which was twice the regular overtime of women.\textsuperscript{457}

**Labour Transitions for the Two-Parent Chrono-normative Family**

**Key:** *italics = working status; bold = labour transition*

**Fathers:** school to waged labour – *waged labour employment* – [Full-time] Employment to Retirement

**Mothers:** school-to-waged labour – *waged labour employment* – Non-employment (maternity leave) – Unemployment (leave exhausted) – Unemployment to waged labour (Part-time Work) – [Part-time] Employment/Precarious Carer to Retirement

With the ‘flexible’ labour approach advocated by Howard and installed by *Work Choices*, the parental labour transition became an exclusionary transition, relegating mothers to precarious work for flexible working patterns and both mothers and fathers to unsustainable labour patterns and high levels of time-stress. Rather than create the work/care regime conducive to Howard’s modified breadwinner model by fostering TLMs supportive to parental labour transitions, this exclusionary approach

contributes to a gendered accumulation of waged work benefits in the form of (but not limited to) wages, superannuation, and opportunities for promotion and skills development that disadvantage women and deprive men of participation in rich networks of care.

Remaining Instability and Time Stress

The Howard Government emphasised the need for flexibility in labour relations in order to meet their twin objectives of decollectivising labour and increasing women’s workforce participation. However, had the Howard Government considered the realities of women and men’s lived experiences of time, evidenced in part through time-use data available to them through the Australian Bureau of Statistics, it would have recognised the importance of a policy built around transitional labour markets. Time was represented as a quantifiable, finite resource by the ABS. Taken as such, the Howard Government could have easily recognised the value in developing TLMs supportive of parental labour transitions. Further, had the Howard Government recognised research demonstrating fathers’ increased desire for greater involvement in childrearing,458 the Government’s rhetoric for ‘choice’ and ‘flexibility’ would have been consistent with supportive labour transitions. This would translate as a maintenance-based transitional labour system facilitating parental leave for all parents as continuing an employment relationship, but with emphasis on flexible working patterns and

458 Goward, above n 405.
flexible working time status. By developing a maintenance transitional labour market that fostered non-employment rather than unemployment, parents could more easily meet their temporal needs and preferences, which in turn would be experienced as a greater alliance between objective chances and subjective preferences. A key component of this would be flexible working patterns and working time status.

Further, under a maintenance TLM the distinction between ‘jobs’ and ‘careers’ collapses. Freeman distinguishes ‘careers’ as positions that provide skill enhancement, ongoing training and upward mobility. These are premised, posits Freeman, on the assumption of full-time work and longer-term retention. Jobs, on the other hand, and are largely based on exclusionary models of employment criteria and rights, operate on temporary or part-time working patterns, and provide few entitlements, training opportunities, and opportunities for skill enhancement. Freeman champions the skill-enhancing entitlements of ‘careers’ rather than ‘jobs’, regardless of the working time status. This is premised on an understanding that whether a position is part-time or full-time does not dictate the entitlements available to a given position. Entitlements are tied rather to a specific employment relationship, and not the working time status within a workplace.

459 Mark R Freedland, above n 229.
Work Choices, rather than fostering entitlements, limited them in scope. Awards, where protected, were subject to dismantling upon expiration, allowing for specific terms and conditions to be renegotiated and bargained away. Under the Howard Government, there were little supports facilitating maintenance transitions. Full-time labour to meet the needs of employers was prioritised, having the effect of marginalising part-time and transitional work patterns, while job security was sacrificed to the whims of Greenfields agreements and unenforceable AWAs, discussed in Chapter 1. This made transitions more difficult and provided additional barriers to mothers already burdened with the double-shift and stress of combining the roles of primary carer and secondary earner. It also relegated working fathers to a certain model of low-level care and lower rates of active involvement and household labour, commodifying his role in the family as primary earner.

This gendered division of labour resulted in increasing time stress. Lyn Craig, who has developed a significant body of scholarship on Australian time-use data, published a paper with Killian Mullan in 2009 comparing families’ use of time and time pressure over the course of the Howard Government. Their research showed that as more mothers transitioned from non-employed carers to part-time waged workers, their experience of subjective time pressure increased. Women spent,

---

460 Craig and Mullan, "The Policeman and the Part-Time Sales Assistant", above n 328.
on average, 57% more time on domestic labour than men.\textsuperscript{461} In a labour landscape where working hours are increased, this had the effect of disproportionately increasing the overall workload of women.\textsuperscript{462} This study demonstrates that as women transition into longer hours work (full-time and over), the stress felt by both parents increased markedly.

A noticeable emphasis on waged work and employer demands emerged during the decade of the Howard Government. More men and women were engaged in labour, and for longer hours. The availability of casual work increased, and more women were employed in part-time work than ever before in history. But while the hours of unpaid labour remained steady for men over the decade, their hours of waged labour increased, while women’s labour increased in both the paid and unpaid capacity. By the end of the Howard Government, the modified breadwinner model applied to the majority of Australian families. But with that shift came the highest recorded experience of time stress than ever before, with well over 80% of working mothers reporting always or often feeling rushed for time; and the proportion of fathers increasing significantly as well.\textsuperscript{463} Time-stress reflects the enormous cost of


\textsuperscript{462} Ibid.

\textsuperscript{463} In 2006, 80% of mothers working part-time in waged labour reported feeling time-stressed; 93% of mothers working full-time in waged labour reported the same, Craig and Mullan, ‘The Policeman and the Part-Time Sales Assistant’, above n 6, 557.
temporal accumulation in the habitus; it is Australia’s unstable work/care regime embodied as contradictory personal expectations and gendered norms.

The more hours a mother engaged in paid labour, the more she reported feeling ‘always’ or ‘often’ rushed or pressed for time — this was true in 1997 as well as in 2006. However, two important changes occurred during the Howard years in terms of subjective time pressure. First, the subjective time pressure felt by working mothers increased markedly, and most drastically for mothers in dual-full-time earner households. In 1997, 76% of mothers in dual full-time earner households reported feeling always or often rushed or pressed for time, but by 2006 the proportion had increased to 93% of mothers in these households.

Secondly, the experience of time pressure impacted working fathers in unexpected ways. Male breadwinners have consistently reported the lowest level of subjective time pressure, whether that be in 1997 or 2006. However, in 1997, just over half of fathers in dual full-time earner households experienced feeling always or often rushed or pressed for time; 53% compared with 67% of fathers in one-and-a-half earner households. But by 2006, this number had risen to 78% of father

---

464 Ibid.
465 Ibid.
467 Ibid 557.
respondents — an increase of twenty-five percentage points.\textsuperscript{468} By 2006, a similar proportion of fathers with working partners reported high levels of time stress.

Fewer fathers than mothers reported high levels of subjective time pressure, regardless of their earning role or whether it was reported in 1997 or 2006. But the gap in time stress narrowed between the sexes over the decade — while it rose for all parents. Although both the exact causes and the cumulative effect of these subjective time pressures are beyond the scope of this paper, it provides a partial picture of subjective time pressure during a massive policy transition. Further, several studies have shown that stress has profound impacts on mental and physical health, productivity, relationship satisfaction and longevity, as well as other factors of wellbeing.\textsuperscript{469}

\textsuperscript{468} Ibid 558.

III. Conclusion

Under the Howard Government and alongside the dual narratives of intensive mothering and the ideal worker, flexibility turned into entrenched gender norms of time, work and care, and a diminished capacity to transition into and out of paid work and unpaid care. Read together, Pocock and Bourdieu demonstrate the significant public and personal instability in the work/care regimes promulgated by the Howard Government. Pocock’s empirical data captures the social attitudes of mothering in the 1990s, and Bourdieu explains how those attitudes arose in a reflexively constituent context. The conceptions of time and labour from the Howard Government’s understanding of flexibility have enduring effect in contemporary labour approaches to paid and unpaid labour and the disruptions and transitions between the two. Gendered experiences of care-based temporalities remain under-addressed in law and policy, resulting in the continuation of exclusionary transitional labour markets.

The Howard Government purported to facilitate a modified breadwinner work/care regime, but failed to create the parental labour transitions necessary to facilitate the transitions between paid work and unpaid care labour. John Howard, especially, publicly touted his vision of the ‘policeman and the part-time sales assistant’ model family, but without the TLM to support it. Instead, the Howard Government

passed laws that preferred the male breadwinner model and its
gendered chrono-normative work ideals. Neither the male breadwinner
model nor the modified male breadwinner model, both championed by
the Howard Government adequately addressed the work and care
issues of an unstable chrono-normative embodiment of time, nor was
public rhetoric or policy materials demonstrative of class concerns
between the two models. Instead of addressing the temporal conflicts
arising from the models, the Howard Government’s ‘flexibility’ referred
to labour relations rather than to the temporal flexibility that parental
labour transitions would flourish with.

The Howard Government’s use of the language of ‘industrial relations
flexibility’ and ‘flexible workplaces free of rigidity in the industrial
system’ belies its understanding of ‘flexibility’ to describe a
decollectivised and atomistic system of workplace relations. Although
John Howard as Prime Minister and the Howard Government relegated
‘flexibility’ to describe industrial relations and the move towards Work
Choices, such a system necessarily had profound impacts on transitional
labour markets and working patterns.

The Howard Government’s use of flexibility refused a temporal
approach that would have addressed and incorporated the disruptive

470 Interview with John Howard, ‘One Millionith (Sic) AWA Announcement
Comrec Elizabeth Downs; Prime Minister - Howard, John; Interview - 05

471 ‘John Howard’s Acceptance Speech’, above n 30.
time of care-based temporalities. This neoliberal preference for full-time, uninterrupted paid labour over a life course forms the current chrono-normative system in Australia and contributes to the economic insecurity of women during their working lives, as well as in older age. The issue of superannuation in the following chapter addresses these very concerns in older age.

Chapter 4
Superannuation: Waged Work and Labour Hours

I. Introduction
As has been demonstrated throughout this thesis, having children is the tipping point for significant financial inequality between men and women in Australia. This inequality compounds over time, becoming even more stark in older age. In Australia, a distinct pattern of earning emerges with the birth or adoption of children: men with children earn nearly twice the lifetime earnings of women with children. Women, who are often the ones to engage in part-time or decreased hours of

---

472 Portions of this chapter have been previously published, Starla Hargita, ‘Disrupting the Hegemonic Temporality of Superannuation’ (2016) 42(2) Australian Feminist Law Journal 223.

waged work to combine caring responsibilities, will see diminished earnings over a life course as compared to men.\textsuperscript{474} Over the life cycle, this reduction in earned income translates to considerably more retirement savings in superannuation for men with children compared to women with children. This financial outcome in older age emerges despite evidence that women complete more combined labour hours of paid and unpaid work than men over the life course.\textsuperscript{475}

This chapter discusses superannuation, Australia’s government subsidised, contribution-based retirement savings programme. Superannuation is one part of Australia’s multi-pillared retirement income system.\textsuperscript{476} Other tiers or pillars include voluntary savings accounts, assets (including shares, real estate, and the family home), and the Age Pension, Australia’s means tested pension system. Superannuation is a compulsory savings system in place since 1992 whereby an individual’s employer is required to submit a set percentage of the employee’s income, up to a quarterly maximum dollar amount, into a superannuation fund or account, which may then be topped up by the individual (or their partner) subject to certain tax provisions.\textsuperscript{477} Although there are limited circumstances where superannuation funds

\begin{footnotes}
\item[\textsuperscript{474}] See Chapter 3.
\item[\textsuperscript{475}] Commonwealth of Australia and Bureau of Statistics, above n 3.
\item[\textsuperscript{476}] See Treasury, above n 132, 8–13; Young and CEO, above n 132, ch 8; Millbank, above n 132, 111.
\item[\textsuperscript{477}] Superannuation Guarantee (Administration) Act 1992 (Cth).
\end{footnotes}
are available before retirement, the funds generally become accessible once the individual reaches preservation age. Preservation age depends on when the individual is born and is set by statute.\footnote{Preservation age generally falls in the early or mid-60s, but proposals suggest the age of 70 by 2035. \textit{Superannuation Industry (Supervision) Regulations 1994} (Cth) s 6.01; see also OECD, ‘2015 Pension Policy Notes: Australia’ (Policy Notes and Reviews, 2015) <www.oecd.org/els/public-pensions/OECD-Pension-Policy-Notes-Australia.pdf>.

Empirical data suggest that in Australia, men and women retire with significantly unequal funds in their superannuation accounts.\footnote{Australian Bureau of Statistics, ‘Gender Indicators, Australia, August 2016: Economic Security’ (4125.0, 31 August 2016) <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4125.0~August%202016~Main%20Features~Economic%20Security~6151>; see also Workplace Gender Equality Agency, Commonwealth of Australia, ‘Women’s Economic Security in Retirement’ (Perspective Paper, 2015) <https://www.wgea.gov.au/sites/default/files/PP_womens-economic_security_in_retirement.pdf>; Clare and Association of Superannuation Funds of Australia Limited, above n 93.} In 2011-12, nearly 35\% of women reported having no superannuation, compared with only 26\% of men.\footnote{Thirty-four point six per cent (34.6\%) of women reported having no superannuation balance, Ross Clare, ‘An Update on the Level and Distribution of Retirement Savings’ (Association of Superannuation Funds of Australia, March 2014).} As men and women approach retirement, their superannuation balances are significantly disproportionate: in 2013-14, men aged 55-64 had on average $321,993 in their superannuation accounts, while women had $180,013.\footnote{Australian Bureau of Statistics, ‘Gender Indicators, Australia, August 2016: Economic Security’, above n 484.} Data further suggest that this gendered inequality emerges from the gendered consequences of having and raising children.\footnote{See, eg, Australian Human Rights Commission, ‘Investing in Care: Recognising and Valuing Those Who Care’, above n 50; Australian Human Rights Commission, ‘Petition on Gender Equity for Women’s Economic Security in Retirement’, above n 54.} This chapter
focuses on the compounding financial inequality over time that emerges from an earned-income based approach to retirement security. Given the disproportionate superannuation balances between women and men, it is evident that some individuals are excluded from an equitable share of the superannuation system—specifically, those whose life cycles do not adhere to the ideal worker paradigm of a waged labour based temporal trajectory. Because superannuation is predominantly made up of employer contributions based on a percentage of earned income, those who spend more labour hours in unwaged work (namely, women) accumulate less earned income for superannuation purposes. Where superannuation fails to provide income security in older age, older Australians are forced to rely on one or all of the remaining pillars of Australia’s retirement system: voluntary savings, assets (including the family home), and the means tested Age Pension.\(^{483}\) However, recent reports indicate that older age Australians are more at risk of poverty, and women are at greater risk than men in older age.\(^{484}\) This comes as no surprise when approximately one-third of Australians over the age of 65 relying on the Age Pension live on less than 60% of the

---

\(^{483}\) See Jefferson and Preston, above n 93.

\(^{484}\) See Australian Council of Social Service, above n 86; Austen, above n 86; The Government of Australia, Senate Standing Committees on Economics, above n 86.
national median income. Older age poverty is often the consequence for deviation from the life course of the ideal worker. To combat that, Australia needs a system that recognises women’s increased labour hours over a lifetime, accounts for the decreased wages women earn for the same or similar work over a lifetime, and supports the disparate material needs in retirement.

Superannuation is important to analyse because consecutive Australian governments have increasingly shifted the retirement emphasis from the Age Pension to superannuation. Superannuation and other investments now form 45% of retirement incomes in Australia. Compulsory superannuation was incrementally introduced across industries and sectors beginning in 1992. As the superannuation system ‘matures’ to cover the entire working lives of all Australians, estimated to be by 2043, the disparity in superannuation may incrementally improve but not resolve. System maturation will do

---

485 Australian Council of Social Service, above n 86.

486 See Austen, above n 86, 500; The Government of Australia, Senate Standing Committees on Economics, above n 86.


nothing to resolve the underlying issues that cause the gendered
disparity in the first place. Women live longer than men and complete
more total labour hours over a lifetime but face increased
vulnerability to poverty in older age. This economic insecurity is
exacerbated by the current superannuation system.

A number of scholars have identified factors contributing to the
gendered situation of financial insecurity in older age. Four
predominant factors are noted in this chapter: income disparity, time
out of the waged workforce, relationship breakdown, and women’s
increased life expectancy. Then, in the following section, I demonstrate
how these connect to chrono-nuclear norms of the ideal worker
foundational in neo-maternalistic productivism. Reforms addressing
aspects of superannuation considering these factors fail to address the

---


491 Commonwealth of Australia and Bureau of Statistics, above n 3.


gender-time gap because each one focuses on a specific aspect without considering the impact of time and time-use.

Although it has become more commonly understood that the gender-wage gap contributes significantly to the disparity of retirement incomes for older age Australians, what is missing is the opportunity to develop a system that does not favour the time of the ideal worker. Superannuation privileges the ideal worker in older age based solely on earned income, and not on labour completed over a lifetime. It takes no heed of needs at retirement, nor unwaged contributions to family and society. On average, women complete more total labour hours over a lifetime than do men, and yet men, who work far fewer hours, are better off in retirement. It is men more than women who are more likely to have their care provided in older age by their (female) partner or (female) child.494 Women, who have fewer assets in retirement, are more likely to be dependent on care from outside the home (and pay for it).495

By analysing the factors listed above, this chapter will demonstrate how each reflects a specific, hegemonic paradigm of time as earnings, borne out in women’s increased vulnerability in older age, and point to superannuation as exacerbating the problem. This chapter will further


495 Ibid; Austen, above n 86, 495.
analyse the disproportionate outcomes associated with superannuation.

This chapter begins with an overview of the superannuation system. This legal and policy background introduces the Superannuation Guarantee provided under statute⁴⁹⁶ as well as the recent debates in the form of Government reports on the topic. Section II analyses the factors contributing to women’s financial insecurity in older age in Australia, and how each factor compounds over time. This section also discusses reforms associated with the factors and how each fails to adequately address underlying issues and bring about significant improvement for women in older age. Section III demonstrates how all the factors are unified under a dominant paradigm of time privileging the hegemony before analysing actual and proposed reforms in Section IV. In Section V, I situate the problem of women’s insecurity in retirement largely in superannuation, and explore one particular alternative in a ‘sex discrimination pension’. As a proposed amendment to the Sex Discrimination Act 1984 (Cth), I suggest that such a pension has the potential to better address the specifically gendered risk of poverty facing women in older age. In conclusion, I suggest that superannuation is one method of neoliberal burden shifting, leaving individual income-earners with the task of preparing for retirement. However, this gender-blind approach ignores the disproportionate impact on women and contributes to gendered outcomes throughout the life cycle.

II. Superannuation: Legal and Policy Background

This section outlines how superannuation operates legally, and recent government debates on the topic. This section begins by outlining how superannuation functions in Australia’s labour and retirement systems by reference to the corresponding statutes. It then continues by investigating the ways in which the policies fail to properly investigate and remedy how superannuation contributes to the increased risk of poverty for women in older age. Finally, the section discusses a current inquiry by the Productivity Commission into superannuation that continues the legacy of efficiency without any examination of fundamental inequities arising from an overemphasis on efficiency and productivity.

The Function of Superannuation

The superannuation legislation does not identify what the objectives of superannuation is, but it is generally assumed to provide a savings device to reduce or eliminate individuals’ reliance on the Age Pension.\textsuperscript{497} Superannuation is a legally mandated retirement savings vehicle for waged workers, whereby employers must contribute to individual government subsidised accounts and individuals may also contribute.\textsuperscript{498} An employer’s mandatory contribution, the

\textsuperscript{497} See The Government of Australia, Senate Standing Committees on Economics, above n 86, 6.8; Australian Government, Productivity Commission, ‘Superannuation Policy for Post-Retirement, Vol 1: Chapters’, above n 493, 3–7; see also Superannuation (Objective) Bill 2016.

\textsuperscript{498} Superannuation Guarantee (Administration) Act 1992 (Cth); see Treasury, above n 132, 8–13; Young and CEO, above n 132, 8.
‘Superannuation Guarantee’ (‘SG’), is a percentage of the employee’s income, up to a quarterly maximum, that the employer must submit into a superannuation fund or account (including a self-managed fund).\(^{499}\) The SG applies to adults earning over $450 a month and is currently set at 9.5%, and the rate is set to increase to 12% by 2025.\(^{500}\) The maximum contribution base is $52,760 per quarter, which acts as the quarterly upper limit of the SG for an individual earner for 2017-18.\(^{501}\) At the current rate, which depends on the indexation factor for the year, an individual earner can earn up to $211,040 annually and receive employer funded superannuation contributions for 9.5% of that amount, in addition to any voluntary private contributions added by the individual or partner.\(^{502}\) This means that an individual earning over $200,000 can accumulate nearly $20,000 annually to his or her superannuation balance, which may then increase through fund returns.

