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## Australia's Parental Leave Pay Scheme: Temporal Disruption and 'Genuine' Attachment to Waged Work

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**Abstract:** Australia's parental leave provisions were enacted to provide both leave and pay for new parents, with the intent of promoting economic gender parity and softening the financial burden of motherhood. This paper investigates the structure of Australia's parental leave pay (PLP) scheme, particularly its work-test eligibility requirement, and considers the consequences of this requirement for women excluded from PLP benefits by virtue of their attachment to waged work being deemed disingenuous (ie, not 'genuine'). The article theorises a retemporalisation of care that allows for the varieties and transformations of embodied time in the gendered body.

Parenthood exacts an economic burden that generally falls more heavily on mothers than fathers.<sup>1</sup> In Australia, women with children can expect to earn nearly half the lifetime earnings of men with children.<sup>2</sup> The Australian government has attempted to lessen the gendered economic burden of motherhood through the provision of two types of benefits for new parents: parental leave from work and parental pay during some or all of that absence. At present, the parental leave system in Australia has separate provisions for leave and for pay. The provisions for parental leave, as

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<sup>1</sup> See Tanya Livermore, Joan Rodgers and Peter Siminski, 'The Effect of Motherhood on Wages and Wage Growth: Evidence for Australia' (2011) 87 *Economic Record* 80.

<sup>2</sup> Men with children earned, on average, \$2.5 million compared to \$1.3 million for women with children. Rebecca Cassells et al, *The Impact of a Sustained Gender Wage Gap on the Australian Economy* (Report to the Office for Women, Department of Families, Community Services, Housing and Indigenous Affairs, National Centre for Social and Economic Modelling University of Canberra, November 2009) 9 <[http://www.natsem.canberra.edu.au/storage/gender\\_wage\\_gap.pdf](http://www.natsem.canberra.edu.au/storage/gender_wage_gap.pdf)>; Rebecca Cassells et al, *She Works Hard for the Money: Australian Women and the Gender Divide* (AMP.NATSEM Income and Wealth Report Issue 22, National Centre for Social and Economic Modelling University of Canberra, April 2009) 32 <[http://www.natsem.canberra.edu.au/storage/AMP\\_NATSEM\\_22.pdf](http://www.natsem.canberra.edu.au/storage/AMP_NATSEM_22.pdf)>.

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governed by the *Fair Work Act 2009* (Cth), give protected absence from waged work for 12 months after childbirth, extendable up to 24 months. The provisions for statutory parental leave pay,<sup>3</sup> as governed by the *Paid Parental Leave Act 2010* (Cth), provide the federal minimum wage for up to 18 weeks for the primary carer,<sup>4</sup> and up to two weeks for secondary carers ('dad and partner pay').<sup>5</sup> Pay is provided by the Australian Government, but administered by employers.<sup>6</sup> These two components of the parental leave system operate independently and are subject to separate eligibility criteria.

A subtle, but important distinction between the legislation for parental leave and for parental leave pay is that the former is oriented toward the goal of protecting parental time for care labour, whereas the latter is designed to provide temporary material support with an eye toward women's eventual re-entry to the workforce. Despite referencing the gendered temporalities of care in its broad objectives,<sup>7</sup> the *Paid Parental Leave Act 2010* (Cth) remains firmly situated in a paradigm privileging time in waged work. The broad legislative objectives relating to both parental leave pay and dad and partner pay are to:

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<sup>3</sup> I distinguish 'statutory' parental leave pay as that which is provided by the *Paid Parental Leave Act 2010* (Cth) as opposed to employer funded and provided parental leave pay.

<sup>4</sup> *Paid Parental Leave Act 2010* (Cth).

<sup>5</sup> *Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measures) Act 2012* (Cth). Although a detailed critique of Dad and Partner Pay is beyond the scope of this paper, the short nature of this parental leave pay further demonstrates the gendered nature of care contemplated by the Act.

<sup>6</sup> Self-employed, contract, and seasonal employees who are eligible for paid parental leave but do not have sustained contact with a specific employer may receive statutory parental leave pay direct from Centrelink, Department of Human Services: *Paid Parental Leave Act 2010* (Cth) s 63.

<sup>7</sup> *Ibid* s 3A(1B).