In addition to the Superannuation Guarantee, an individual earner can voluntarily contribute to their own superannuation fund, dependent on income related rules. A waged worker earning more than $37,000 may ‘salary sacrifice,’ forfeiting some portion of her salary before tax to contribute to her own superannuation fund.\(^{503}\) This sort of savings

\(^{499}\) Superannuation Guarantee (Administration) Act 1992 (Cth) ss 11-12, 16.

\(^{500}\) Ibid s 19(2).

\(^{501}\) Ibid s 15(3), the SG is required for employees earning at least $450 a month. Ibid s 27(2).

\(^{502}\) Superannuation Guarantee (Administration) Act 1992 (Cth) s 15.

\(^{503}\) The Australian Government, Australian Taxation Office, Salary Sacrifice Arrangements for Employees (16 October 2015)
mechanism, known as a ‘concessional contribution’, is encouraged with a special tax rate of 15%.\textsuperscript{504} A worker can also contribute after tax to her superannuation fund up to $180,000 before it is subject to extra additional taxation. Though calculations estimating the cost of superannuation in terms of superannuation taxation concessions vary, the Treasury estimated over $50 billion in costs in subsidising superannuation in 2012-13, and set to rise.\textsuperscript{505} As evidenced by these generous terms, the Australian Government treats superannuation as the preferred retirement savings vehicle but without the necessary considerations to address gender disparity at retirement.

\textit{Policy and Women’s Economic Security}

This benefits and drawbacks of this preference for superannuation was investigated in the Senate Standing Committee on Economics Report, ‘\textit{A Husband is not a Retirement Plan’ Achieving Economic Security for Women in Retirement}’.\textsuperscript{506} On 17 April 2015, the issue of women’s economic security in retirement was referred to the Economics References Committee of

\begin{itemize}
  \item \textless https://www.ato.gov.au/General/Fringe-benefits-tax-(FBT)/In-detail/Employees/Salary-sacrifice-arrangements-for-employees/\textgreater.
  \item \textsuperscript{504} \textit{Income Tax Assessment Act 1997 (Cth)} ss 292-25, 292-165, 995-1.
  \item \textsuperscript{506} The Government of Australia, Senate Standing Committees on Economics, above n 86 Made up of senators from the Australian Labor Party, the Liberal Party, the Nationals, and one independent, the Report solicited submissions and held five public hearings across the country. Collating and evaluating 92 submissions, the Report adequately identified the problematic, gendered outcomes with Australia’s superannuation system generally. See also app 1-2.
\end{itemize}
the Senate to produce a report in 2016.\textsuperscript{507} The terms of reference for the report referred to:

i. the impact inadequate superannuation savings has on the retirement outcomes for women,

ii. the extent of the gender retirement income gap and causes of this gap, and its potential drivers including the gender pay gap and women's caring responsibilities,

iii. whether there are any structural impediments in the superannuation system [impacting on the superannuation savings gap],

iv. the adequacy of the main sources of retirement income for women, and

v. what measures would provide women with access to adequate and secure retirement incomes; including:

   o assistance to employers to assist female employees' superannuation savings,

   o Government assistance, with reference to the success of previous schemes, and

   o any possible reforms to current laws relating to superannuation, social security payments, paid parental leave, discrimination, or any other relevant measure.\textsuperscript{508}

These terms of reference framed both the problem and the solution to women’s economic security in retirement within the superannuation system. The Report extended across eleven chapters investigating the broad issues covered in the terms of reference, including the gender pay

\textsuperscript{507} Ibid 1.14.

\textsuperscript{508} Ibid 1.16.
gap, financial literacy, child care, housing and achieving dignity in retirement.

Time and time-use, however, was not a focus of the Report. It was only discussed in terms of part-time and full-time work and the gendered uptake of each, as well as the ways in which superannuation privileges the ideal, full-time, uninterrupted worker. Although the disparity of part-time and full-time waged work was discussed extensively, the assumption of waged work as the individualised source of retirement income was unquestioned. Doing so fails to address how an emphasis on waged work systematically ignores other uses and experiences of time and instead leads to gendered outcomes in retirement.

The Report’s conclusory recommendations were overly broad and imprecise. The Report recommended review of the *Fair Work Act 2009* (Cth), the *Paid Parental Leave Act 2010* (Cth) and superannuation legislation but did not specify what should be altered. Additionally, it

509 Ibid ch 3.
510 Ibid ch 10.
511 Ibid ch 4.
512 Ibid ch 9.
513 Ibid ch 11.
514 For example, the Report recommended ‘The committee recommends that the Australian Government review the Fair Work Act 2009 to determine the effectiveness of Equal Remuneration Orders in addressing gender pay equity, and consequently in closing the gender pay gap’ and ‘The committee recommends that the Commonwealth Paid Parental Leave Scheme continue to be improved over time to allow for 26 weeks paid parental leave through the combination of government and employer funding’. Ibid xi-xii.
recommended that ‘any changes to the retirement income system are measured against the guiding principle of dignity in retirement’, but neither specified what those guiding principles looked like in practice, nor what they would achieve beyond improved general outcomes for women in retirement. Citing guiding principles such as ‘a decent standard of living’, the ‘interrelationship between the three pillars’ of Australia’s retirement income system, and the ‘diversity of experience and outcomes in retirement incomes’, the Report lacked comprehensive, rigorous investigation into specific recommendations and outcomes and largely relied on submissions for input. Although the Report implied that the superannuation system was itself a significant problem, instead of advocating for radical restructuring of the retirement income system, the enumerated recommendations instead suggested a familiar pattern of piecemeal tinkering with aspects of the system. This accepts the superannuation system as given, despite demonstrating how the system disproportionately harms women in retirement.

Several other reports commissioned by the Australian Government similarly assume the benefits of superannuation without adequate remedy to the consequences borne on women in retirement. An

515 See ibid 5.38.
516 Ibid xii–xiii.
inquiry into superannuation is currently being conducted by the Productivity Commission at the time of writing. The terms of reference provide for this review to ‘develop criteria to assess the efficiency and competitiveness of the superannuation system; and an inquiry to develop alternative models for a formal competitive process for allocating default fund members to products’. Stage one of the review was completed in November 2016, and included no sustained investigation, insight, or analysis of women’s decreased superannuation balances, except to provide that women have ‘lower financial literacy and lower levels of knowledge about superannuation than men’ and have lower rates of voluntary contributions than men. No explanation or further discussion was provided. Stages two and three of the inquiry aim to develop and assess alternative models for fund competitiveness by investigating allocating default fund members to default


Ibid.

superannuation products and will be reported by June 2018. By focusing solely on competition between funds, the inquiry appears set to ignore women’s disproportionate superannuation balances and the factors contributing to women’s economic insecurity in retirement.

III. Temporal Analysis and Alternatives

Despite their decades of the ‘double day’, [women] approach their retirement years being told that they must work on longer — that the nation cannot afford their pension and that their superannuation balances are woefully inadequate.

This section examines what the policy reports do not: the factors contributing to women’s economic insecurity in retirement. It does so by analysing how the dominant paradigm of time codified in contemporary superannuation laws privilege neo-maternalistic productivism. Even where chrono-normativity influences the habitus, as previously discussed, an expanding sense of time from the hegemonic to a pluralistic approach allows for a more inclusive approach to retirement income.

The gendered inequity of retirement outcomes in Australia can be explained by the system’s basis in the temporal norms of neo-maternalistic productivism. The superannuation system rewards those

---


who use their time according to the dominant neoliberal assumptions about how time ‘should’ be used. These assumptions of time are preserved in the waged labour basis in superannuation, rewarding the ideal worker and, by extension, the ideal worker’s wife who adhered to her prescribed supportive role, in retirement. Though work entitlements of personal leave, sick leave, and annual leave all see superannuation payments connected with those paid leave entitlements, statutory parental leave does not. We also see these temporal assumptions emerge in the way women’s diverse experiences of time are ignored in the Productivity Commission inquiry discussed above and other government reports. As we have seen, the material conditions of retirement are experienced differentially by individuals, depending on their level of conformity to chrono-nuclear norms — those whose adherence is high and minimise disruption from waged labour see much higher superannuation account balances, whereas women whose work is largely unremunerated face startlingly lower balances and are often forced to rely on the Age Pension.

Theorising the temporal basis of Australia’s superannuation programme illustrates the assumptions that underlie superannuation as a retirement income mechanism. Among those assumptions is the neoliberal ideal of maximum productivity performed by the individual, defined in terms of waged labour, by contrast to ‘unproductive’ — unwaged — domestic

523 See section I(b) above; Scott Morrison, above n 523; Australian Government, Productivity Commission, ‘Current Inquiries: Superannuation’, above n 526.
and care work. A corollary to this is the assumption of the intact family unit at retirement—that if the neoliberal unit is not the individual, it is the family unit where the head-of-household provides the material needs to his wife. This locates the connection between superannuation and neo-maternalistic productivism in a shared neoliberal ideology found specifically in one who adheres to chrono-nuclear norms.

Australia’s superannuation retirement scheme has emerged within a neoliberal context. Neoliberal rationality would suggest that the gendered division of labour is both an appropriate economic response to waged work and care responsibilities as well as a morally appropriate reflection of accepted heteronormative family mores. Under this approach, a household is made up of a heterosexual, two-parent family with children; women provide the majority of care and men provide the majority of household income. These roles are presented as rational choices selected by the agents. It is presumed that there is adequate sharing of resources within the relationship, namely financial, and that this household will remain intact and endure as is through the death of both partners. These assumptions facilitate a gender blind approach to law and policy, assuming that any ensuing gender disparity is


rectified within each individual heteronormative family unit. However, this neoliberal approach fails on multiple fronts: first, it ignores what Bourdieu shows is constrained choice in the habitus, second, it ignores evidence definitively demonstrating that poverty is directly related to marital status, and third, it ignores the gendered temporalities of the changing life cycle and its disproportionate detriment to women’s economic security, regardless of relationship status.

Chrono-normativity in Australia relies on a hegemonic reading of time to manage the body through historicist narratives of the nation-state, industrial capitalism, and sub-cultural politicised identities. According to Freeman, individuals are born, made, crafted, and transformed by time in the habitus, meaning that time is used as a mechanism to group, regulate, and maximise productivity. Through that process, people are bound to one another and ‘made to feel coherently collective’. But this feeling is, to a significant degree, an

526 See ibid.

527 See Bourdieu, above n 2; see also Williams’ discussion of Bourdieu’s logic of practice, Joan C Williams, ‘From Difference to Dominance to Domesticity: Care as Work, Gender as Tradition’ (2001) 76 Chicago-Kent Law Review 1441, 1473–1476, see also preceding chapters and especially Chapter 1.


529 As above.

530 As above.
orchestrated manipulation through the inculcation of chrono-normativity.

Australia’s superannuation system is premised on this hegemonic temporality. Specifically, superannuation laws and policies rely on two notions of time: time in waged work and working-time patterns. An individual’s superannuation balance upon retirement relies on these two chrono-normative manifestations of time. Time in waged work reflects the duration in paid employment: there is no Superannuation Guarantee for anyone who is not engaged in the time of waged work. Whilst engaging in the time of waged work, superannuation then relies on working-time relationships and patterns: is the worker engaged part-time or full-time, as a contractor (in self-employment), as a casual worker, or in an ongoing and permanent contract? The answer to those questions translates into financial earnings for time in waged work, which the Superannuation Guarantee (Administration) Act 1992 (Cth) calls ‘ordinary time earnings’.

Both of these understandings of time reflect hegemonic temporalities and demonstrate the enduring relationship between chrono-norms and neoliberal law and policy. An individual who engages in

---


532 However, there are other ways to contribute towards an existing superannuation fund, as discussed above.

uninterrupted, full-time waged work from the end of schooling, education, or training until retirement will have significantly higher superannuation balances than the individual who takes time out of waged work for unpaid caring labours or who works part-time for significant stretches of time. This chrono-normative approach to subsidised, forced retirement savings penalises women in retirement for their assistance toward unpaid caring and domestic labours. Though it captures bodies in production, this approach ignores the gendered body in reproduction and care, failing to value time spent in activities that are not directly wage-based.\footnote{See also Lisa Adkins and Maryanne Dever, ‘Housework, Wages and Money: The Category of the Female Principal Breadwinner in Financial Capitalism’ (2014) 29(79) Australian Feminist Studies 50; Peta Tancred, ‘Women’s Work: A Challenge to the Sociology of Work’ (1995) 2(1) Gender, Work & Organization 11; Marilyn Waring, If Women Counted: A New Feminist Economics (Harper & Row San Francisco, 1988) <http://www.roiw.org/1992/237.pdf>.

As a result, women have significantly higher rates of poverty in retirement than men, and are far more reliant on the Age Pension and private or family charity.\footnote{See Workplace Gender Equality Agency, Commonwealth of Australia, ‘Women’s Economic Security in Retirement’, above n 484, 1; Australian Council of Social Service, above n 86, 10.}

By relying on neo-maternalistic productivism, the superannuation system contributes to the gendered disparity of outcomes in retirement and otherwise. It ignores the empirically demonstrated time differential experienced by men and women with children that dissolves the ‘public’ and ‘private’ division of paid and unpaid labour.\footnote{See Australian Human Rights Commission, ‘Investing in Care: Recognising and Valuing Those Who Care’, above n 50; Australian Human Rights Commission, ‘Accumulating Poverty’, above n 487; Lois Bryson, ‘Revaluing
Reproductive and caring labours that manifest within the ‘private’ sphere are interconnected with, and have important implications in, what unfolds in time in the financial and waged labour markets.\footnote{See also Jo Grady, ‘Gendering Pensions: Making Women Visible’ (2015) 22(3) \textit{Gender, Work \\& Organization} 445; Ginn and Arber, above n 498; Tancred, above n 539; Adkins and Dever, above n 539.} The link between time and money means the personal is always political – time is a way of demolishing the distinction between the private and public spheres so that what occurs ‘at home’, in ‘domestic’ space, in the ‘private’ realm impacts tremendously and enables that which occurs ‘publicly’ in financialised markets. An approach to retirement savings that increasingly depends on the superannuation system, which in turn relies on the false dichotomy of the public and private, leaves women disproportionately impoverished in older age. Further, it entirely ignores the gender-time gap, whereby women complete more combined labour hours over a lifetime than do men.

combined paid and unpaid labour than do men—which adds up over a lifetime. In 2006, the time spent on paid and unpaid work by people aged 15 years and over averaged 7 hours and 25 minutes per day for men and 7 hours and 34 minutes per day for women. Because the Australian Government de-funded the ABS Time Use Survey, there have been no more recent research done on average working hours, but trends seem to maintain a disparity of hours worked between men and women, suggesting that women are working more hours of paid and unpaid labour than men. ABS research calculates that women spend an average of 2 hrs 52 min per day on domestic activities, whereas men spend 1 hr 37 min. Given that waged work does not usually occur for 52 weeks of the year, but instead has periods of holiday, leave, and sick days, while domestic, unpaid work does not have the luxury of leave, holiday, or sick days (except, of course, when a couple or family is away on holiday, or when someone’s illness is so severe as to be totally debilitating), the discrepancy of total labour hours is likely to be much higher. This calculation also does not account for the likelihood that

538 Commonwealth of Australia and Bureau of Statistics, above n 3.


women increase their unpaid labour during periods of decrease in waged work (eg during Christmas or other public holidays when, for example, child care centres are closed). Adopting a conservative view that women complete one hour of additional total labour hours per week than men, over a working lifetime (20-64), that adds up to 2,288 additional hours. This additional work is unremunerated at the time it is completed and, perhaps more disturbingly, is penalised at retirement age.

Assigning a minimum dollar value, this additional 52 hours of annual unremunerated work is worth approximately $920 at federal minimum wage.\textsuperscript{542} If this amount did not change and there was no increase across 44 years of a waged work phase of an adult before retirement at age 65, the additional amount earned would be over $40,480. However, considering a more realistic increase of 2.1% inflation rate with minimum wage at 2017 across 44 years, the total adds up to $66,063.50, uncompounded, by the time a woman reaches 65 years of age. Adding a 5% compound interest with each year’s 52 extra hours of work, the total adds up to over $200,000 over a waged work phase life cycle ($203,497.85). Add to this the average lifetime earnings lost to the gender-wage gap, and women have earned well over $800,000 over their

\textsuperscript{542} At the time of writing in July, 2017, the federal minimum wage was $17.70 per hour Fair Work Commission, ‘Annual Wage Review 2016-17’ (C2017/1, Australian Government, 26 June 2017) <www.fairwork.gov.au/pay/minimum-wages>.
working age life phase of unrealised income.\textsuperscript{543}

Combining lost earnings from the gender-time gap and the gender wage-gap provides this conservative figure of unrealised income over the waged work phase of a women’s life cycle. This does not represent the actual market figure of this labour, nor does it account for the time-pressure, quality of time, lost leisure time, and the stress of conflicting preferences of time-use.\textsuperscript{544} Nor does this figure begin to address the gender-time imbalance in older age, where research indicates that women continue to provide much more unremunerated labour, especially care, than do men.\textsuperscript{545} In short, women in Australia, as elsewhere, face empirically demonstrable structural disadvantages in funding retirement.\textsuperscript{546} The laws governing retirement funding are based on gender blind and inaccurate assumptions and norms regarding heteronormative family forms and the gendered division of labour, without regard to women’s experience of time over a life cycle or their

\textsuperscript{543} This is calculated using the average weekly gender pay gap of $277.70 across 52 weeks and 44 years, giving a total average life-time loss to the gender pay gap of $635,377.60. It should be noted that there remain variations across industry and state or territory. Workplace Gender Equality Agency, Commonwealth of Australia, ‘Gender Pay Gap Statistics’ (Workplace Gender Equality Agency, March 2016) <https://www.wgea.gov.au/sites/default/files/Gender_Pay_Gap_Factsheet.pdf>.

\textsuperscript{544} See preceding chapter for discussion of preferences and resulting conflicts.


\textsuperscript{546} See Australian Human Rights Commission, ‘Accumulating Poverty’, above n 487; Millbank, above n 132; see also Grady, above n 542.
material needs in retirement. Women are expected to rely on male partners with their larger superannuation accounts, yet women are the ones that experience significant financial hardship when the relationship breaks down and superannuation funds are not fairly allocated. Ultimately, superannuation’s basis in waged work is unfair to people who do unpaid care work or who cannot work. As elsewhere, women in Australia are disproportionately the ones providing unpaid labour, earning fewer and lower wages than men. And yet, despite the stark empirical evidence demonstrating the gendered distribution of labour and Australia’s enduring gender-wage gap, political rhetoric and legal mechanisms privilege superannuation as a retirement solution. The evidence overwhelmingly proves that superannuation is not the solution for women.

IV. Analysis of Actual and Proposed Reforms

This section discusses the four main explanations for the gender disparity in Australia’s superannuation system. By using the factors as a framework to discuss related reform approaches, this section further

---


demonstrates the failure of such efforts. This section then explores the ways in which each explanation and attempted reform in fact makes up a component of the Australian habitus, further reflexively contributing to the construction of social agents’ temporal experiences. By outlining this pluralistic approach to time, neo-maternalistic productivism is further disambiguated.

Four explanations have been advanced for the gender disparity in Australia’s superannuation system. The first explanation is that women are disadvantaged from the outset of their working lives: superannuation contributions are calculated as a percentage of income, and the fact that the gender-wage gap leaves women who work full-time earning, on average, 18% less than men who work full-time translates directly into lower superannuation contributions. Once part-time work is accounted for in this, the gap extends to over 20%. Second, in Australia, women are more likely than men to take time off of waged work for care and other unpaid labours. This introduces a

---


period of time, sometimes spanning years, when women are not receiving wages and thus, no regular superannuation contributions. Additionally, time away from waged work effects occupational mobility by limiting advancement opportunities and decreasing the rate of pay raises.552 Furthermore, an extended period away from waged work can often mean a return to part-time waged work, not full-time waged work, further compounding the economic effects of care-based temporalities in Australia’s current economic context. Third, relationship breakdown leaves women without access to the superannuation accumulated by a partner. Finally, women outlive men in Australia.553 A man retiring at age 67 can expect to live, on average, for an additional 17.3 years, whereas a woman retiring at age 67 can expect to live, on average, for an additional 20.1 years.554 Women’s superannuation balances would need to be approximately 16% more than men’s to account for their increased longevity;555 however, recent

552 See Ginn and Arber, above n 498.

553 Australian Institute of Health and Welfare and Commonwealth of Australia, above n 495.

554 Ibid.

reports demonstrate that women’s balances are about half the superannuation balances of men.\(^{556}\)

Each of these factors contributes to the structural inequality in the super system.\(^{557}\) Yet piecemeal reforms have not brought about meaningful change because none have challenged the gender-time disparity and addressed the gender blindness inherent in it. Gender blindness does not acknowledge the differences between men and women in society, thus perpetuating patriarchal standards and norms.\(^{558}\) The reform of income disparity with taxation approaches fails because it does not address how women’s relationship with waged work is inconsistent and unrelated to the male uninterrupted work pattern of the ideal worker. Regarding women’s time out of waged work, the proposal to pay superannuation during parental leave does not deal with the gendered disparity of time and labour. Third, regarding relationship breakdown, proposed reforms have also failed to deal with the fundamental time and work imbalance of women in relationships with men. Finally,


\(^{557}\) See, eg, The Government of Australia, Senate Standing Committees on Economics, above n 86.

reforms attempting to deal with women living longer than men are strictly voluntary and are, again, premised on women’s relationship to waged work prior to retirement.

A. Income Disparity

Superannuation is a compulsory savings programme premised on waged work. It requires employers to contribute an amount to each employee’s superannuation fund based on a percentage of income from waged work. Even for women who do not have children and have remained in work full-time, the average Australian woman still has just over half the superannuation savings of men.\(^{559}\) The very foundation of superannuation is built on income disparity and ignores the gendered disparity of income accumulation of the gender-wage gap. As a result, superannuation perpetuates class and gender-based inequalities and accumulates and compounds these inequalities until retirement.

Reforms have centred around progressive taxation of superannuation contributions. But reforms such as these fail to grasp the *gendered* component of this very foundation of superannuation accumulation from the gender-wage gap and gender-time gap, and further widens the class division at retirement.

---

\(^{559}\) ANZ, ‘ANZ Women’s Report: Barriers to Achieving Financial Gender Equity’ (ANZ Ltd, July 2015) 9

<http://www.women.anz.com/content/dam/Women/Documents/pdf/ANZ-Womens-Report-July-2015.pdf>, also note that this figure does not account for women who have little or no superannuation.
The dominant reform in this area suggests that all contributions to superannuation be non-concessional and taxed at a progressive taxation rate. Therefore, all income would be taxed, there would be no ‘salary-sacrificing’ or concessional contributions, and tax credits would take the place of concessions for lower-income earners. The Australian Council of Social Service (ACOSS) suggests this in its 2012 report on taxation and superannuation.\(^{560}\) Indeed, such reform would diminish the tax advantages of high income superannuation contributions and spousal contributions, but would do little to address the gendered foundations of the superannuation system as it stands today.

So long as superannuation is based on a percentage of income, retirement inequalities will be borne by those engaging in lower waged or unwaged labours, who are more likely to be women. The *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (Cth) is one attempt to offer some targeted relief for low income earners. It provides a superannuation co-contribution of up to $500 by the Australian Government into an eligible income earner’s superannuation fund.\(^{561}\) Concessional superannuation contributions are taxed at a 15% rate, but low-income earners pay no income tax on the first $18,200 of their earnings, and a 19% tax on the next $18,800 on their


\(^{561}\) *Superannuation (Government Co- Contribution for Low Income Earners) Act 2003* (Cth); as amended by *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016* (Cth) sch 4.
income up to $37,000. The co-contribution ensures that low income earners do not pay more tax on their compulsory superannuation contributions than they pay on their income. This measure has been replaced by the Low Income Superannuation Tax Offset (‘LISTO’) beginning in July 2017, which operates as the co-contribution did.\textsuperscript{562} LISTO refunds the tax paid on concessional superannuation contributions for low income earners in the form of a 15\% offset, up to $500.\textsuperscript{563} The eligibility criteria remain the same between both schemes: a low income earner must be earning $37,000 or less of adjustable taxable income and must contribute to his or her superannuation fund. LISTO tapers according to income from a maximum of $500 for the lowest earning individual to $10 for eligible low-income earners at the top end of the $37,000 cut-off.\textsuperscript{564} In total, this allows for a partnered individual earner, earning less than $37,000, to receive up to an additional $1040 into her superannuation fund by co-contributions from both the Government (up to $500) and her partner (up to $540 for tax offsets). However, this amount would be significantly lower than the average annual contribution of men in waged work.\textsuperscript{565}

\textsuperscript{562} Minerals Resource Rent Tax Repeal and Other Measures Act 2014 (Cth) sch 7; Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016 (Cth) sch 4.

\textsuperscript{563} Superannuation (Government Co-Contribution for Low Income Earners) Act 2003 (Cth) 12E(2); as amended by Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016 (Cth) sch 4.

\textsuperscript{564} Superannuation (Government Co-Contribution for Low Income Earners) Act 2003 (Cth) s 12C(2).

\textsuperscript{565} Australian Bureau of Statistics, ‘Employment Arrangements, Retirement and Superannuation, Australia (Apr to Jul 2007 (Re-Issue))’ (6361.0, 2009) 23
B. Time out of Waged Work

As this thesis has thus far demonstrated, the adoption or birth of a child marks an important transition in the working lives of parents. The use of early child care providers outside of the family is common in other societies but in Australia mothers are the most likely candidate to provide child care in the earliest years of a child’s life.566 Because this care labour is not waged, it is not remunerated in the current construction of Australia’s superannuation system. Even after a woman with children returns to waged labour, her experience of employment and time will change as her role broadens to include additional care responsibilities.567

The life-cycle approach, discussed above, with the eight phases of a life-cycle in relation to working age and children in a household, provides an important mechanism to demonstrate how gendered time and time-use is in two-parent households. In Australia, women are still tasked with the majority of child care and domestic responsibilities, and this

---


only widens with additional children. This means that for the average Australian woman, the time calculated as actual hours in waged work diminishes when she has children, while the actual hours of waged work increases for men with children (in heterosexual partnerships). Rather than waged work, women increase the time devoted to unpaid labours including care and domestic labour, whereas men will often decrease their contribution to care and domestic labours following the birth of a child as their waged work hours increase.

As a result, the disparity of superannuation balances between women and men diverge quite starkly upon the birth or adoption of children, and increase and compound over the life-cycle. Women with children see a rapid decline in the rate of retirement income accumulation in superannuation, whereas men with children will often see an increase in the rate of accumulation of superannuation savings. The Superannuation Funds of Australia coined this effect the ‘super baby

---


570 Apps and Rees, above n 72.
debt’ that women with children accumulate, leading to accumulated superannuation deficit of up to $50,000 over their working lives.\textsuperscript{571}

To alleviate this point of disjuncture, reform proposals have focused on providing parents with superannuation contributions during parental leave.\textsuperscript{572} Although the relevant equivalent is legally mandated in many parts of the world,\textsuperscript{573} Australia does not require the payment of superannuation contributions during any period of parental leave, care-related leave, or decreased hours as a result of family care obligations. Calls for reform provide superannuation coverage during care-related leave. This is the reform I seek to analyse and critique. It comes in two forms: voluntary coverage and government mandated superannuation coverage. I will address each in turn.

A voluntary system already exists. This approach relies on the market, and social and business-case pressure to persuade businesses to provide superannuation contributions during periods of leave. Both Westpac and ANZ have pledged to continue contributing superannuation amounts to employees on paid and unpaid parental leave.

\textsuperscript{571} Super Baby Debt - ASFA Super Guru


A government mandated approach would require that superannuation be paid during any period of parental leave or care-related leave. Other systems have adopted two different approaches to addressing the accumulation of disparate super balances during periods of parental leave: paying the contributions rate based on the individual’s rate of pay immediately prior to taking parental leave, or paying a flat rate of parental leave pay and retirement system contribution. The first approach is favoured by Sweden and the UK (albeit most of these countries include a later period of flat-rate, lower pay, falling into the second category).\footnote{See, eg, Viva Energy Australia, Viva Energy Becomes First Australian Company to Pay Full Super Benefit to Part-Time Parents for Five Years (2017) Viva Energy Australia \url{https://www.vivaenergy.com.au/about-us/media-centre/news/2017/viva-energy-becomes-first-australian-company-to-pay-full-super-benefit-to-part-time-parents-for-five-years}; Commonwealth Bank of Australia, CBA Earns Major Accolade for Gender Equality Strategy (8 December 2016) Newsroom \url{https://www.commbank.com.au/content/shared/newsroom/2016/12/cba-earns-major-accolade-for-gender-equality-strategy}; ASX, Benefits About ASX \url{http://www.asx.com.au/about/benefits.htm}.}

The second approach is adopted by Poland and France.\footnote{Australian Human Rights Commission, ‘Investing in Care: Recognising and Valuing Those Who Care’, above n 50, vol II, 110.}
The second category pays a flat rate of parental leave pay and, presumably in a superannuation system, a contribution based on that flat rate of minimum payment. In the current parental leave system in Australia, eligible workers are entitled to 18 weeks of parental leave at the rate of the national minimum wage. If the superannuation guarantee then applied during this period of leave, eligible workers would accrue a percentage (currently 9.5%) of the minimum wage as their SG. This would represent a significant decrease in the rate of pay and superannuation contributions for many parents engaged in waged work prior to the birth or adoption of a child. However, even this reform would only cover the superannuation contributions of waged workers during the 18 weeks of Parental Leave Pay, leaving no superannuation coverage during the remaining time of federally protected parental leave (up to two years, see also Chapter 2).

Further, many Australian women transition from full-time waged work to full-time unwaged work or part-time waged work after the birth or adoption of a child in the early years. As has been discussed in previous chapters, at varying times and to varying extents, the

---

578 See also ibid vol II, 62-64 for this proposed approach in Australia.

579 The current national minimum wage is $694.90 per week, Fair Work Commission, above n 547 achieving a SG of approximately $66 per week, minus fees.

Australian tax and welfare systems indeed favour and incentivise one member of a couple to engage in waged work in a part-time capacity, if at all, in the early years of a child’s life. This, again, reflects a political preference for the hetero-nuclear family and ongoing social attitudes of familial child care as preferential and maternal care as superior to other members of the family.\textsuperscript{581}

The reform approach fails to fully address the gendered disparity of superannuation for several reasons. First, this approach is, so far, voluntary. Accordingly, few companies are publicly touting the payment of superannuation during parental leave (with ANZ and Westpac being two of the most conspicuous). But even if payment during parental leave were mandated by law, it would become cumbersome to reconcile this with the separate systems of paid and unpaid parental leave. If such a reform only applied during periods of statutory paid parental leave, it would contribute the SG for the national minimum wage for 18 weeks. If it extended beyond paid parental leave to apply to periods of unpaid parental leave, then it potentially applies the SG for up to two years (but at what rate, minimum wage, previous wages, or some other rate?). At best, such a reform would only begin to alleviate the disparity of superannuation income accumulation arising from periods of parental leave (up to two years), and would not address the accumulating disparity after parental leave, or the attendant

\textsuperscript{581} See Chapter 2 for additional discussion on this point.
decrease in pay that might arise as women incorporate caring responsibilities into their working weeks. In summary, reforming superannuation to provide contributions during periods of paid or unpaid parental leave would not address the gender-wage gap, the gender-time gap, nor the gender disparity of retirement wealth.

C. Relationship Breakdown

The majority of women with children are in a couple relationship.\textsuperscript{582} Though the average Australian parent at the time of the birth or adoption of a child is a member of a couple, it is an unavoidable statistical reality that many relationships will breakdown.\textsuperscript{583} Due to a number of compounding factors, in Australia, single women are at the highest risk of persistent poverty in retirement.\textsuperscript{584} Most women of a couple who have children will take time away from full-time waged work,\textsuperscript{585} resulting in loss to their superannuation balances. Further, women’s unpaid labour rises when she becomes a member of a

\begin{flushleft}

\textsuperscript{583} There were 48,517 divorces granted in Australia in 2015 and the crude divorce rate remained at 2.0 per 1,000, Australian Bureau of Statistics, ‘Marriages and Divorces, Australia, 2015’ (3310.0, ABS, 30 November 2016) <http://www.abs.gov.au/ausstats/abs@.nsf/mf/3310.0>.


\textsuperscript{585} See Apps and Rees, above n 72.
\end{flushleft}
heterosexual couple, regardless of whether her paid labour decreases. This unpaid labour contributes toward supporting the husband as he accumulates waged work hours and the attendant superannuation contributions resulting from the increase in waged work earnings, but it could have deleterious effects on the financial security of women.

Admittedly, most members of a couple do not plan for the breakdown of their relationship at marriage or registration. As a result, couples are left with the problem of retirement income to deal with at legal and de facto dissolution. Failure to adequately split the superannuation balance of a higher income-earning spouse with a lower or no-income earning spouse has the potential of leaving the latter with significantly fewer resources at retirement, while also depriving that spouse of the assets that she contributed in her support of her partner’s full-time waged work. Australian family law has proposed several approaches to alleviate the accumulation of retirement savings disparity resulting from relationship breakdown, discussed below.

---


587 Though financial agreements (colloquially known as ‘prenuptial agreements’ or ‘prenups’) are legal, there are no statistics available in Australia on the number of couples that draft and sign financial agreements before or during a marriage or de facto relationship. *Family Law Act 1975* (Cth) 90B-90KA (marriage); 90UA-90UN (de facto).
Prior to 2002 for married couples and 2009 for de facto couples, family courts could not issue orders to third-party trustees.\textsuperscript{588} Because superannuation accounts are held in trust, the Family Court was thus barred from splitting superannuation funds.\textsuperscript{589} Courts were to consider the superannuation funds in determining the distribution of assets, but could not directly split any accruing or unvested superannuation. Splitting is still not legally mandated, though family law reforms now allow for splitting at the source either by financial agreement or court order.\textsuperscript{590} The Family Court may split superannuation interests in accordance with one of the three specified approaches in the statute:

(a) For non-percentage-only interests: the Court is entitled to calculate a base rate that will be payable once the fund goes into payment phase;

(b) For percentage and non-percentage interests: Splitting is based on percentage amount to be payable once the fund achieves payment phase;

(c) For percentage-only interests: the Court is entitled to calculate a percentage amount to be paid with reference to the percentage specified in the order.\textsuperscript{591}

These three approaches attempt to remunerate the contributions of a non-superannuated, non-member partner, particularly ‘women out of

\textsuperscript{588} See Family Law Legislation Amendment (Superannuation) Act 2001 (Cth); Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008 (Cth).

\textsuperscript{589} See Superannuation Industry (Supervision) Regulations 1994 (Cth); Family Law Legislation Amendment (Superannuation) Act 2001 (Cth); Family Law Act 1975 (Cth) reforms; see also Family Law (Superannuation) Regulations 2001 (Cth); see also splitting orders under s 90MT of the Family Law Act 1975 (Cth).

\textsuperscript{590} Family Law Act 1975 (Cth) s 66K.

\textsuperscript{591} Ibid s 90MT(a)-(c).
the workforce because of homemaker and child-rearing responsibilities’. Unfortunately, each of these options fails to accurately represent the contribution made by the non-member spouse. First and foremost, it is difficult if not impossible to accurately and consistently quantify the amount and quality of contribution a non-member partner provided for the superannuated partner. Secondly, splitting orders falling under (a), and less so under (b) and (c), may not allow for the non-member partner’s interests to adequately compound over time. Despite the ability to do so, there remains a low incidence of splitting orders.593

Flagging orders provide another conduit for preserving a non-member spouse’s interests. These are orders that bar superannuation trustees from issuing any splittable payments before the ‘flag’ has been lifted either by agreement or by permission from the Court.594 It can be useful where the parties decide to wait until the interests have fully vested before splitting the interests.

Both splitting orders and flagging orders attempt to address superannuation interests at relationship breakdown. To do so requires careful valuation and projections; the value of the superannuation

592 Revised Explanatory Memorandum, Family Law Legislation Amendment (Superannuation) Bill 2000 2001 (Cth).

593 See Sheehan, Chrzanowski and Dewar, above n 533.

interest(s) must be assessed along with all other assets, and then the court is required to consider seven key concerns in allocating a ‘just and equitable’ property distribution:

(a) Direct and indirect financial contributions;

(b) Direct and indirect non-financial contributions;

(c) The ‘contribution made by a party to the marriage to the welfare of the family constituted by the parties to the marriage and any children of the marriage, including any contribution made in the capacity of homemaker or parent’;

(d) The impact of any proposed order on the earning capacity of either party;

(e) Spousal maintenance (if relevant);

(f) Any other order made affecting either party or child of the relationship;

(g) Any child support (if relevant). 595

Determining proportions or cash amounts of unvested interests is an imperfect science. Rather than wait until dissolution to calculate partner shares of superannuation interests, one alternative approach proposes splitting superannuation upon marriage or registration.

This reform recommends splitting superannuation fund beneficiaries into two autonomous, separate accounts upon marriage or registration, with contributions automatically equally distributed between the two accounts during eligible waged work. It would require that superannuation funds be administratively split to benefit each

595 Family Law Act 1975 (Cth) s 79(4)(a)-(g).
individual member of a couple; one superannuation account would essentially become partitioned into two superannuation accounts. Contributions would be split evenly between the two accounts during the lifetime of the relationship. Should the relationship breakdown, each will already have their own separate account, and so the Family Court would not be tasked with any complicated method of valuing or dividing a deferred benefit. This approach also has the added benefit of alleviating some of the burden of the age pension and clarifying difficulties in calculating benefits for members of a couple that have separated but remain legally married.  

However, such an approach may disturb the delicate balance currently playing out in Family Courts of Australia. Prior to the 2001 reforms allowing for superannuation splitting, woman in a dissolving couple were usually awarded the family home as both a compensatory feature of the superannuation difficulties, and as a method of alleviating retirement disparities for dissolving couples. Even after the reforms,  

596 See Fuda and Secretary for Department of Social Services, [2015] AATA 279, 30 April 2015 (Senior Member Taylor) which found that the members of a couple, though living in the same home and still legally married, were not ‘members of a couple’ for purposes of the age pension; see also Gordon and Secretary, Department of Employment and Workplace Relations [2006] AATA 792 (15 September 2006) which found that despite evidence of spousal abuse, the application to be paid the single rate of the aged pension failed: ‘although the relationship between the applicant and Mr Gordon is poor there is a sufficient degree of co-operation and sharing between the couple, including in financial and other responsibilities and joint decision-making and commitments to satisfy it that the applicant and Mr Gordon are not living separately and apart’ [43].  

research in 2008 demonstrated little change: women in a dissolving couple still, largely, received the family home and men still retained the superannuation interests reserved in his name.598 Surprisingly, there has been no recent statistical and empirical research done on property allocation post-separation in Australia.599 A superannuation system that is predicated on hours worked and rate paid, rather than on any objective measure of women’s needs at retirement, will necessarily leave women less well off than men.

Another mechanism that has emerged in attempts to alleviate the gendered disparity in relationships is the ‘spousal contribution,’ by which partners (de facto or married) may contribute to the fund of low or no-income earning partners (known colloquially as ‘spousal contributions’).600 This results in a tax offset of up to $540 annually for

598 Sheehan, Chrzanowski and Dewar, above n 533; Sheehan, above n 552, 102.

599 See Belinda Fehlberg and Christine Millward, ‘Family Violence and Financial Outcomes after Parental Separation’ in Families, policy and the law: Selected essays on contemporary issues for Australia (2014) 235 <https://aifs.gov.au/sites/default/files/fpl24.pdf> noting no recent research; one exception is the small study of 60 separated parents conducted by Belinda Fehlberg and Christine Millward which examined the parenting and financial arrangements of shared-care parents post-separation. The preliminary reports on this research demonstrates similar findings: ‘As a group, the mothers in our study were more financially disadvantaged than fathers due to their lower incomes, the lower share of property they received relative to the amount of time spent with children (most were primary time parents, but few received more than half of the property)...’ Belinda Fehlberg, Christine Millward and others, ‘Post-Separation Parenting and Financial Arrangements over Time Recent Qualitative Findings’ [2013] (92) Family Matters 29, 38.

the contributing partner, and the receiving partner must be earning less than $13,800 of assessable income in the year.\textsuperscript{601} The tax offset is calculated as 18\% of the lesser of (a) $3000, reduced by $1 for every $1 of the receiving partner’s income rises above $10,800, or (b) the total contributions made to the receiving partner’s superannuation fund.\textsuperscript{602} Unsurprisingly, it is predominantly women engaged in unremunerated domestic and caring labours receiving spousal contributions into their super funds.\textsuperscript{603} These women may be engaged in sporadic or part-time waged work, or may not be engaged in waged work at all. After the tax offset of $540 annually is reached, a partner may continue to contribute annually into a partner’s superannuation fund up to the maximum non-concessional cap for the year.\textsuperscript{604} This is augmented by the current allowance to bring forward two previous years’ contributions caps for a maximum of $450,000 annual non-concessional contribution before the cap imposes the higher tax of 46.5\%.\textsuperscript{605} Note the high earning capacity

\section*{Notes and References}

\textsuperscript{601} Superannuation Industry (Supervision) Regulations 1994 (Cth) div 6.7; The Australian Government, Australian Taxation Office, above n 605.