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- (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.<sup>8</sup>

The section identifying the objectives specific to parental leave pay (providing pay to ‘mainly birth mothers’) has one objective that directly addresses the health and development of birth mothers and children.<sup>9</sup> However, the other two objectives explicitly reference the carer’s engagement in waged work: the objective of allowing carers to take time off work to care for the child after the child’s birth or adoption (a phrasing that implies the temporary nature of the leave and the expectation of a timely return); and the objective of encouraging women to continue to participate in the workforce.<sup>10</sup> This article focuses specifically on the provisions for parental leave pay, rather than the provisions for leave or dad and partner pay, because it clearly demonstrates the hegemonic temporal imprint left by its author, the Productivity Commission, and continues to disproportionately impact on specific, targeted groups of women with children.

Australia’s current parental leave pay system, as codified in the *Paid Parental Leave Act 2010* (Cth), originated in a 2009 report conducted by the Productivity Commission at the behest of the Rudd Government.<sup>11</sup> The purpose of the report was

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<sup>8</sup> Ibid.

<sup>9</sup> Ibid s 3A(1B)(1)(b).

<sup>10</sup> Ibid s 3A(1)(a)-(c).

<sup>11</sup> Commonwealth of Australia, Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children* (Productivity Commission, 2009) <<https://www.pc.gov.au/inquiries/completed/parental-support/report/parental-support.pdf>>.

to assess the 'economic, productivity and social costs and benefits of providing paid maternity, paternity and parental leave' in Australia.<sup>12</sup> The Productivity Commission's larger charge is to advise the government on matters related to 'industry, industry development, or the productive performance of the economy as a whole'.<sup>13</sup> In order to develop its report on parental leave within this established mandate, the Productivity Commission oriented its investigation on employment by examining how women were attempting to 'balance' employment with the 'important job' of child-rearing. The primary goal that it identified for a parental leave pay system was the promotion of child and maternal health and welfare.<sup>14</sup> According to the report, child and maternal health and welfare benefits needed to be provided and protected for a period of several months after the birth of the child. Absence from work should be protected for six months, the report noted, and 'longer periods (of up to 9 to 12 months) [could also be] beneficial'.<sup>15</sup>

The Productivity Commission report made a number of recommendations as to what eligibility criteria should be used to determine which applicants receive parental leave pay. Among other provisions, the report stated that a 'critical' prerequisite to any parental leave pay should be that the worker have a so-called 'genuine' attachment to waged work.<sup>16</sup> The report defined a 'genuine' attachment as one that produces an income from waged work within the time span enumerated by

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<sup>12</sup> Ibid XVI.

<sup>13</sup> *Productivity Commission Act 1998* (Cth) s 6(2).

<sup>14</sup> See Productivity Commission, above n 11, XXV.

<sup>15</sup> Ibid 4.53.

<sup>16</sup> Ibid 2.22.

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a ‘work test.’ Specifically, the Productivity Commission suggested that a successful applicant for parental leave pay must have been engaged in waged work for a minimum of 330 hours over a period of 10 out of the previous 13 months, with no more than an eight-week gap between two consecutive waged work days. Those who fall outside of these dictates are considered to lack a ‘genuine’ attachment to the waged labour market – in other words, they have a *disingenuous* attachment to waged work – and therefore do not qualify for parental leave pay. The report’s work-test recommendation was retained in the subsequent legislation, the *Paid Parental Leave Act 2010* (Cth), and remains in effect in Australia today. As this article will later show, the mothers who are excluded from parental leave pay are those whose waged work is disrupted: specifically, women who engage in precarious labour, and women who have closely-spaced subsequent children. These two groups of women are excluded from parental leave pay because their attachments to the waged labour market are deemed disingenuous.

In this article, I illustrate how Australia’s provisions for parental leave pay – particularly the ‘work test’ eligibility requirement relying on ‘genuine’ attachment to paid work – excludes women who defy the neoliberal expectation that they devote their time to those activities that are maximally economically productive. Further, I argue that this prioritisation of a ‘genuine’ attachment to waged work is emblematic of a larger problem with Australia’s parental leave pay system, namely that it penalises workers, particularly some women with children, who labour outside of the dictates of hegemonic time. In short, the framing of these parental leave

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provisions denigrates the very gendered care labour they purport to enable.<sup>17</sup> As an alternative conception of the relationship between time and labour, I suggest drawing on the temporal theories of Pierre Bourdieu, whose conception of time arguably makes room for care and may point the way to a more equitable parental leave pay system. Ultimately, this article uses the example of Australia's paid parental leave scheme, and particularly the construction of non-genuine or disingenuous forms of labour as evidence of ineligibility, to investigate notions of care as labour disruption, and to imagine alternative temporalities that better account for care and the gendering of care labour.