\textsuperscript{602} Superannuation Industry (Supervision) Regulations 1994 (Cth) div 6.7; The Australian Government, Australian Taxation Office, above n 605, 3.


\textsuperscript{604} Income Tax Assessment Act 1997 (Cth) s 292.85(3)-(4); Superannuation Industry (Supervision) Regulations 1994 (Cth) div 6.7; The Australian Government, Australian Taxation Office, above n 605.

\textsuperscript{605} Superannuation (Excess Non-Concessional Contributions Tax) Act 2007 (Cth); Income Tax Assessment Act 1997 (Cth) ss 292.80, 292.85.
of such a household: the retirement system protects earners up to $450,000 before a higher tax is imposed.

This approach again relies on the hetero-nuclear family form and the operation of neoliberal rationality within the family. It is structured in such a way as to keep the ‘problem’ of retirement within the private household, and shifts the responsibility of economic security in older age to the members of a couple. As such, it has failed to alleviate the gendered outcomes of superannuation.

Like the spousal contribution, the family law reforms fail to adequately address the gender disparity inherent in superannuation along two main points. Firstly, women are engaging in more labour hours in a relationship with children (as compared to single people) and being penalised in their superannuation balances for this. Secondly, superannuation remains based on a percentage of income earned from waged work. The persistence of Australia’s gender-wage gap ensures that a contribution superannuation system reliant on wages defined as ‘ordinary time earnings’ will continue to disproportionately impact women’s superannuation balances.

D. Women Live Longer

It is undisputed that women in Australia, on average, live longer than their male counterparts, with estimates ranging from 2-4 years
longer. Additionally, statistics show that women spend, on average, 24.2 years in retirement, whereas Australian men can expect to live 19.3 years in retirement. Women in Australia retire slightly earlier than men, but even if this inequity were remedied, an average worker who retires at the age of 67 will have different retirement income needs based on expected longevity. A global survey done by HSBC demonstrates that, at current projections, Australians will run out of superannuation after just 10 years in retirement and this is no doubt compounded for women with about half of the superannuation balances of men.

There has been one type of approach recently introduced to alleviate this gendered disparity of superannuation. As discussed above, Rice Warner, an actuary firm, applied to the Australian Human Rights Commission for an exemption to the *Sex Discrimination Act 1984* (Cth) in 2012 in order to pay its female employees an increased Superannuation Guarantee. It cited women’s increased longevity as the reasons to do

---

606 Australian Institute of Health and Welfare and Commonwealth of Australia, above n 495.


611 Application Letter from Melissa Fuller, Deputy CEO Rice Warner Actuaries, to Elizabeth Broderick, Sex Discrimination Commissioner, 10 April 2012, 1
so. At the time of the application, the SG was set at 9% and Rice Warner was requesting to pay female employees 10.5% SG, rising to 13.95% when the SG rises to 12% of wages.

Rice Warner’s application was later rescinded relying on the s 7D of the SDA allowing for ‘special measures for the purpose of achieving substantive equality between men and women’. This approach was later echoed by ANZ, who recently pledged to contribute an additional $500 SG for every fixed term and permanent female employee each year beginning 8 January 2016. ANZ also cited the increased life expectancy of Australian women. Additionally, ANZ pledged to pay super contributions to all employees for any periods of paid or unpaid parental leave.

References:

612 Rice Warner sought a temporary exemption from the SDA so as to ‘pay an additional superannuation contribution for our female employees to compensate them for their extra longevity in retirement relative to male employees’. Application Letter from Melissa Fuller, Deputy CEO Rice Warner Actuaries, to Elizabeth Broderick, Sex Discrimination Commissioner, 10 April 2012, 1

613

614

615 ANZ, We are Bridging the Super Gap, ANZ Women

616 Ibid.

617 See also previous section in this chapter.
Australian Greens federal member for Parliament, Adam Bandt, proposed the Sex Discrimination Amendment (Boosting Superannuation for Women) Bill 2014 (Cth) (the ‘Bill’) to legislatively allow employers to provide additional superannuation contributions to women. The Bill succinctly provides an amendment to the SDA:

Nothing in Division 1 or 2 makes discrimination by an employer against a female employee unlawful if the discrimination:

(a) is on the ground of the employee’s sex; and

(b) involves the employer making an employer superannuation contribution for the benefit of the employee that is more than that otherwise required by law.\(^\text{618}\)

On 16 Jun 2015, this Bill was removed from the Notice Paper with no further Parliamentary discussion.\(^\text{619}\)

Although this is the first reform proposal that makes explicit reference to gender, it still fails to comprehensively address the gendered nature of the Australian retirement system. Using the Bill as a guide, it still leaves it up to individual employers to voluntarily address the gendered disparity of superannuation savings. Even without the Bill, employers

\(^{618}\) Sex Discrimination Amendment (Boosting Superannuation for Women) Bill 2014 sch 1 inserting Sex Discrimination Act 1984 (Cth) s 41C.

such as Rice Warner and ANZ have opted to pay women additional super contributions.\textsuperscript{620}

As a voluntary measure, the Bill operates on only the most willing employers, and fails to alleviate the fundamental problem of superannuation which is that it is based on earned income.\textsuperscript{621} In a system where women continue to suffer an average gender-wage gap of 18\%, superannuation will disproportionately impact women by its very design. This reform does nothing to address the disparity of superannuation balances based on the gender-wage gap, nor does it provide for the lack of retirement savings that accumulates during time away from waged work, or during part-time work.

It assumes that women are earning the same as men and that they work the same number of years in the same work pattern: namely, that women, as men, work full-time from the completion of training/education to the start of retirement. Should that be the case, then using actuary data to calculate women’s additional longevity would indeed alleviate the gender disparity of superannuation balances. After an uninterrupted work life cycle, women would retire,

\textsuperscript{620} As mentioned in the above text, the AHRC and employers are operating on a presumption that a court will find the differential treatment of women’s superannuation as a special measure under s 7D of the SDA. However, this is as yet untested and could act as a disincentive for a highly risk-adverse employer.

\textsuperscript{621} Superannuation Guarantee contributions are based on ‘ordinary time earnings’ and are to be paid at least quarterly. \textit{Superannuation Guarantee (Administration) Act} 1992 (Cth) s 19.
just as men, and then live, on average, three years longer. By providing for additional superannuation contributions in light of this, women would be able to maintain the same level of retirement income as their male counterparts, to cover their average longer life spans.

However, the average female experience to time in waged work differs from that of the ideal male worker. As the literature on life cycles and time-use demonstrates, many women intersperse their waged working lives with periods of unpaid care labours (maternity leave, carer’s leave) and part-time waged work. Paying women an increased SG does little to alleviate the very reliance on waged work and hours to superannuation accumulation.

E. Analysis

These reforms, both the actual, implemented efforts and the proposals for reform, fail to redress women’s lower superannuation balances because they fail to remedy the underlying gendering of time. Despite identifying how superannuation relies on waged work and how that reliance compounds over a lifetime to contribute to women’s economic insecurity in retirement, current trajectories appear set to maintain the current superannuation system with all its gendered flaws. Though

---

622 See, eg, Pocock, ‘Holding up Half the Sky? Women at Work in the 21st Century’, above n 527; Pocock, Skinner and Williams, above n 573; Craig, *Time to Care*, above n 591; Craig and Bittman, ‘The Incremental Time Costs of Children’, above n 574; Craig, Powell and Cortis, above n 553; Apps and Rees, above n 72.

623 See, eg, Scott Morrison, above n 523.
many areas for reform have been identified, none have specifically recognised how neo-maternalistic productivism and its rationality constructs and reinforces retirement inequalities. This neo-maternalistic productivism is reflected in part through law and policy promoting a waged work-based temporal dominance.

What emerges is a simultaneous operation of hegemonic, politicised time manifest in legal temporalities, and the personal experiences and constructions of time in social agents. Whereas political narratives of time craft the ideal worker’s life cycle of uninterrupted waged work as the preferred time, social agents experience time differently. Rather than adhering to the externally imposed temporal life cycle of neo-maternalistic productivism, social agents craft and experience time through the habitus. We see this through the numerous ways in which people, especially parents, do not adhere to an uninterrupted waged work life cycle. Women, especially, disrupt neo-maternalistic productivism’s preference for waged work and instead craft time through significant re-orderings of action and experience. This is discussed in more detail in the following chapter.

These simultaneous experiences of time for women with children point to pluralistic conceptions of time. As discussed in Chapter 1, Rita

---

624 See, eg, The Government of Australia, Senate Standing Committees on Economics, above n 86.

625 The relationship between the habitus and time is discussed in more detail in the Introduction and Chapter 1.
Felski’s approach to time suggests multiple, undulating temporal registers in the everyday, life time, and monumental time. This plurality agitates against neo-maternalistic productivism by actively and reflexively incorporating multiple temporalities at once.

Superannuation, as we have seen with other legal frameworks and legal temporalities discussed in this thesis, does not allow for pluralistic conceptions of time. To do so would potentially threaten the ideal worker’s waged work hegemony. However, an alternative system to retirement income that references multiple approaches to time and time-use would have the potential to incorporate women’s experiences of time outside of neo-maternalistic productivism. Furthermore, an alternative that begins with a basic understanding of women’s needs at retirement is more likely to redress the entrenched inequities than superannuation.

V. An Alternative Proposal

A retirement income device in the form of a ‘sex discrimination pension’, based on empirical, up to date, evidence of compounded discrimination and disproportionate time-use has the potential to achieve twin objectives of addressing the material needs for women in older age and provide ongoing fiscal responsibility and transparency to motivate structural change. As an additional pillar to Australia’s retirement income system, a sex discrimination pension could provide

---

the conduit to compensate women in older age for diverse experiences of time, thus broadening conceptions of time and remuneration beyond the ideal worker narrative. Established as a fund to redress the economic effects of systemic sex discrimination, it would apply to all women (so long as women remain subject to ongoing sex discrimination as described below).

One way in which such a pension could emerge would be as a two-part payment paid in addition to any prior earnings and savings. The two-part payment includes a base flat-rate based on women’s longer life expectancy plus an additional ‘discrimination top-up’ based on the gender gap in wages and time. A sex discrimination pension based on empirical findings on the compound effects of the gender-time gap and the gender-wage gap in retirement incomes provides one opportunity to successfully remediate the disproportionately gendered impacts in older age.
Accordingly, this proposed pension would operate as a base rate based on life-expectancy plus a ‘discrimination top-up’ that all eligible pensioners would receive, as represented in Figure 1:

\[
x = a + (b+c)
\]

Sex Discrimination Pension \((x)\) = Base rate \((a)\) + Discrimination top up \((b + c)\)

Paid quarterly into the individual agent’s Sex Discrimination Pension

Where:

\(a\) = gendered disparity of SG based on life-expectancy; eg, at 9% SG, women need 1.5% more to meet the needs of living an additional 2.8 years in retirement

\(b\) = quarterly gender-time gap in real-dollar amount

\(c\) = average gender-wage gap in quarterly dollars

The base rate would be the superannuation gap between men’s and women’s average superannuation balances based on life-expectancy, providing women (so long as they continue to be the longer-living sex) with the additional monies necessary to fund the average additional life expectancy. This base rate is based on average comparisons of the Superannuation Guarantee, average full-time income or a woman’s actual earned income (whichever is higher), and life expectancy. For example, it has recently been calculated that women need an additional 1.5% over the current 9% Superannuation Guarantee to meet their
material needs of longer life expectancy. The base rate would be made up of quarterly contributions calculated by the above criteria. By way of example, at current levels, this base rate would be made up of 1.5% of a women’s actual earned income or the Australian average full-time earnings (whichever is higher), deposited quarterly into her sex discrimination pension. This base rate would deposit into her pension regardless of whether she was in paid labour or not.

The monies in the ‘discrimination top up’ would be set during the accumulation phase of the working age life-phase (20-64), with the upper age limit adjusted if the preservation age is set to increase for superannuation. The discrimination top-up payment would be made quarterly into the individual’s sex discrimination pension during the working age life-phase of the pensioner, reflecting a two-part compound analysis of the gendered time-use disparity and the gender-wage gap. For example, in recent estimates, women exert just over an hour more a week doing combined paid and unpaid labour than men—which adds up. As previously calculated above, the gender-time gap produces, in conservative estimates at federal minimum wage, $920 annually or $230 quarterly. This gender time disparity becomes


628 See above note 6.

629 Commonwealth of Australia and Bureau of Statistics, above n 3.
part of the sex discrimination pension by way of accurate time-use surveys, and calculated as unrealised quarterly income, submitted to the individual’s sex discrimination pension. Similarly, the gender-wage gap can be reflected in real dollar amounts, making up the second part of the discrimination top-up. For example, recent estimates by the Workplace Gender Equality Agency submit that women earn, on average, $251.20 per week less than men. Using the formula previously, provided, Figure 2 calculates the quarterly pension deposits at current estimates.

---

Submitting the entire average gender-wage gap amount into the

Fig. 2 Sex Discrimination Pension Sample Quarterly Contribution

\[
131.18 + (230 + 3265.60) = 3626.78
\]

Where:

\[
a = 1.5\% \text{ of quarterly federal minimum wage}
\]

\[
b = \text{quarterly gender-time gap calculated at federal minimum wage}
\]

\[
c = \text{quarterly average gender-wage gap}
\]

\[
x = \text{quarterly contribution paid into the individual’s Sex Discrimination Pension}
\]

individual’s sex discrimination pension at quarterly intervals, the
discrimination top-up would fluctuate quarterly depending on the level
of sex discrimination evidenced in Australian society by time, wage, and
age. This two-part discrimination top-up amount would significantly
alter the gendered disparity of retirement income and wealth in older
age, while also partially remediating the compounding financial aspects
of the gender-time gap and gender-wage gap of unrealised income.

Informed and set by rigorous empirical data, this pension would have
the added impact of ensuring accurate time-use surveys and data
continue to be resourced and completed. Operated by a new statutory
agency working alongside similar bodies such as the Workplace Gender
Equality Agency, the agency would coordinate and oversee the pension.
This coordination would include ensuring the necessary data sources
are available, selecting and managing the pension researchers, and publishing rates and outcomes. Having the outcomes publicly available and informing annual rates of deposit into a sex discrimination pension would in all likelihood encourage a robust debate about time and the gender-time gap beyond academics and minority politicians. Thus, a sex discrimination pension would have the benefit of not simply providing for women’s material needs at retirement while reflecting the gendered wage and time disparities, it would provide a targeted national research agenda to inform policy and legislative decision-making aimed at substantively remediating and eliminating sex and gender-based disparities.631

As an amendment to the *Sex Discrimination Act 1984* (Cth), a sex discrimination pension would be directly aimed at eliminating sex- and gender-based discrimination, in furtherance of the Objects of the Act.632

631 This also speaks directly to the value of temporal research discussed from a methodological perspective in Chapter 1.

632 The Objects of the Act are: (a) to give effect to certain provisions of the Convention on the Elimination of All Forms of Discrimination Against Women and to provisions of other relevant international instruments; and (b) to eliminate, so far as is possible, discrimination against persons on the ground of sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy or potential pregnancy or breastfeeding in the areas of work, accommodation, education, the provision of goods, facilities and services, the disposal of land, the activities of clubs and the administration of Commonwealth laws and programs; and (ba) to eliminate, so far as possible, discrimination on the ground of family responsibilities in the area of work; and (c) to eliminate, so far as is possible, discrimination involving sexual harassment in the workplace, in educational institutions and in other areas of public activity; and (d) to promote recognition and acceptance within the community of the principle of the equality of men and women. *Sex Discrimination Act 1984* (Cth) s 3. Notably, it would not need to qualify as a permanent exemption from the Act under Part II, Division 4 of the Act,
Additionally, as a formally gender-neutral pension, it would be crafted to meet the deficits of ongoing sex discrimination as demonstrated by empirical data based on gendered disparity of wages and time. Currently, women would be the beneficiaries of such an empirically-based national pension, but should the pendulum swing the other way, men could be availed of the pension benefits.

The pension could be funded through a combination of corporate and earned income tax, reminiscent of social insurance programmes found in countries such as Germany and others.\textsuperscript{633} Because men earn, on average, much higher incomes than do women, a radically progressive taxation scheme to fund the sex discrimination pension would have the added benefit of potentially lessening the income disparity between men and women.

Importantly, to be successful such a programme would have to co-exist with additional efforts at remedying the gendered disparity of wages and time. The following chapter discusses additional potential reform. However, as currently presented, a sex discrimination pension shifts the risks of a gendered system from the individual, where it currently stands with superannuation, and back into structural and social forces that benefit from women’s labour.

VI. Conclusion

Australia’s superannuation system, which is premised on the individual’s ‘active participation’ in the accumulation of her own retirement income, is one form of the neoliberal burden-shifting of retirement from the social collective of universal age pensions to the individual income earner. This shifts not just the accumulation of retirement income to each individual earner, but also the risks of a market-based fund and system. Each resident, by following the ideal worker paradigm of uninterrupted waged work, is expected to provide her own earned retirement income through a system of government mandated savings. Thus, retirement becomes merely the penultimate event in a sequence of chrono-nuclear norms—typical life-defining events encompassing birth, education, career advancement, retirement, and death—earned by achieving the preceding sequence of chrono-nuclear norms in the proper order.

The fundamental unfairness of the superannuation system results from its foundations built entirely on an ideal worker as the uninterrupted pattern of full-time, consistent paid labour until retirement and then death. The superannuation system does not account for the unwaged work that women largely do, nor does it address the undulating cycle of waged work and working time patterns frequented by women with children. Fluctuating care and other needs often necessitates a change in working time patterns (full-time to part-time, flexible work) and/or
significant time away from waged work entirely. Moreover, so long as superannuation is based on a percentage of income, retirement inequalities will be borne by those engaging in lower waged or unwaged labours, who are more likely to be women. Though progressive taxation of all contributions acknowledges the tax concessions afforded higher income earners (usually men), it fails to address the foundation of superannuation built upon earned income. The unifying paradigm underlying each factor is a basis in neo-maternalistic productivism. This does not to account for the gendered life cycle of waged work and caring responsibilities. Effective superannuation reform must consider the materiality of retirement, including its ongoing gendered assumptions of care and temporalities.

This chapter discussed how the work-based life cycle of the ideal worker narrative excludes women in superannuation. Because superannuation benefits are linked directly to wages earned, without reference to other, unpaid forms of labour, there remains a significant disparity in who relies on what parts of the retirement system. That disparity is starkly gendered. Women rely predominantly on the age pension, and men rely, increasingly, on superannuation and private

---


The disparity reflects the male bias of a wilfully gender-blind system that persistently fails to value the gendered distribution of unpaid caring labours in heteronormative households. As compared to men, women work more, earn less, and live longer. A contributory superannuation system that is predicated on waged labour, rather than on any recognition of women’s lifetime labour or objective measure of women’s needs at retirement, will necessarily leave women less well off than men. By accounting for the gendering of temporality, time, and the life cycle, the fundamental unfairness of a gender blind system based on waged work becomes clear. What is needed instead is an approach that accounts for the gendered labour that occurs across the life cycle, while also addressing the materiality of retirement itself – the objective needs of women approaching the next phase in their life cycles.


637 See Linstead, above n 563; see also Grady, above n 542; Ginn and Arber, above n 498.

638 Commonwealth of Australia and Bureau of Statistics, above n 3.


The following chapter discusses the diverse life cycles of women with children, including the potential for subversive temporality. Accordingly, it draws on the themes of this and preceding chapters to discuss how a theory of time as disrupted better accounts for the ways in which time is experienced and constructed by social agents.
Part II
Feminist Alternatives in Disruption
Chapter 5
Disruptive Time and Transitional Labour Markets

Introduction

This chapter continues to build a coherent model of time and temporality that is used to further discuss existing frameworks and potential legislative change. It builds on the theme of disruption woven throughout this thesis, and fully develops this into a comprehensive theory of care-based temporalities as disruptive time. The chapter more fully elaborates upon the central issues of reproduction and care in time by discussing feminist and queer literature on what I call critical temporalities. The literature identifies specific areas for critique and reform in existing social and labour relations. Drawing on the legal temporalities discussed in chapters 2 – 4, and in light of the gravity of recognising care-based temporalities to remedy a deeply gendered system, this chapter discusses the example of transitional labour markets (‘TLMs’) as one potential alternative approach to redress the gendered temporalities in Australia’s parental leave, flexible work, and superannuation systems. Having accounted for the critiques provided by feminist and queer theorists in critical temporalities, TLMs provide a reimagination of the traditional labour market to accommodate for the multiple ways in which people weave into and out of traditional productive, waged labour. As such, TLMs provide multiple avenues,

---

Portions of this chapter have been accepted for publication in a forthcoming special edition of the Griffith Law Review as ‘Care-based Temporalities and Parental Leave in Australia’.
support, and structures for social agents to interact with their peers and society beyond traditional waged labour, including substantial social support systems. Disruptive time provides a theoretical anchor point to reframe norms of employment and labour while TLMs provide one alternative approach to transform legal and policy approaches to labour and incorporate care-based temporalities within that transformation.

Section I discusses the three legal frameworks addressed in the substantive chapters of this thesis: parental leave, flexible work, and superannuation. Each of the three preceding chapters discusses a different way in which legal temporalities are incompatible with care-based temporalities. This section summarises the conclusions to my first two research questions, ‘What is the dominant conception of time underlying Australian work and parenting laws and policies?’ and ‘In what sense is that conception gendered, particularly as it relates to women with children?’ In introducing care-based temporalities, this section lays the foundation for Section II to answer the third main research question, ‘what alternative conceptions of time are possible?’ by identifying those in need of care as vulnerable — that is, those who are cared for are too vulnerable to care for themselves.

Section II and the following sections more fully answer the third research question by elaborating on the relationship between caring responsibilities for children and the care-based temporalities of disruptive time. I fully develop my concept of disruptive time by expanding on my earlier introduction of the literature on critical
temporalities, and by incorporating LA Paul’s concept of the transformative experience. In order to situate disruptive time as a series of potentially political acts, this section also sets out my understanding of praxis informed by Pierre Bourdieu and Hannah Arendt. Section III segues from a discussion of praxis into an alternative approach to time that more appropriately represents the temporalities of those excluded from legal temporalities. Set up in opposition to the processual and financialised time of neo-maternalistic productivism and by drawing on discussions of time as plurality, this section more fully articulates my concept of care-based temporalities in disruptive time. Given this exclusion in existing legal temporalities, this chapter then introduces the concept of transitional labour markets in more detail in Section IV, explaining what they are and how they can be developed and sustained. This section analyses TLMs where they are fully integrated within social, welfare, and labour systems and how they recognise and value multiple temporalities in a life cycle. Section V concludes.

I. Legal Temporalities

Parental leave, flexible work, and superannuation represent three chronological phases of a life-cycle that experiences child-based caring responsibilities. With each phase, Australian law and policy creates a legal temporality to address that life phase, manipulating it back within

---

642 However, it should be noted that these phases of the life-cycle are not always linearly progressive; for example, some carers may themselves in flexible work prior to parental leave due to other responsibilities. However, for our purposes I look specifically at the life cycle for parents with caring responsibilities.
a waged-work trajectory. The legal temporalities of each, discussed in preceding chapters, is shown here to be in disjunction with care-based temporalities of parenting.

**Parental Leave**

Chapter 2 discussed parental leave in Australia, focusing on statutory parental leave pay as provided by the *Paid Parental Leave Act 2010* (Cth). The sense of time discussed in Chapter 2 analysed the exclusions that occur for certain women, namely migrants and those with closely-spaced children who do not have the requisite paid labour continuity to qualify for statutory paid parental leave. The *Paid Parental Leave Act 2010* (Cth) requires a minimum of 330 hours of work in 10/13 months with no more than an 8-week gap between two consecutive working days. For the worker with continuous labour market ties, this averages out to just over 7 hours a week. However, for many workers, this continuous connection to the waged labour market is not possible. This is especially so for certain workers who have recently migrated or those who have had multiple children closely spaced together (‘closely spaced’ for purposes of the Act). As a result, despite ongoing labour market ties and sympathetic objectives of the Act, these women would not be eligible for statutory paid parental leave.

These women would not be eligible for statutory paid parental leave because their labour market ties have been disrupted by caring

---

643 Paid Parental Leave Act 2010 (Cth) s 32.
responsibilities. As has been mentioned, not everyone has the luxury of
time, biology, or luck to space children according to the preferred
timing enumerated in the *Paid Parental Leave Act 2010* (Cth). Of course,
as previously discussed in Chapter 2, without significant legal leave
literacy and cooperation from Human Resource departments, many
waged workers may not be able to parse out their leave entitlements to
qualify for subsequent paid parental leave. A legal regime that works in
such a way as to exclude the very women it was targeted at fails at its
enumerated aims. It also exacerbates women’s economic insecurity later
in life, putting pressure on individuals and couples to fulfil the
neoliberal promise and provide for their own economic security
throughout each phase of the life cycle, no matter how incompatible
care-based temporalities are with the hetero-capitalist rationality of the
ideal worker. This pressure takes no heed of the pluralities of care-
based temporalities emerging at parental leave, and undulating through
the reminder of the life cycle.

**Flexible Work**

In Australia, it is women more than men that seek flexible working
patterns. These flexible work patterns can include anything from
flexible start and stop times, to flexibility in location of work, part-time
days, compressed working weeks, or various other working hour
adjustments. Those with caring responsibilities have the right to request

---

flexible work.645 Employers, however, are not obliged to acquiesce to these requests, and may decline all or part of it on ‘reasonable business grounds’ with little oversight.646 Chapter 3 discussed the emergence of the rhetoric of flexibility during the Howard Government (1996-2007). Flexibility, as used in the dominant policies and public materials of the Howard Government, referred to flexibilising workplace relations— it was, in large part, an obfuscation of the Howard Government’s dismantling of the existing negotiated flexibility of previous workplace relations. The rhetoric of flexibility was used by the Howard Government to shift contractual and negotiation power in labour relations to employers and was largely accomplished through the WorkChoices legislation.647 Though the Fair Work Act 2009 (Cth) repealed most of the provisions of WorkChoices, there remains a legacy in contemporary law, policy, and society. This is reflected in part by the ways in which the neoliberalisation of Australian law, policy, and society became accelerated during the Howard Government and entrenched in subsequent governments.

Despite empirical evidence demonstrating that providing flexible work does not negatively impact on productivity and, in fact, increases

---

645 Fair Work Act 2009 (Cth) s 65, this section also allows the right to request to eligible persons without caring responsibilities, eg, those with a disability.

646 Ibid.

647 Workplace Relations Amendment (Work Choices) Act 2005 (Cth).
productivity,\textsuperscript{648} there is no right to flexible work in Australia. Such a statutory right, if constructed in a way to support transitions between working patterns and phases of the life cycle, would enormously impact on the ways in which women interact with waged labour. However, this legacy of labour and flexibility, which became pivotal under \textit{Work Choices}, disproportionately harms women and continues today without the actual working time and pattern flexibility that parents need to combine waged work with caring responsibilities. This has multiple effects, including decreasing workplace and workforce attachment and increasing women’s reliance on partners or, if unpartnered, increasingly deficient public assistance. In the same way that paid parental leave fails and instead leaves disproportionate numbers of women at higher risk of poverty in older age, these same risks are compounded without an enshrined right to flexible work for all workers with caring responsibilities (and, arguably, even those without). This arises because the right to request flexible work is the extent of flexible work in Australia — employers are under no obligation to provide flexible work and may decline on ‘reasonable business grounds’ without adequate, streamlined oversight — another legacy of the Howard era’s ‘flexibility’ regime.

Superannuation

Having just discussed how earlier phases of the life cycle impact on women’s lifetime earnings and attachment to the waged labour market, we see the starkest indicator of this in superannuation balances at retirement. Women have significantly lower superannuation balances than do their male counterparts, and are disproportionately reliant on the Age Pension and private or family charity. However, the Age Pension, even at its highest rate still leaves those reliant on it in older age at increased risk of poverty.\(^{649}\) Women suffer increased risk of poverty when compared to men in old age, despite working more labour hours over a life cycle. The superannuation system, as a savings vehicle based on a percentage of earned income, does not sufficiently provide for women or others who take time out of waged work to provide unremunerated labour. This comes as a result of a lifetime of disparate treatment of women under labour and employment law.

Each of the preceding chapters discussed the role of neo-maternalistic productivism in shaping narratives of work and labour, and the conflicts that arise in gendering temporalities. These gender roles are shaped in large part by the socio-political narratives of the ideal worker.

and the intensive mother. Neo-maternalistic productivism treats women as a secondary support to the ideal (male) worker. However, as numerous other feminists have pointed out, no one is free from vulnerabilities and attachments, care and dependency.\(^{650}\) This goes beyond women with children, but using women as an indicator highlights their disproportionate treatment under the legal temporalities of parental leave, flexible work, and superannuation — the very legal regimes meant to support their alignment with neo-maternalistic productivism. Ultimately, what emerges from each case study is a legal disregard for a common and pluralistic time shared by these women with children — that of care-based temporalities.

However, this care is not simply care hoisted upon those who do not need it. Rather, it is care for the deeply vulnerable — for infants and children who are unable to care for themselves and whose care needs are not and cannot be set by a clock or scheduled roster. Feeding, changing, and meeting the educational and emotional needs of young children cannot be time disciplined. That is, a baby cannot be left unattended while her parents are engaged as ideal workers in full-time waged labour five days in the week.\(^{651}\) This vulnerability is such that it

\(^{650}\) See, eg, Martha Fineman, ‘The Vulnerable Subject: Anchoring Equality in the Human Condition’ (2008) 20(1) *Yale Journal of Law & Feminism* 8; see also Williams, ‘From Difference to Dominance to Domesticity: Care as Work, Gender as Tradition’, above n 487; Iris Marion Young, ‘The Ideal of Community and the Politics of Difference’ [1995] *Feminism and community* 233.

\(^{651}\) Of course, that same baby can be taken to a child care centre, or cared for by a grandparent or other individual or crèche, but her needs cannot be safely met.
necessarily makes a care demand that cuts across normative working
time patterns and other temporalities of the ideal worker. This
relational aspect is also seen in care for the elderly, frail, severely ill, and
those with a significant disability.

II. Maternity and Critical Temporalities

It is this relational aspect of vulnerability that I refer to in terms of
congeptualising care-based temporalities. As a project centring on the
outcomes for women with children, this thesis has focused on maternity
as a relational position of care. This section expands on key feminist
and queer literature on what I called ‘critical temporalities’ in Chapter 1,
by which I mean the critical theorisation of time and temporality. The
literature discussed below focuses on the relational aspects ignored by
mainstream approaches to time. It begins by discussing Julia Kristeva’s
influential essay, ‘Women’s Time’ which is Kristeva’s attempt to
create a gendered model of time that prioritises maternal experience,
and which I use to begin analysing work and care norms in Australia. It
is with this nexus of maternity and time that I explore the additional
research on critical temporalities in queer and feminist literature. This
section then incorporates the work of Judith/Jack Halberstam, Lee
Edelman, and Elizabeth Freeman who each further reveal the ways in
which a mainstream approach to time in fact reflects a dominant

or paused while her care providers attend to other chrono-norms such as full-
time waged labour.

Kristeva, above n 174.
heteronormativity, a critical approach that I use in this thesis to show that law and government policy are themselves dependent on an invisible heteronormativity in ways that undermine women’s use and experience of time and temporalities. I then link these theorists to the concepts of transformative experience and praxis in conceptualising a politics of time.

*Julia Kristeva’s Women’s Time*

Julia Kristeva’s article on ‘Women’s Time’ seeks to theorise the increasing participation of women, and mothers, in the workforce.⁶⁵³ Kristeva suggests that women’s time is not incompatible with what she calls ‘masculine’ values, and the time of history. She describes this ‘masculine’ time as one of project and teleology, as ‘departure, progression, and arrival’. In building a conception of time, Kristeva contributes to the feminist project by suggesting that time as ‘cyclical and monumental’ is not simply aligned with female subjectivity as it relates to maternity but is the foundational conception of sacred time across civilisations and experiences.⁶⁵⁴

Kristeva constructs her argument of women’s time on a reification of maternity. In doing so, Kristeva argues that motherhood, rejected by the older generation of feminists in the seventies, as she was writing, has been re-examined by younger feminists who conclude that

---

⁶⁵³ Ibid.

⁶⁵⁴ Ibid 17.
maternity is compatible with both a professional life and their feminist sensibilities. However, Kristeva contextualises this change in attitudes by relating it to changing societal structures and scaffolds of care, noting that attitudes change as child care moves beyond maternal care. Thus, Kristeva cautions against 'the refusal of maternity' in feminist ideologies, and instead appeals to an expanded understanding of time within the dominant hegemonic approaches to time.

Kristeva’s reification of maternity is deeply embedded in reconciling maternal temporalities with productivistic and capitalist-based conceptions of time. Her underlying logic seems to be an appeal to situating 'women’s time' with the linear teleology of capitalist labour. However, another reading of it highlights the subversiveness of such a suggestion; how can hegemonic conceptions of linear time as history seamlessly incorporate cyclical and monumental forms of women’s time? By simply stating that women and, more specifically feminists, are increasingly viewing both the experience of maternity and the sacred time of maternity as compatible with the linear project of hegemonic time, Kristeva is suggesting either that women are folding seamlessly into the rank and file of capitalist temporal orderings with the outsourcing of child care and the flexibilities of productive-output

---

655 Ibid 30.
656 Ibid.
657 Ibid 31.
based employment, or she is suggesting something far more radical: that societal constructions of time itself are shifting.

What follows, then, in Kristeva’s argument is a shift from a singular monolithic conception of time as project and teleology toward multiple conceptions of time. These multiple conceptions of time exist either separately or simultaneously. This suggests that time is either a temporal manifestation of ‘separate but equal’, or that the dominant societal conception of time expands from a singular view of time towards a plurality of time. This plurality of time might then encompass a spectrum of time and temporalities that are simultaneously embodied, experienced, and conceptualised as multiple relations to time, each temporality falling within the umbrella conception of time in the same way that categories like ‘cake’ or ‘car’ describe multiple varieties of foods or vehicles. Thus, time becomes a category by which society understands the manifestation and conceptualisation of different times and temporalities as co-existing simultaneously. In the same way that Kathi Weeks’ shorter hour work week acts as a provocation to capitalism’s hegemony, a pluralistic conception of time emerges as a radical provocation to a hegemonic time which constructs time in a singular normativity.

---

658 See Weeks, above n 169. See also Chapter 1 of this thesis for a brief discussion of Weeks’ approach to labour and time.
Rita Felski draws out this pluralistic approach to time in her three temporal registers.\textsuperscript{659} She conceptualises time as a plurality across the everyday, the life scale and larger scale expansions. Everyday time, Felski argues, is the phenomenological sense of time as we experience it on a day-to-day basis.\textsuperscript{660} Though the unit is delimited to a ‘day’, everyday time goes beyond a unit-based conception of time to include the real, lived experiences of practice, habit, and surprise. This includes the minutiae and vicissitudes of daily life. Life time expands beyond the everyday to include life as a temporal project that connects the ‘random segments of daily experience’ into an ongoing creation of the subject self.\textsuperscript{661} Large-scale time, then, expands the relevance of life time to incorporate a reference to the long-term processes of time.\textsuperscript{662} In a sense, large-scale time collectivises the everyday and life time toward a monumental time that allows for the linear as well as cyclical nature of large-scale processes and movements. I understand this to connect the everyday and life time to the collective unit, as temporalities coalesce to inform and shape large-scale projects and units. This three-level understanding of time views multiple temporalities as existing simultaneously across all three registers, so that an act that occurs ripples through everyday time, life time, and large-scale time.

\textsuperscript{659} Felski, above n 199, 17.
\textsuperscript{660} Ibid.
\textsuperscript{661} Ibid.
\textsuperscript{662} Ibid 18.
In much the same way that Kristeva is suggesting that time be reimagined through a feminist lens of relational care, Felski’s argument for pluralities of time refers to this same sense of relationality and sociality. This can be most evidently seen in her understanding of large-scale time, which directly collectivises multiple experience to shape social movements. Therefore, Felski’s temporal registers rejects the monolithic, singular concept of hegemonic time in favour of multiple temporalities reflecting relationality, connection, and experience. We see these same themes reflected by the following queer theorists in building their counter narratives of time.

**Queer Time**

Both Elizabeth Freeman and Judith/Jack Halberstam map a critique of hegemonic time by providing counter narratives to heteronormative historicism. The heteronormative family becomes the fulcrum of their arguments. For Freeman, the heteronormativity of the family is captured in the nation-state’s official time line of marriages, births, and deaths. Instead, Freeman suggests counter-histories emerging out of queer traumas; but instead of remaining despondent and melancholic, Freeman orientates these queer counter-histories toward ‘positive affect’. Rather than accepting history as the nation-state’s prioritisation of heteronormative life events, Freeman looks to alternative narratives in brief moments of relationality and affective connection such as ‘erotic

---

663 See Freeman, above n 71; Freeman, above n 318.
scenes, utopias, and memories of touch’ to illustrate queer counter-histories.\textsuperscript{664} Similarly, Halberstam establishes ‘queer time’ as a resistance against historicism and postmodernity’s heteronormative family time. Using ‘failure’ as a device to account for queer histories and orientations, Halberstam rejects conventions of hegemonic time situated in heteronormative ‘family time’.\textsuperscript{665} Failure, instead, becomes a tool with which to ‘queer’ normative trajectories of time, accomplishment, and relations.

Family time, according to Halberstam, refers to the historicism of reproduction and the family, best expressed through inheritance.\textsuperscript{666} Inheritance is what links the family to the historicism of the nation-state, tethering its participants to generational time within a process of nation-state building.\textsuperscript{667} Intergenerational transfers provide the temporal vehicle to orientate individuals to the capitalistic, productivistic state-building project; inheritance connects the family to the past as well as the future of both familial stability and national stability.\textsuperscript{668} Rejecting these conventions, Halberstam instead privileges the transgender body and subcultural spaces,\textsuperscript{669} offering ‘disqualified and anti-canonical

---

\textsuperscript{664} Freeman, above n 318, 66.

\textsuperscript{665} See Halberstam, above n 178.

\textsuperscript{666} Halberstam, \textit{In a Queer Time and Place}, above n 178, 6.

\textsuperscript{667} Ibid 5.

\textsuperscript{668} Ibid.

\textsuperscript{669} Dinshaw et al, above n 179, 182.
knowledges of queer practices’ as alternative temporalities.\textsuperscript{670} These anti-canonical knowledges as alternative temporalities suggest a relational and bodily connection beyond the historicist devices of the heteronormative nation-state.

Queer time directly addresses the intersection of gender and time through reference to the family in critiquing chrono-normativity. Halberstam argued that the reproduction of the family relates intimately with the reproduction of the nation-state through the hegemonic use of historicism.\textsuperscript{671} Lee Edelman, too, challenged ‘futurity’s time to come’\textsuperscript{672} as co-articulated through the image of the child. Edelman poses that the image of the Child regulates American public discourse and prescribes just what counts as public discourse.\textsuperscript{673} Thus, American politics, Edelman argues, manifests a ‘reproductive futurism’ that relies on the image of the child to moralise politics and public engagement. Instead, the queer, proposes Edelman, represents the ‘negativity opposed to every form of social viability’.\textsuperscript{674} Edelman lays claim, in a sense, to immediate relationality based on body rather than a future-oriented connection based on reproduction. Edelman positions the queer as the

\textsuperscript{670} Ibid.

\textsuperscript{671} Halberstam, \textit{In a Queer Time and Place}, above n 178, 5.


\textsuperscript{674} Ibid 9.
opposite binary of reproductive futurity. This polarity of Future/No
Future, which gives his book its title, is actually demonstrated to be the
binary of Child/No Child. While seeking to resist the dualism,
Edelman’s account ultimately operates within the child-centred
reproductive/non-reproductive (Future/No Future) binary while
simultaneously critiquing the reification and co-optation of the child for
political ends. Like Edelman, my own project critiques and resists the
co-optation of the child for hegemonic political ends by shifting the
political emphasis from reproduction to the agitation of care-based
temporalities against hegemonic time. This allows for a philosophically
pragmatic approach to the question of time and temporality in
Australia.675

These conceptions of and engagements with queer time reject
heteronormative reproduction as naturally desirable and instead are,
according to Halberstam, ‘about the potentiality of a life unscripted by
the conventions of family, inheritance, and child rearing.’676 Queer time,
by this reading, positions itself in opposition to reproductive futurism,
instead emphasising the relational aspects of queer counter narratives.

675 I approach time from the same ‘philosophical pragmatism’ that Joan C
Williams does in her ‘femme’ and ‘tomboy’ proposals for redressing work and
family conflicts. In doing so, Williams proposes to restructure market
entitlements in combination with restructuring family entitlements, thus
appealing to both maternalists and equal parenting advocates. Williams, ‘From
Difference to Dominance to Domesticity: Care as Work, Gender as Tradition’,
above n 487 In the same vein, my own proposal for TLM and social insurance
with a women’s pension meets both interests without getting into the
same/difference feminist debate. .

676 Halberstam, In a Queer Time and Place, above n 178, 2.
And though Kathi Weeks’ shorter-hours work week\textsuperscript{677} confronts the temporal norms implicated in the constructed work-family dichotomy, this understanding of queer time does what Kristeva originally sought: a relational time outside of the processual, monolithic, and singular hegemonic time. Accordingly, this project seeks to reconcile a reference to the maternal and its relational care, while critiquing the temporal norms of neo-maternalistic productivism.

III. Care and Disruptive time

The temporal ideology of neo-maternalistic productivism fails at accurately capturing the multiple experiences of relationality in maternity. The preceding section outlined specific scholarly critiques to the hetero-capitalist hegemonic time; by emphasising the care-based temporalities of maternity this section now weaves the relationality found in those critiques into a theory of time as disruptive time. Like the critiques found in the preceding section, it takes as a starting point the subversive and radical politics of praxis to disrupt established hegemonic orderings. In so doing, such a conceptualisation of time requires a relational account of the individual and social constructions of agency while also appreciating the political project of a life of action as an agent with the capacity to change.

\textsuperscript{677} Weeks, above n 169 see also Chapter 1 of this thesis for a short discussion of Weeks.
By reference to ‘disruption’ I am directly referencing the material as well as praxeological ways in which child care disrupts individual and collective routines and established orderings. Care disrupts the life course of the ideal worker, it disrupts the everyday, the life time, and large-scale time. Disruptive time accounts for the disruptive qualities of maternity. However, it is important to note that this approach treats ‘disruption’ not as pejorative, but as an opportunity to understand the subversive elements of disruptive temporalities in terms of a larger political picture, while also acknowledging the jarring difficulties of disruptive temporalities to the hegemonic or social agent’s preferred orderings of routine, habit, and everyday social and individual practices. That is, this theory seeks to recognise the political potential in everyday practices of care without erasing the difficulties that women face in the daily struggle of care and motherhood. Therefore, my theoretical approach seeks not simply to construct a vision of time as radical disruption disembedded from the difficulties of disrupted routines, but to instead recognise both the soothing qualities of everyday routine and the jarring difficulties associated with disrupted routines. A theoretical solution to the proposed problem of the gender-time gap must take into account a daily schedule constantly experiencing unpredictable life necessities. These unpredictable life necessities embedded in care-based temporalities include the temporality of vulnerability, sickness, and frailty, as well as the unpredictable and not always linear or progressional temporalities of
child development. That life is not and cannot be entirely scheduled and regimented, much less the life of an infant, child, or young adult seems the very kernel of any theory that successfully addresses gender and time from a maternal perspective. As a political critique, this thesis addresses the problem of the gendered division of labour in Australia through a theoretical framework that accounts for the gendering of temporality, time, and time-use with specific reference to the material outcomes of maternity.

Disruptive time

Disruptive time cuts across everyday time, life time, and large-scale time, but also acts as a disruption to hegemonic temporality. Disruptive time goes beyond a mere interruption. An interruption acts as a bracket in an otherwise standardised flow or experience of time; the interruption removes the agent from that which she was otherwise doing and being, but eventually the interruption ceases and the agent returns to the original practice. A disruption interrupts and changes. This means that any trajectory is permanently altered and speaks directly to the unknowability and unimaginability of disruptive time.

Working within the philosophical tradition, LA Paul theorises ‘transformative experiences’ as those which are both epistemically and personally transformative but lacking in foreseeability; the ways in which these transformations manifest are unknowable and

---

unpredictable. Paul categorises having children as just one of these transformative experiences. As such, it radically changes a parent in ways that are unimaginable beforehand. I am directly referencing this sort of unimaginable transformation that comes with maternity: the routine flow of habits, practices, and trajectories becomes permanently changed after the birth or adoption of a child in unimaginable ways, across multiple temporalities.

Rita Felski’s multiple temporalities of the everyday, lifetime, and monumental time become meaningful markers in understanding how this transformation unfolds across temporalities for parents. Everyday time is disrupted and shifts into new temporalities with the birth or adoption of a child. Where previously a parent might have worked full-time or longer hour days, this daily practice of waged work becomes disrupted with a new child. Most parents take some leave from waged work in the early days of having or adopting a new child. However, the current construction of the Paid Parental Leave Act 2010 (Cth) does not encourage both parents being equally involved in the early life of a

---

679 Paul, above n 249.


681 Arguably, this is also because capitalism in Australia separates us from any communal acts of child rearing, so that having children becomes ‘strange’ in ways it may not in cultures where children are communally raised. I thank Dr Karen O’Connell for raising this important point.

682 Commonwealth of Australia, above n 259; Commonwealth of Australia, Department of Social Services, above n 256, s 7.
new child; after the two weeks of ‘Dad and Partner Leave’ ends, the scheme only pays for one parent to be take leave from waged work—not both. Though unpaid parental leave as provided by the *Fair Work Act 2009* (Cth) may be used by either parent, it may only be used concurrently by both parents for up to 8 weeks, and in Australia women take the clear majority of unpaid leave. Fathers, if they take any leave, tend to do so in the first two months of the child’s birth or adoption. So it is women’s day-to-day lives that continue to transform in unimaginable ways even moreso than men’s. And it is not just waged work that changes—sleep patterns, eating patterns, relationships, finances, bodies, and the daily experience outside of waged work will all change for parents after the birth or adoption of a child. The transformative experience of parenthood is totalising. Regardless of a parent’s position in the parental leave transition, the everyday time of a parent will be transformed into something unimaginable and largely unpredictable.

Life times, too, are permanently disrupted and changed in unimaginable ways with a new child. As women continue to be more involved than their male counterparts in care work, their life times are

---

683 Note, also, that the eight weeks of concurrent leave will be deducted from the 12 months of total leave available, *Fair Work Act 2009* (Cth) s 72; Commonwealth of Australia, above n 259; Commonwealth of Australia, Department of Social Services, above n 256.

684 Commonwealth of Australia, Department of Social Services, above n 256, s 7.

685 Although the degree of change is likely to be gendered.
especially altered in ways that are specifically unforeseeable. The lifelong economic consequences of having children can be predicted, but the ways in which children change the experience of lifetime cannot.

This disruptive time also radically shifts large-scale time. Though having children can be seen to perpetuate a hetero-capitalistic time as we have seen with the longer hours culture of working fathers in Australia (and elsewhere), having children also provides a temporality largely at odds with this hegemonic time. This cluster of care-based temporalities disrupts the ideal worker narrative, providing egress into a more egalitarian sharing of care and time between genders. Across monumental temporalities, disruptive time provides the potential for collectivising disrupted temporalities and thus incrementally breaking with the hegemony of male-centred legal temporalities and chrononormativity. The disruption to large-scale time speaks directly to my interest in politicising acts and the large-scale, praxeological impact of collective experiences of temporalities. I conceptualise the gendered parent as a temporal agent, engaging in political acts of disruption and creation.

Praxis provides a conduit between everyday time, life time, and large-scale time and demonstrates the power inherent in disruption. Praxis, as it relates to the everyday, becomes especially salient for carers as it imbues the present moment of disrupted temporalities with the

---

686 See, for example, Chapter 4.
potentiality of subversion and resistance, multiplying across one lifetime, and then multiple lifetimes through collective experiences of disruption through care. Bourdieu elegantly constructs praxis as a temporal activity through his theory of the habitus.\(^{687}\) Praxis, explains Lois McNay, is ‘the living through of the embodied potentialities of the habitus’.\(^{688}\) It is this embodiment as inseparable from social practice that leads Bourdieu to write about ‘social agents’ rather than ‘subjects’.\(^{689}\) Accordingly, I also predominantly use ‘agents’ when discussing individuals for the same reasons as Bourdieu—that is, as an indication of the praxeological sense of agency and self, set within the confines of a social context of practice.

Hannah Arendt, too, relies on praxis in her theory of action.\(^{690}\) In constructing her theory of action (and praxis), Arendt relies on her concept of ‘natality’ to situate actual and metaphorical birth as a radical departure from the automatism of hegemonic processes.\(^{691}\) She understands birth as the starting moment for a ‘meaningful human life’.\(^{692}\) Arendt’s ‘natality’ views birth as an actual and symbolic representation for new action; her entire theory of action rests upon the

\(^{687}\) McNay, above n 194, 101; Bourdieu, above n 2, 138.

\(^{688}\) McNay, above n 194, 101.

\(^{689}\) Ibid.


\(^{691}\) Ibid.

\(^{692}\) Ibid; Hodges, above n 491, 43.
foundation of ‘natality’ which treats each new act into the world as birth as a radical departure and opportunity for change. Disruptive time is a beautiful relation to this, treating birth (or adoption) as an actual and symbolic new temporality, as a radical departure and opportunity for change from the established hegemonic orderings.

Although I would argue that Arendt’s natality does not account for the disparate experience of time and temporality between men, women, and the fluidity of gender, it was not meant to. The central position of birth in Arendt’s theory is compelling, perhaps more so because of the self-avowedly ungendered position that Arendt attempts. Natality, for Arendt, is the ontological foundation for her theory of action. As such, birth is not just the starting moment of humanity but, more importantly to Arendt’s theory of action, it marks the radical departure from the automatism of processes and it arises each time an individual introduces some new action into the world. In this sense, Arendt’s theory takes the standpoint of the child. The child born into the world is engaging in a radical new act; this break from the status quo arises repeatedly throughout an individual’s life so as to fill the time between life and death with what Arendt calls a ‘meaningful human life’ through action for radical change and new beginnings.

Arendt’s theory of natality, while constructing a reference to the individual equipped with agency for change and renewal, fails to

---

\(^{693}\) Arendt, above n 649; See also Hodges, above n 491, 43.
appreciate the gendering of time. Accordingly, I shift the focus from the child as ‘born’ and thus renewed, to the parent as a social agent engaging in a political act of disruption through the actual and symbolic creation—temporal creation and life-giving creation. In conceptualising disruptive time, I, too, conceptualise birth as a radical departure from the automatism of established hegemonic processes, however I conceptualise this in temporal terms, from the perspective of the parent rather than the child and by emphasis on care-based temporalities as a radical departure from the hegemonic time of neo-maternalistic productivism. As previously discussed, Bourdieu’s concept of *allodoxia* describes his understanding of agents’ orientation to the imminent forthcoming. Having and raising children expresses this orientation materially and temporally. The material orientation includes the quantifiable and qualifiable experience captured in the empirical evidence discussed in preceding chapters. Temporally, parenthood provides a radical break from dominant productivistic temporal orderings. But because ‘parenting’ in this present moment and specific location in Australia remains highly gendered, my empirically-informed model of time provides a focus on the mother as a social agent engaging in a political act of change, creation, and potentially radical and subversive acts in the everyday, through temporal acts in domesticity, care, labour.

---

694 I reserve my argument that her theory fails to account for the reflexivity of the habitus constraining individual agency for change and renewal for another venue.
Birth or adoption and the related care-based temporalities of caring for the vulnerable are indisputably radical disruptions to hegemonic time and waged-labour based political economy. For example, the disruptive time of child care agitates against the chrono-normativity of the ideal worker. We see this in the ways in which many primary carers establish fragmented relationships with full-time waged labour. My theory of disruption addresses the gendered disparities in Australia that emerge with the birth or adoption of a child, but avoids the pitfalls of reifying the child, so appropriately cautioned against by Edelman, and eschews Arendt’s generalisation of birth as a metaphor. Instead, my theory of disruption takes the maternal viewpoint of a female parent to best account for the gendered temporality of care that emerges. It does relate to action, though, in the sense that it captures the same radicality of disruption and change that I see Arendt’s natality doing. But unlike Edelman’s argument of reproductive futurism, my theory shifts from the child as symbolic of any sort of futurism, to the radical acts of unpaid labour and disrupted times from the perspective of maternal care. This approach to time as disruption seeks to more fully account for the disparately gendered experience of temporality embodied in the habitus.

Disruptive time establishes motherhood as a site of the everyday as a collection of temporally predictable and unpredictable life necessities. Domestic and care labours remain intricately part of daily maternal orderings: the incessant cycles of feed, change, wash, prepare, sleep,
punctuated by unpredictable moments of affect, affection, and physicality. These labours remain largely unrecognised in the public financial systems and unremunerated. Existing in their own temporalities, domesticity and care are outside and irreverent of the hegemonic temporality of financialised labour and individualised consumption. As such, maternal care radically rejects as impossible the neoliberal fixation on the atomistic self. Within the everyday are these collections of temporal fragments: disruption and habit. Habits emerge as simultaneously soothing and disembodied, becoming routine without conscious intention or predilection. The balm of habit smooths the fibres of parenting’s unpredictability, while the qualities of habit allow for feedings and nappy changings through the delirium of sleeplessness. Then these habits shift, disrupted and changing with children as they grow, age, fall ill, or experience disability. Disruptive time captures these multiple qualities of maternal temporalities in the habit of the everyday while also acknowledging the personal is political.

The immediacy of care needs operates outside the dominant normative time of productivism and financialised processes. The temporality of the everyday prioritises the present as a multitude of potentially subversive opportunities as each act operates independently of financialised outputs or incentivised clock-time. The child in need of soothing, food, napping, or changing does not adhere to a regimented schedule, but demands instead the undulated unpredictability of the presently-situated body in change. Care needs are not easily absorbed
into the time-discipline of waged labour hours and clock-time. This orientation to the present, as seen from the body of the child, is demanding and immediate; from the perspective of the carer it can be simultaneously disruptive and transformative. The act of caring for a child disrupts the worker, ideal or otherwise, and transforms that worker into an agent of reproductive and unremunerated labour, in opposition to productive and waged labour. Dedicated and extended time to care, being outside of the scriptures of neo-maternalistic productivism, thus becomes a radical act in itself.

And though I understand disruptive time as radical, this is to try and avoid the pitfalls of categorising it as entirely one thing or another; as either positive or negative, subversive or normative—instead, it is both. I take Arendt’s approach that the very act of reproduction is radical (both in its potential and in its very act), but that the experience of disruptive time is thus of value in and of itself, in each individual and collective act, experience, and embodiment. As opposed to the legal temporalities found in Australia’s parental leave, flexible work, and superannuation schemes, disruptive time is the temporality for finding value in the unwaged practices of the everyday. It appreciates the everyday as both a contrast to disrupted temporalities found in the habit while also being the site of disruptive time. That is, the everyday can and often does become a site of comfort through emerging habits and repeated practices; the everyday of rhythm and routine can develop in brief, undulating contrast to the constant disruptions of disruptive time.
However, this sense of the everyday is often fleeting, transitory, and impermanent. By its very existence, though, disruptive time becomes all the more disruptive, and so any perceived sense of calm or habit can instantly dissolve into the unpredictability of care-based temporalities, only to emerge again days, weeks, or months later. This cycle of disruption and calm also becomes manifest in disruptive time, materially and symbolically, and so I want to be sure to give this temporal undulation credence in this theory as well.

Disruptive time views time as existing simultaneously in social agents and the collective. However, this leaves a gap between the legal temporalities—which treats and shapes time as an instrument in a hegemonic paradigm—and care-based temporalities. Care-based temporalities require flexibility and security—flexibility to transition between various working statuses (whether paid or unpaid), and financial and social security to successfully make those transitions throughout the life course and experience the undulations of care in unpredictable ways. Transitional labour markets seek to provide a labour regime that provides both flexibility and security to all workers and their transitions.

IV. Transitional Labour Markets

This section draws on the concepts discussed above to analyse one possible legislative response to disruptive time. Given disruptive time as the most common experience of time across the life cycle, this section explores whether transitional labour markets (‘TLMs’) provide a
sufficient political effort to shift the dominance of the paid labour market. Drawing on the legal temporalities and care-based temporalities discussed in preceding sections and chapters, this section turns to the role of TLMs in remedying a deeply gendered labour system through fostering relationality and transition. Using this concept of disruptive time to pose the question of appropriate approaches to labour and employment, the benefits and pitfalls of a robust transitional labour market are discussed in more detail.

**Introduction**

Acknowledging and accounting for disruptive time requires an approach that fosters relationality and care-based temporalities, and supports fluid movement between waged work and unwaged care. Transitional labour markets, a concept and policy-based approach to employment and social integration developed by Günther Schmid, provides one such approach. According to Schmid, TLMs do not take waged labour as the main and only focus, but instead incorporates social networks, family connections and labour, cultural activities, education, and volunteer work. As such, it takes the transition throughout the life cycle as the starting point, and develops a system that supports those transitions and social agents in transition. ‘Transition’ used to refer only to transitions between employment statuses—that is, full-time to part-time, or from unemployment to

---

695 Gazier and Schmid, above n 22, 6.
employment. However, Schmid includes a reference to a range of flexible employment careers and the various stages of ‘preparation, encounter, adjustment, stabilisation, and renewed preparation for a new job or task’. 696 In developing TLMs, Schmid worked from the standpoint of five main transitions in the life cycle, that between:

1. training or education and waged work;
2. working-time regimes or employment statuses;
3. unwaged domestic and labour market work;
4. employment and unemployment; and
5. waged work and retirement. 697

Schmid’s transitional labour markets provide the necessary ‘bridges’ to move through these critical transitions. 698

The ideal worker narrative presumes that the only transitions occur from school, education, or training to the waged workforce and then to retirement. 699 In reality, all workers will likely experience multiple labour transitions throughout their working lives. Parents occupy a space outside of the ideal worker-narrative by taking time off for infant and maternal health and wellbeing. Based on labour force statistics, women remain more likely to take longer leave from waged labour for

696 Ibid.


698 Gazier and Schmid, above n 22, 11.

699 Williams (2001).
care related activities. Parental leave, by definition, is followed by a transition back to the waged workforce. This transition marks a temporal shift from one set of labours to another, marking it as ‘parental labour transitions’; parents on leave from waged labour to care for young children are largely engaging in unpaid care and domestic labours, and when they return to waged work they are transitioning back to paid labour often in a reduced or flexible working arrangement. In a well-coordinated TLM, employee-set flexible working would be fully integrated and supported.

TLMs foster mobility through several strategies to support and promote continuous opportunities for education and training, multiple employment relationships, combining self-employment with dependent employment, and risk management. To accomplish this, employment relationships must be re-imagined, but also income structures and leave provisions must be more supportive and integrative. This will be discussed in more detail in the following section. Writing from a European context, Schmid and Gazier suggest that the emphasis on full

---


701 Ibid 10–11.
employment move to an emphasis in ‘fluid equilibrium’ described as
the average 30-hour work week over a life course, with room for
substantial increase and decrease to this working status— which
better reflects the ways in which social agents (to use Bourdieu’s phrase)
adjust to a variety of factors including family status, health, needs,
preferences, expectations and opportunities.

It follows, then, that the understanding of ‘employment’ shifts from the
traditional definition of ‘the act of employing a person, the state of being
employed, or a person’s regular occupation or business’ to a more fluid
understanding that denotes long-term employability over a life
course. Taking transitions as universal, it reconstructs employment as
an undulating state over the life course, subject to ongoing training,
education, developments, and entry and exit points. This requires a
system that provides both flexibility and security for social agents to
have legitimised, protected, and socially integrated options to transition
between and among various employment statuses and relationships.
A fully integrated system recognises and remedies the risks associated
with traditional labour markets and will be discussed in more detail in
the following section.

---

702 This emphasis on waged work hours becomes the fulcrum to my critique in
the following sections.
703 Ibid 7–8.
704 See ibid 8.
705 Ibid 11.
Fully Integrated TLMs

Transitional labour markets are both a social enterprise and a financial issue. As a social enterprise, transitions between employment, unpaid work, education, training, and other opportunities are socially accepted in the community and in the labour market social context. In that sense, labour is treated as a tool for social integration—without being focused solely on waged work. Financially, TLMs seek to ensure that social agents earn enough to allow and support transitions through different phases of the life cycle. To achieve this end, there needs to be wholesale protections and support across all transitions, rather than a piecemeal approach providing limited support or applying only to one transition. For example, rather than the current parental leave system provided under both the *Fair Work Act 2009* (Cth) and the *Paid Parental Leave Act 2010* (Cth), which focuses on parental leave as a singular issue spanning the maximum time allotted under the statutes, a wholesale approach would fully integrate transitional labour markets across all transitions whilst recognising that specific leave types requires specific supports (eg Keeping in Touch Days during a period of parental leave).

So, too, with flexible work including part-time work: workers would have an enforceable right to employee-set work pattern flexibility without detriment. Any lost income from diminished hours is protected under the system. Thus, transitions are wholly supported, fostered, and protected socially and financially regardless of the specific transition occurring.
Disruptive time reframes the norms of employment and TLMs provide a vehicle to do so within labour systems. A system that incorporates supports and structures for robust, maintenance-based transitional labour markets better facilitates the ways in which agents weave into and out of waged labour. For Schmid, this means a labour policy aimed at achieving both security and flexibility from the perspective of employers and employees.\(^706\) Under such an approach, employees have the flexibility to transition into and out of various employment relationships throughout the various working stages in their life cycles, while maintaining a sense of income security.\(^707\) Employers, on the other hand, maintain a negotiated flexibility of their workforce while appreciating the security that comes with employee loyalty and reliability.\(^708\) Robust TLMs acknowledge the delicate relationship between waged and unpaid labour, without necessarily privileging the normative time of waged labour, thus acknowledging the personal and political value of other temporalities and life cycle phases.

As mentioned, constructing a robust, high quality TLM requires a whole scale approach, but Schmid adds that this can only begin with setting a solid foundation based in the following principles:

- freedom of choice through empowerment

---


\(^707\) Ibid 284, 315–16.

\(^708\) Schmid, above n 662 esp Chapter 8.
• solidarity through joint risk sharing
• effectiveness through a combination of cooperation and competition
• efficiency through decentralisation; and
• monitoring and evaluation of quality standards.

Coming from an employment perspective advising on a European full-employment policy, Schmid’s language and approach remains highly managerial. Furthermore, it continues to emphasise waged employment as the standard by which to measure transitions, despite avowing a shift away from ‘dependent labour’. As a political strategy, Schmid is careful to suggest that a shift in traditional, neoliberal labour and employment strategies toward a robust TLM requires a series of formal and informal agreements between the state (for example, occurring at all levels of Commonwealth, state/territory, and local), social partners, employers, and employees. These stakeholders have three key features: the assumption of more entrepreneurial functions, including a risk management strategy to support TLMs, and the continuous promotion and support of sustainable employability through lifelong learning, and acceptance of responsibility for the disadvantaged through the provision of meaningful jobs for all and responsible, sustainable, risk management.

---

709 Gazier and Schmid, above n 22, 17; see also Schmid, ‘Transitional Labour Markets and the European Social Model: Towards a New Employment Compact Index’, above n 656.

710 Gazier and Schmid, above n 22, 18.

711 Ibid.
This risk management is key to robust TLMs and, as I have already suggested in Chapter 4, can be achieved with social insurance-like provisions. Rather than relegate risk to either employers, employees, or the public entirely, a social-insurance like provision manages the risks inherent in each transition and provides publicly-supported insurance or income protection. Schmid suggests a ‘work-life insurance’ based on three pillars: 1) a universal guarantee of a basic income that ensures a life without persistent poverty; 2) expansion of unemployment insurance into employment insurance which also covers employability and to some extent volatile income risks such as that borne by entrepreneurs and the self-employed; and 3) privately or collectively bargained insurance systems designed especially to cover life course risks related to the knowledge and care economy such as additional training and education or extended caring responsibilities. Schmid also notes that decisions ‘to reduce the amount he or she works, to indulge one’s preferences (exotic or not) or to enter a particular occupation’ should be covered by this work-life insurance. However, as a ‘work-life insurance’ based on these established pillars, the insurance would potentially only cover those sufficiently involved in the waged work economy, and so the same problems facing many women with Australia’s current paid parental leave system would plague such a ‘privately or collectively bargained insurance system’.

712 Schmid, above n 662, 284.

713 Ibid 284–85.
That is, women who are recently arrived, making a transition out of training or education, or have multiple children closely spaced together may not have entered the waged labour market sufficiently to have such a ‘work-life insurance’. Unless, of course, this sort of model is not actually one that is ‘privately or collectively bargained’ but is instead one based on social insurance.

Social insurance is a public institution based on universal risk sharing. As a public institution, it recognises that a universal insurance administered by the public sector is the only one equipped to handle the complex and interrelated risks of multiple transitions over a life course. As such, it would cover the financial aspects of multiple and interdependence risks over a life course, including protecting against the ‘randomness of career opportunities and nature’s lottery of innate abilities’. Social insurance, then, acts as the modern equivalent of ‘traditional institutions such as the extended family, neighbourhoods, the hinterland of small farms providing economic subsistence, and the communities or trade unions organising mutual self-help’ which seem to continuously erode in globalised, neoliberal societies such as Australia. Where neoliberal rationality shifts risks to the individual, social insurance spreads that risk back to the collective as a public

---

714 Ibid 233.
715 Ibid.
716 Ibid.
717 Ibid 234.
institution of protection and support. By interpreting Schmid’s risk sharing pillar as a collective, public encounter of risk, the managerial-like principles of Schmid’s approach soften to become more flexible and responsive to care and relationality.

It is this sort of integrative approach that a robust TLM requires to adequately incorporate disruptive time within a politicised system—both the social supports of legally protecting transitions throughout the life course, and the economic protection against risk inherent in transitions. However, as TLMs are subject to the same waged-labour basis of the existing system, TLMs are not the simple solution one hopes for. Nevertheless, TLMs demonstrate that time experienced in care labours and other unwaged labours, as well as other experiences of time in education, training, community involvement, or illness, are part of the ordinary and valuable life cycle and should be protected, supported, and promoted socially and financially. As such, TLMs have the potential to accept disruptive time as the universal experience of the life course—that social agents transition into and out of waged work over a life course and what they do during these periods of leave are not tangential, irrelevant, or unnecessary.

Understanding that disruptive time is the transitions of a social agent through the life course, TLMs provide one comprehensive approach to the exclusion evident in the existing, piece-meal system. Combined with an empirical-gap based women’s pension as a component to compensate for the gender-time gap and gender-wealth gap, TLMs have
the potential to pave the path for care to become un-gendered as just another transition in the life course, fully protected and supported.

Though it would not decouple the hegemony of waged work from influencing legal temporalities, TLMs would allow men to also partake in care to a similar degree as women without the economic and social disadvantage currently besetting the Australian system.

The existing hegemonic construction of legal time is largely about confining risk to one model of time and temporality: anything outside of it is excluded from legal recognition by the system. For example, the legal temporality of paid parental leave is based on a singular vision of time as ‘genuine’ connections to the labour market, and flexible work is similarly constructed around the waged work privileged model. When the legal temporality of superannuation legislates time as ‘ordinary time earnings’ accrued as a percentage of earned income over the life course, concurrent experiences of time that undulate into and out of waged work disadvantage those in older age. As discussed in previous chapters, these exclusions compound over a lifetime, leaving women disproportionately disadvantaged later in life as well as vulnerable in the early stages of caring for a young infant or child.

V. Conclusion

Enshrined in contemporary legal temporalities, hegemonic time does not account for relational, care-based experiences of time. This chapter and those preceding have demonstrated that the dominant conception of time in Australian legal temporalities in parental leave, flexible work,
and superannuation is heavily gendered. Without accounting for care-based temporalities, this gendering of time significantly shapes the disproportionate outcomes borne by women over a life course.

Informed by feminist and queer critiques of hegemonic time, disruptive time provides relational counter temporalities to hegemonic times. Disruptive time takes disruption not as pejorative, but instead as transformative. As a transformative experience, the care of children has the potential to transform experiences of time beyond that which is imaginable. Acknowledging this new relationality that emerges in care-based temporalities is pivotal to addressing the gender-time and gender-wage gaps discussed in the preceding chapter. Transitional labour markets provide one possible opportunity to account for this relationality in disruptive time through a comprehensive overhaul of social, welfare, and labour systems. The aim of such an approach would be twofold: to normalise care and relationality in the labour market and society, as well as protect carers from the economic burdens plaguing the current system. In combination with the remedial suggestions in the preceding chapter, as well as an increased emphasis on public risk-sharing in social insurance, TLMs provide potential as a political option but do not provide the vehicle to fully transform social and individual relationships with waged labour, de-prioritise dependent labour, or allow total egress from an ideal worker-based narrative.

Building on my themes from Chapters 1 and 2, the critique of neo-maternalistic productivism lies not just in policy reforms outlined
above, but in an ongoing critical discourse on time and temporality.

Recognising and acknowledging the dominant conception of time in
Australia’s parental leave, flexible work, and superannuation regimes
provides only one part of the project; analysing and appreciating how
that conception is gendered and then suggesting alternative conceptions
of time and legal temporalities provides the other significant parts of
this project on time. As the next chapter demonstrates in conclusion,
disruptive time and the other arguments covered in this and preceding
chapters, draws together the key themes and methods of this thesis to
sustain a critical analysis of legal temporalities.
Chapter 6
Conclusion

Introduction

This chapter concludes the thesis by returning to my research questions and main themes. As a final section, it recalls my key findings from the preceding chapters and recaps the ideological analyses within those arguments. Finally, it finishes by looking forward to the future and ends with brief, concluding comments on work and creating meaning in contemporary life.

This thesis has uncovered the construction of time in Australia’s parental leave, flexible work, and superannuation law and policy. By analysing each legal framework, I have identified dominant temporal narratives as well as diverse experiences of time and uncovered how legal temporalities exclude women. Through an exploration of the laws and policies involved in Australia’s parental leave, flexible work, and superannuation systems, I had drawn on Bourdieu and others to develop an understanding of time in the social agent who is reflexively constructed by the habitus along collective and individual settings. I have identified the gender-time gap and how it impacts on working women with children, and further articulated how the gender-time and gender-wage gaps compound over multiple phases of the life and work cycle. Finally, this thesis has addressed alternative conceptions of time and investigated how a concept of time as constantly disrupted provides a link to a new, more inclusive, gender sensitive system.
The Enduring Ideology of the Ideal Worker and Intensive Mother

In addressing my first two research questions, ‘What is the dominant conception of time underlying Australian work and parenting laws and policies?’ and ‘In what sense is that conception gendered, particularly as it relates to women with children?’ I have uncovered how each of the laws and policies around parental leave, flexible work, and superannuation perpetuate neo-maternalistic productivism, a hegemonic view of time. Using neo-maternalistic productivism as the only conception of time in crafting worker-mother laws and policies has created legal temporalities that are neoliberal, sexist, and hetero-capitalistic governmentalities. There is a clear preference and reward for the heteronormative family and a gendered division of labour. Despite the ostensible policy focus on women’s economic security in parental leave, flexible work, and superannuation, this preference for neo-maternalistic productivism still prevails. However, this preference disproportionately harms women, and most especially women with children.

In fact, each of the laws and policies informing Australia’s parental leave, flexible work, and superannuation systems preserves a hegemonic view of time that reflects enduring ideologies of the ideal worker and intensive mother. This, in turn, perpetuates the gender-time gap. We see this quite evidently in the legal temporalities of parental leave in Australia. Though the objective of parental leave pay was to allow a parent the opportunity to provide a child with primary care for
the first six months of a child’s life, the legislation only provides federal statutory minimum wage for 18 weeks. This limits longer periods of parental leave to privileged families who can ‘co-fund’ the gap between the 18 weeks of federal statutory parental leave pay and this six-month time period. Furthermore, the eligibility criteria exclude certain groups of women without the sufficiently ‘genuine’ ties to the workforce—these women generally fall into one of two groups: those with closely spaced children, and those who labour outside of the traditional labour market or in non-standard ways. Despite being engaged in work, these women do not qualify for parental leave pay. Finally, the legal temporalities of parental leave are deeply gendered and preclude longer-term, simultaneous leave by both parents, installing a gender-time gap from the first weeks of a new child.

This gender-time gap is evident in the structuring of the legislation—the legislation assumes that the birth mother is the lower earner and treats her as the ‘primary claimant’ for paid parental leave purposes regardless of whether she intends to share some of her leave with her partner. This explicit preferencing of the mother as primary claimant and sole carer constructs an ideal of a mother based on heteronormative families and typifies the imprint of the ideal worker/intensive mother narrative in neo-maternalistic productivism and legal temporalities. Preserving it in legislation and legal temporalities detrimentally affects both men and women who are subject to these normative legal structures: women’s economic insecurity compounds over a lifetime,
increasing her risk of poverty in older age, and men never develop the capacity for deep care that comes by experiencing sustained, high quality, care of children.

We see this reference to the ideal worker/intensive mother in the legal temporalities of flexible work as well. Under the Howard Government, ‘flexibility’ was used to convey a flexibility of industrial relations and labour regulations with an aim toward employer interests and neoliberal values. Flexibility then, in the Howard Government, was changing the mechanism by which labour regulations were made, shifting it from a negotiated approach to a constrained voluntarist approach. The result was a disempowering of union-based collective bargaining and industrial tribunals in favour of individualised Australian Workplace Agreements and employer mandated standards and conditions. This outcome is about giving *structure*, through laws and regulations, to the ideal worker narrative.

The ideal worker narrative emerges through the primacy of waged work and the neoliberal values of productivism and capital. As an ideological narrative of flexible employment relations and flexible working time patterns, the ideal worker narrative belies a central reference to the gendered division of labour. With its close connection to hetero-capitalism, neo-maternalistic productivism relies heavily on employer and industry concerns, rather than on the impact of working time patterns and employment relationships on workers and their families and communities. Accordingly, this question of flexibility is
better understood as a question of time, and more specifically, chrononormativity, implicating and revolving around questions of working time, time spent in other relations and activities, and who controls these constructions and lived experiences of time.

While working hours declined in many countries, they continued to grow in Australia during the Howard Government, increasing to become a ‘long hours’ culture amongst international standards, averaging 41.3 hours per week in 2001.718 Given this shift in working time and organisational culture, one can see the obvious conflict with existing practices and norms of intensive mothering. Indeed, the spread of hours between women and men lengthened during the Howard Government: men were working longer hours, while women were increasingly taking up shorter hours, part-time, and precarious waged work in an attempt to maintain ‘flexible’ constructions of time so as to meet their intensive care responsibilities. This legacy of ‘flexibility’ as manifesting the ideal worker/intensive mother narratives reverberates through Australian law and policy today, where the right to flexible work remains as only a right to request flexible work, without any additional reformation of neo-maternalistic productivism or the gender-time gap. Furthermore, we see the outcome of the legacy of the ideal worker and intensive mother over a life cycle in women’s vulnerability to economic insecurity in older age.

718 Pocock, ‘Work/Care Regimes’, above n 114, 35.
Superannuation, too, reflects enduring ideologies of the ideal worker/intensive mother dichotomy. As Australia’s last ‘pillar’ of retirement income, superannuation is a government-mandated savings programme meant to provide the medium for individuals to save for their own retirement. However, the gendered ways in which neo-maternalistic productivism’s financialisation compounds in retirement is most starkly demonstrated in superannuation. Each Australian resident, by following the ideal worker paradigm of uninterrupted waged work, is expected to provide her own earned retirement income through a system of government-mandated savings. But so long as there exists a gender-wage gap and gender-time gap, then a superannuation system that is calculated on a percentage of income will continue to disadvantage women. Legal reform efforts have failed to rectify the underlying problem of time in superannuation.

This thesis suggests a sex discrimination pension as one possible additional pillar to Australia’s retirement system as a way of focusing on the problems caused by the existing system’s ignorance of the gender wage and gender-time gaps. Based on carefully assessed empirical research documenting the gender-wage gap and the gender-time gap, the pension would directly address the enduring narratives of the ideal worker and intensive mother by calculating and providing quarterly contributions into an eligible agent’s pension. In a hetero-capitalistic society such as contemporary Australia, this financialisation of discrimination has the potential to both show and address the
devaluation of women’s work through the superannuation system. It further redistributes wealth from those that continue to benefit from women’s unwaged work. It provides one effort, in combination with others, to address some of the key effects of a waged-work based and superannuation-focused system.

Throughout these three legal frameworks, we see how reliance on the narratives of the ideal worker and intensive mother perpetuate the gender-time gap, compounding over a lifetime to disproportionately impact on women, especially women with children. A gender-time gap has the potential of being innocuous to economic security, however in a system like Australia’s that systematically privileges and rewards waged work over unwaged work, it leaves those performing a disproportionate share of the unwaged work in more precarious economic positions. Though it is women who complete more total labour hours over a life cycle, the current legal temporalities reward those with minimal caring responsibilities, mostly men, with significantly higher chances of economic security throughout every phase of the adult life cycle.

The foregoing analysis of the dominant conception of time in parental leave, flexible work, and superannuation addressed the first two research questions, demonstrating that the hegemonic conception of time is particularly gendered, especially as it relates to women with children. The third main research question, ‘what alternative conceptions of time are possible?’ was answered by careful analysis and
interpretation of social indicators used to discuss my first two research questions as well as sociological, critical temporal, and feminist research. By reference to the empirical data available around gendered work and time in Australia, I imagined alternative conceptions of time that reflects women’s demonstrated experiences. In answering this research question, my conception of disruptive time provides a more accurate and inclusive representation than that of neo-maternalistic productivism.

**Disrupting Neo-maternalistic Productivism**

Disruptive time challenges neo-maternalistic productivism’s normativity and instead views time as multiple and undulating, uniquely experienced rather than uniformly imposed. Relying on the twin pillars of transformation and plurality, disruptive time uses ‘disruption’ not as pejorative, but as a provocation to neo-maternalistic productivism, while simultaneously accounting for the actual disruptions experienced in care-based temporalities. Neo-maternalistic productivism fails to accurately represent the experience of social agents, while disruptive time accounts for the multiple experiences of care-based temporalities.

Having outlined the theory of disruptive time in Chapter 5, it became clear that disruptive time is not compatible with the existing legal

---

719 See Paul, above n 639; Felski, above n 199, respectively, and discussion of transformative experience and multiple registers of temporal experience in Chapter 5.
temporalities of parental leave, flexible work, and superannuation. The existing legal temporalities rely on a conception of time enshrined and imposed by the legal and political regimes and exemplified in neoliberal workplace relations.

The legal temporalities of parental leave, flexible work, and superannuation further reflect hegemonic temporal objectives by constructing its logic on a future-orientation of the past. Pierre Bourdieu provides an interpretive framework to understand this future-orientation. Bourdieu’s concept of the habitus relies on a temporal embodiment of past, present, and future. Through a ‘practical relation to the forth-coming’, time is generated, mediated as it is by power and the objective chances it enables.\(^{720}\) As individuals within social settings, Bourdieu conceptualised the person as the social agent, with the social agent constantly anticipating and adjusting their place amongst the social. But it is this anticipation that can be ‘overdetermined’ by power relations through ‘the shaping of the agent expectations and orientation toward the future’.\(^{721}\) In other words, agents are constantly adjusting their actions, preferences, and attitudes through the conscious and unconscious reflexive references to future, past, and present power relations and anticipatory group expectations and identities. This reference to relations of power and objective chances depends upon the material relations of class for any given social agent. One example

\(^{720}\) Bourdieu, above n 2, 231.

\(^{721}\) McNay, above n 181, 150 interpreting Bourdieu.
identified by this thesis is the co-funding of parental leave. This co-funding expectation relies on existing relations of power imprinted within the gender-wage gap that allows one parent, normally the father, to continue working in waged labour while the lower-earning partner, normally the mother, provides sole care. But it also relies on a certain level of material conditions in class and income, evidenced by the expectation to use home equity to make up for any income shortfall experienced by having one earner provide unremunerated care-work. Long before a couple has or adopts a child, they must prepare (future-orientation) by amassing sufficient resources in the way of home equity and savings to ‘co-fund’ a period of extended parental leave. Superannuation, too, reflects this explicit future orientation through a system of waged work-based contributions.

This mandate for future orientation is also seen in the requirement for a genuine attachment to the workforce and the primacy of waged work over care. In order to be eligible for both paid and unpaid parental leave, there must be ‘genuine’ attachment to the waged workforce reflected through ongoing remuneration for work by a single employer.722 This ‘genuine’ attachment reflects a future-orientation to waged work — that through a temporal series of payments from employment for at least 10-12 months, the worker demonstrates an

722 Although one is eligible for parental leave pay even if she has worked for multiple employers, the work test for unpaid parental leave remains orientated toward a single employer over a 12-month period. Fair Work Act 2009 (Cth) Ch 67-70.
attachment suggesting ongoing waged engagement after the period of parental leave is taken. The applicant’s past relationship to waged work is taken as an ongoing, future-orientation to waged work. The period of parental leave is at most a short interruption, but certainly not a disruption to the primacy of waged work in a carer’s lifetime. This reflects the same future-orientation of Work Choices, which over emphasised the demands of waged work over any other considerations such as care, gender equality, pay equity, or class relations. Instead, the Howard Government’s chrono-normative approach to waged work and care relied on an approach to ‘flexibility’ that disproportionately burdened women with children.

This is echoed in successive legal regimes in Australia. The Howard Government failed in two main ways: by failing to acknowledge and resolve conflicts arising in women’s lives and spheres of social action (otherwise understood as the habitus), and by failing to rectify women’s resulting economic insecurity arising from their policies. However, subsequent Governments’ legislation did not rectify these resounding problems. Instead, we see the longer-term consequences of such legal temporalities outlined in the previous discussion on retirement income and superannuation.

Waged Work and Care for the Two-Parent Chrono-normative Family over the Life Course

723 This is perhaps even more starkly borne out by certain workplace programmes offering significant time or payments for parental leave, but conditional on a ‘return to work’ for a certain duration and number of hours.
This figure was originally presented in Chapter 3’s discussion of flexible work, but its relevance to parental leave and superannuation is also evident. It pointedly illustrates the flow of gendered work transitions constructed by the legal temporalities of the parental leave and superannuation regulatory frameworks. In a system where law constructs and supports exclusionary transitions, women and men have very different trajectories of waged work and care over a lifetime.

The underlying conception of time informing the legal regimes maintains, reinforces, and reflexively constructs the primacy of waged labour in an economic structure that marginalises social reproduction. Neo-maternalistic productivism is reflected in the legislations’ disregard of disruptive temporalities of care and the life phases of care, relying instead on the chrono-norms of the ideal family composed of the ideal worker and ideal mother in a one-and-a-half income earning family.

These terms reflect the objects of economic productivism through an emphasis on women’s workforce participation. This conception of time and labour prioritises finance and capital accumulation through increased and sustained workforce participation. This view of time is in
line with neoliberalised labour relations which treat the individual worker or family unit as largely responsible for their own economic security, set within the confines of a policy and welfare regime providing increasingly deficient public supports. However, this neoliberal rationality is inimical to the goals of justice, fairness, or gender equality.

Given this incompatibility, this thesis has instead suggested an approach to labour and law that analyses and accounts for pluralistic experiences of time. Disruptive time more accurately reflects the ways in which Australians move through the life cycle, moving into and out of waged work and unwaged care at multiple points in their life phases, while also accounting for other responsibilities and experiences that social agents have instead of full-time waged work. An emphasis on transitional labour markets was suggested as one way to incorporate disruptive time within socio-legal doctrines of labour relations. Changing the time orientation of existing worker-mother provisions would be extremely profound and would signal a thorough change in how policy makers and legislators understand the work and life cycle.

**Conclusion**

As a socio-legal thesis, this project has uncovered and analysed the dominant conception of time underlying Australian work and parenting laws and policies. I have identified the dominant conception of time informing the legal temporalities of parental leave, flexible work, and superannuation. This thesis has also investigated the disproportionately
gendered outcomes associated with the established legal temporalities in these frameworks and suggested a more accurate, inclusive understanding of time as multiple and undulating.

My approach re-theorises maternal time as ‘disruptive time’ to better account for the disruptions inherent in child care and care-based temporalities. This thesis theorises maternity as a disruption to neo-maternalistic productivism and practices (actions), thereby providing an opportunity to challenge the dominant norms and ideologies of gendered time and time-use. Rather than pejorative, ‘disruption’ refers to the opportunity to subvert and disrupt hegemonic temporalities within a larger political and social context. By providing a new referent that accounts for the disruptive temporalities of gendered care norms, law and politics can then build a more gender-sensitive approach.

In answering the first two research questions, this thesis has looked to statutory interpretation, policy evaluation, sociological and legal critique, and empirical social indicators. Addressing these findings of neo-maternalistic productivism and the gender-time gap, this thesis also suggested an alternative conception of time as disruptive time that reflects the experience of social agents with caring responsibilities. Disruptive time most appropriately reflects Australians’ actual experiences of time—no person emerges onto the waged labour market without a transition from education, training, or another non-wage-

724 See Chapter 5 for an in-depth discussion of disruptive time.
earning activity. Furthermore, social agents go on to have multiple transitions in a life cycle—from education or training, to work, to care, disability, travel, higher education, or other conditions and experiences. This concept of disruptive time led to a further investigation of transitional labour markets as one potential approach to address these transitions throughout the life cycle. These transitions have the potential to pose serious disruptions to the existing hegemony of time. Rightfully so, transitional labour markets foresee the end of ‘purely dependent labour’—where the worker is entirely dependent on waged work for all forms of identity and integration—and suggest a more inclusive approach to labour in all of its forms. 

Together, the answers to these research questions suggest how time impacts on gender relations in Australia, and provide an evaluation, analysis, and an alternative to the neoliberal hetero-capitalistic legal temporalities. This project approached time from a feminist perspective and uncovered how the existing legal temporalities of parental leave, flexible work, and superannuation systematically leave women with children worse off. Having discussed the disproportionate outcomes experienced by women, this thesis provides an alternative conception of time in disruptive time.

But this project is also about sharing the vicissitudes of work—whether

---

725 Even if waged labour remains the dominant standard, Gazier and Schmid, above n 22, 6.
that work be waged or unwaged, care-based or intellectual, emotional or domestic. This is not to exalt care, but to recognise what women are actually doing while also acknowledging that work comes in many forms and should be shared by those benefitting from it — for example, all parties in a parental relationship. It is to reject the ideology of intensive mothering and the ideal worker, and shift instead to a system that values, facilitates, and promotes sharing waged and unwaged labour in the undulating ways of care-based temporalities across the life cycle. When there are young children in the home, the state must recognise that more resources are needed for their care, as well as the labour of the household, whereas as they age and become increasingly independent, resources can shift from the home to other labours and endeavours — but with the caveat that care-based temporalities are often not linear, and that the care needs of children spike, plateau, and dip at different points in their early life stages.

Joan Williams warned that ‘The sacralization of household work has turned into the sacralization of childrearing as the key source of meaning creation in a human life’. I am not arguing in support of this shift toward intensive mothering, but instead toward a shift away from waged work as the dominant marker of meaning creation. My argument against the ideal worker as the central source of meaning creation in a human life does not turn, instead, to children or care as the

---

726 Williams, ‘From Difference to Dominance to Domesticity: Care as Work, Gender as Tradition’, above n 487, 1450.
dominant marker of meaning creation. Rather, I seek to dispel the myth of family *versus* work— and instead demonstrate that time experienced as family, domestic, child care and other unwaged labours is part of the normal life course and should be supported by legal frameworks and legal temporalities.
Bibliography

A. Articles/Books/Reports

Adkins, Lisa, ‘Sociological Futures: From Clock Time to Event Time’ (2009) 14(4) Sociological Research Online 8


Apps, Peter, ‘Submission on Childcare: Submission to Productivity Commission Childcare and Early Childhood Learning Public Inquiry’ (20 February 2014)

Arendt, Hannah, The Human Condition (University of Chicago Press, 2013)


Bender, Leslie, ‘A Lawyer’s Primer on Feminist Theory and Tort’ (1988) 38(1/2) *Journal of Legal Education* 3

Bender, Leslie, ‘Overview of Feminist Torts Scholarship’ (1992) 78 *Cornell L. Rev.* 575

Bennett, Cecily-Anna, ‘Paid Leave Helps Banish the Baby Blues’ *Weekend Australian* (Canberra, ACT), 25 February 2011 1


Bourdieu, Pierre, ‘Structures, Habitus, Power: Basis for a Theory of Symbolic Power’ in Nicholas B Dirks, Geoff Eley and Sherry B Ortner (eds), *Culture/Power/History: A Reader in Contemporary Social Theory* (1994) 155


Cameron, Jenny and Julie Katherine Gibson-Graham, ‘Feminising the Economy: Metaphors, Strategies, Politics’ (2003) 10(2) Gender, Place and Culture: A Journal of Feminist Geography 145


Clare, Ross and Association of Superannuation Funds of Australia Limited, ‘Superannuation Account Balances by Age and Gender’ (December 2015)

Clarke, Alison J, ‘Making Sameness: Mothering, Commerce and the Culture of Children’s Birthday Parties’ in Emma Casey and Lydia Martens (eds), Gender and Consumption: Domestic Cultures and the Commercialisation of Everyday Life (Routledge, 2007) 79


Cooper, Rae and Bradon Ellem, ‘The Neoliberal State, Trade Unions and Collective Bargaining in Australia’ (2008) 46(3) British Journal of Industrial Relations 532


Craig, Lyn, Contemporary Motherhood: The Impact of Children on Adult Time (Ashgate, 2007)


Craig, Lyn, Contemporary Motherhood: The Impact of Children on Adult Time (Ashgate Publishing, Ltd., 2012)


Craig, Natalie, ‘Paid Parental Leave the Icing on the Cake for New Mothers’ The Sunday Age (Melbourne, Vic), 2 January 2011 5


Dworkin, Ronald, Law’s Empire (Harvard University Press, 1986)


Elson, Diane, Male Bias in the Development Process (Manchester University Press, 1991)


Fehlberg, Belinda, Christine Millward and others, ‘Post-Separation Parenting and Financial Arrangements over Time Recent Qualitative Findings’ [2013] (92) Family Matters 29


Forell, Caroline and Donna M Matthews, A Law of Her Own: The Reasonable Woman as a Measure of Man (NYU Press, 2001)


Fraser, Nancy, ‘Feminism, Capitalism, and the Cunning of History’ in Winfried Fluck, Donald E Pease and John Carlos Rowe (eds), Re-Framing the Transnational Turn in American Studies (Dartmouth College Press, 2011) 374 <http://halshs.archives-ouvertes.fr/halshs-00725055/>

Freeman, Daniel and Jason Freeman, The Stressed Sex: Uncovering the Truth about Men, Women, and Mental Health (Oxford University Press, 2013)

Freeman, Elizabeth, ‘Time Binds, or, Erotophoriography’ (2005) 23(3/4_84-85) Social Text 57

Freeman, Elizabeth, Time Binds: Queer Temporalities, Queer Histories (Duke University Press, 2010)

French, Marilyn, Beyond Power: On Women, Men, and Morals (Olympic Marketing Corp, 1985)


Grabham, Emily, ‘The Strange Temporalities of Work-Life Balance Law’ (2014) 4(1) feminists@law
<https://journals.kent.ac.uk/index.php/feministsatlaw/article/view/101>

Grabham, Emily, Brewing Legal Times: Things, Form, and the Enactment of Law (University of Toronto Press, 2016)


Graycar, Regina and Jenny Morgan, The Hidden Gender of Law (Federation Press, 2002)

Halberstam, Judith, In a Queer Time and Place: Transgender Bodies, Subcultural Lives (NYU Press, 2005)

Halberstam, Judith, The Queer Art of Failure (Duke University Press, 2011)

Hargita, Starla, ‘Disrupting the Hegemonic Temporality of Superannuation’ (2016) 42(2) Australian Feminist Law Journal 223

Harmer, Jeff, ‘Pension Review’ [2008] Background paper, Department of Families, Housing, Community Services and Indigenous Affairs, Canberra

352


Kantola, Johanna, Feminists Theorize the State (Palgrave Macmillan, 2006)


Kompier, Michiel and Cary L Cooper, Preventing Stress, Improving Productivity: European Case Studies in the Workplace (Psychology Press, 1999)

Kristeva, Julia, ‘Women’s Time’ (1981) 7(1) Signs 13

Lambert, Caroline, ‘Reproducing Discrimination’ in Margaret Thornton (ed), Sex Discrimination in Uncertain Times (ANU Press, 2010) 153

Lemke, Thomas, “‘The Birth of Bio-Politics”: Michele Foucault’s Lecture at the College de Grance on Neo-Liberal Governmentality’ (2001) 30(2) Economy and Society 190


354


Martineau, Jonathan, Time, Capitalism, and Alienation: A Socio-Historical Inquiry into the Making of Modern Time (Brill, 2015)


McNay, Lois, ‘Meditations on Pascalian Meditations’ (2001) 30(1) Economy and Society 139


Nancy Folbre, ‘Measuring Care: Gender, Empowerment, and the Care Economy’ (2006) 7(2) Journal of Human Development 183


Paul, Laurie Ann, Transformative Experience (Oxford University Press, 2014)


Peetz, David, Assessing the Impact of WorkChoices’ One Year on: Report to Department of Innovation, Industry and Regional Development, Victoria (Industrial Relations Victoria, 2007)


Pocock, Barbara, Sara Charlesworth and Janine Chapman, ‘Work-Family and Work-Life Pressures in Australia: Advancing Gender Equality in

356


<http://www.unrisd.org/UNrisd/website/document.nsf/0/2dbe6a93350a7783c12573240036d5a0?OpenDocument&language=fr>


Rice Warner Actuaries, ‘Valuing Females and Rewarding Them in Retirement’ (Rice Warner, November 2012)


Ross Clare, ‘An Update on the Level and Distribution of Retirement Savings’ (Association of Superannuation Funds of Australia, March 2014)

Rousseau, Jean-Jacques, Emile: Or, on Education (Basic Books, 1979)
<https://books.google.com.au/books?hl=en&lr=&id=VocWkgK9SxQCAI&oi=fnd&pg=PR7&dq=rousseau+emile&ots=NNmKNxWjfp&sig=IDadEs3Ou7h1LW3Iq9xIRy_A>

<http://www.ssoar.info/ssoar/handle/document/12885>


Sheehan, Grania and Jody Hughes, ‘Division of Matrimonial Property in Australia’ (Research Paper 25, Australian Institute of Family Studies, 2001)


Stephens, Julie, Confronting Postmaternal Thinking (Columbia University Press, 2011)


‘Text of Prime Minister’s Statement on Workplace Relations’ Sydney Morning Herald, 26 May 2005 

The Association of Superannuation Funds of Australia, ‘Superannuation Statistics’ (Superannuation Statistics, February 2016) 


Thornton, Margaret, Public and Private Feminist Legal Debates (Oxford University Press, 1995)


Uchino, Bert N, ‘Understanding the Links Between Social Support and Physical Health: A Life-Span Perspective With Emphasis on the Separability of Perceived and Received Support’ (2009) 4(3) Perspectives on Psychological Science 236


Williams, Joan, Unbending Gender: Why Family and Work Conflict and What to Do about It (Oxford University Press, 2001)


Williams, Joan C, ‘From Difference to Dominance to Domesticity: Care as Work, Gender as Tradition’ (2001) 76 Chicago-Kent Law Review 1441


Wooden, Mark and Nicole Watson, ‘The HILDA Survey and Its Contribution to Economic and Social Research (so Far)*’ (2007) 83(261) Economic Record 208


Wright, Jessica and Alicia Wood, ‘Late, but It’s Here at Last: Generation Miss out on Paid Leave’ Sun Herald (Sydney, NSW), 2 January 2011 5

Young, Iris Marion, ‘The Ideal of Community and the Politics of Difference’ [1995] Feminism and community 233


B. Cases

Australasian Meat Industry Employees Union & Others v Meat and Allied Trades Federation of Australia & Others (Equal Pay Cases) (1969) 127 CAR 1142

Fuda and Secretary for Department of Social Services, [2015] AATA 279, 30 April 2015

Gordon and Secretary, Department of Employment and Workplace Relations [2006] AATA 792 (15 September 2006)

National Wage and Equal Pay Cases (1972) 147 CAR 172

C. Legislation

Anti-Discrimination Act 1977 (NSW)

Australian Bureau of Statistics Act 1975 (Cth)

Australian Constitution

Census and Statistics Act 1905 (Cth)

Census and Statistics Act 1905 (Cth)

Civil Liability Act 1936 (SA)

Crimes Act 1958 (Vic)

Discrimination Act 1991 (ACT)

Equal Opportunity Act 1995 (Vic)

Fair Work Act 2009 (Cth)

Family Assistance and Other Legislation Amendment Act 2013 (Cth)

Family Law Act 1975 (Cth)

Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008 (Cth)

Family Law Legislation Amendment (Superannuation) Act 2001 (Cth)

Family Law (Superannuation) Regulations 2001 (Cth)

Income Tax Assessment Act 1997 (Cth)

Minerals Resource Rent Tax Repeal and Other Measures Act 2014 (Cth)

Paid Parental Leave Act 2010 (Cth)
Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measures) Act 2012 (Cth)

Productivity Commission Act 1998 (Cth)

Public Service Act (No 2) 1966 (Cth)

Revised Explanatory Memorandum, Family Law Legislation Amendment (Superannuation) Bill 2000 2001 (Cth)

Sex Discrimination Act 1984 (Cth)

Sex Discrimination Amendment (Boosting Superannuation for Women) Bill 2014

Social Services Legislation Amendment (Omnibus Savings and Child Care Reform) Bill 2017

Superannuation (Excess Non-Concessional Contributions Tax) Act 2007 (Cth)

Superannuation (Government Co- Contribution for Low Income Earners) Act 2003 (Cth)

Superannuation Guarantee (Administration) Act 1992 (Cth)

Superannuation (Objective) Bill 2016

Superannuation Industry (Supervision) Regulations 1994 (Cth)

Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016 (Cth)

Workplace Relations Act 1996 (Cth)

Workplace Relations Amendment (A Stronger Safety Net) Act 2007 (Cth)

Workplace Relations Amendment (Work Choices) Act 2005 (Cth)

Workplace Relations and Other Legislation Amendment Act 1996 (Cth)

D. Other

ANZ, We Are Bridging the Super Gap ANZ Women
<http://women.anz.com/at-anz/we-are-bridging-the-super-gap>

ASX, Benefits About ASX

Australian Bureau of Statistics, ‘Women’s Participation in Paid Work Lower than Men’s (Media Release)’
Australian Government, Productivity Commission, ‘Current Inquiries: Superannuation’  


Government of Australia and Department of the Prime Minister and Cabinet, *Search: PM Transcripts (John Howard)* (2015) PM Transcripts: Transcripts from the Prime Ministers of Australia  


Interview with Melissa Doyle and Mark Baretta, ‘Interview with Prime Minister John Howard’ (11 May 2005)

Interview with John Howard, ‘Transcript of the Prime Minister the Hon John Howard MP Radio Interview with Alan Jones Radio 2UE’ (16 March 1998)  


Interview with John Howard, ‘One Millionith (Sic) AWA Announcement Comrec Elizabeth Downs; Prime Minister - Howard, John; Interview - 05 October 2006’ (5 October 2006)  
Interview with John Howard, ‘Interview with Fran Kelly ABC Radio National’ (26 April 2007)

Interview with John Howard PM, ‘John Laws Interviews John Howard PM on Radio 2UE Transcript No 21858’ (10 August 2005)

Interview with Alan Jones, ‘Radio Interview with John Howard’ (20 June 2003)

Klapdor, Michael, ‘Pension Indexation: A Brief History’
<http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2014/April/Pension-indexation>

Melbourne Institute, the University of Melbourne, HILDA Survey (29 April 2016) Melbourne Institute: The Household, Income and Labour Dynamics in Australia (HILDA) Survey
<https://www.melbourneinstitute.com/hilda/>

Norman, political reporter Jane, Proposed Changes to Paid Parental Leave Explained (26 October 2016) ABC News

<www.aph.gov.au>


Scott Morrison, ‘Superannuation: Terms of Reference (17 February 2016)’

Super Baby Debt - ASFA Super Guru