Part I outlines the concerns with the Australian parental leave pay system as codified in the *Paid Parental Leave Act 2010* (Cth). First, I explain the system's problematic assumptions that families will co-fund their parental leave through alternative income sources, and that the parents who apply for PLP should meet eligibility requirements designed around mothers living in heteronormative, double-income, male-breadwinner households. In the discussion of eligibility requirements, I am particularly concerned with the work test, which explicitly prioritises claimants who have so-called 'genuine' attachments to waged work. Part II elaborates on the work-test eligibility requirement, discussing its consequences for mothers whose waged work is disrupted by unpaid care work. This analysis reveals the larger problem with the work-test requirement: its heuristic of genuine (vs disingenuous) attachment to work penalises mothers who defy neoliberal chrononorms by

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<sup>17</sup> See *ibid* 2.25.

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engaging in unpaid care work outside of the time dictates established by the Productivity Commission. In Part III, I suggest an alternative conception of the relationship between time and labour, one that acknowledges ‘disingenuous’, precarious, and disrupted attachments to waged work and chrononorms. I refer to this as a retemporalisation of the body. In contrast to hegemonic time – the singular conception of capitalism’s time under neoliberalism – I imagine an alternative temporal paradigm based on pluralistic understandings of time as embodied. Such a paradigm, drawn from the temporal theories of Pierre Bourdieu and Rita Felski, can make room for care work by acknowledging the varieties and transitions of embodied time in the gendered body.

### **I: Critiquing Australia’s Parental Leave Pay System**

This section identifies and critiques the problematic assumptions that underlie Australia’s system of statutory parental leave pay, as provided in the *Paid Parental Leave Act 2010* (Cth). First, the amount and duration of PLP that is provided to claimants was determined based on the assumption that families co-fund their leave using other income sources.<sup>18</sup> Empirical data from the Australian Bureau of Statistics suggests that this is not a fair assumption.<sup>19</sup> Second, the eligibility requirements that

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<sup>18</sup> Productivity Commission, above n 11, 4.53.

<sup>19</sup> See Australian Bureau of Statistics, *Housing Occupancy and Costs, 2013-14* (4130.0, 16 October 2015) <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4130.0~2013-14~Main%20Features~First%20Home%20Buyers~7>>; but see also Australian Government and 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>>.

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are used to determine who qualifies for PLP are problematic: residency and visa requirements are little understood and can be culturally insensitive, and more directly related to our purposes here, income tests and work tests are premised on heteronormative assumptions about household structure and gendered time use. The effect of these eligibility requirements is to exclude certain groups of mothers from statutory leave pay on questionable grounds. I am mainly concerned in this article with the impact of the work-test eligibility requirement, whose consequences will be discussed at length in Part II to follow.

### **Problem 1: The Assumption of Co-Funding**

A cursory glance reveals an important limitation in Australia's current statutory parental leave pay system: there is a mismatch between the recommended duration of leave (six months or more) and the amount of pay that is provided (up to 18 weeks). This mismatch is not accidental: the 2009 Productivity Commission Report explicitly stated that a paid parental leave scheme should allow a mother to provide primary care for the first six months of a child's life,<sup>20</sup> and that this leave should be facilitated by 18 weeks of pay, at the minimum wage level.<sup>21</sup> Eighteen weeks was chosen as the minimal length of funding that could facilitate the six months of parental care because, as explained in the Commission's report, parents (note the plural form) could 'co-fund' their parental leave through savings, reduced

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<sup>20</sup> Note the gendered language of 'mother': see Productivity Commission, above n 11, J.4.

<sup>21</sup> Productivity Commission, above n 11.

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consumption, and 'borrowings on the basis of housing equity'.<sup>22</sup> This terminology maintains heteronormative and patriarchal attitudes to gendered divisions of labour: it assumes that the 'male' partner should continue to support the 'female' partner, even in the event of federal assistance. This has the effect of maintaining gendered expectations of male partners as providers and primary breadwinners. 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'.<sup>23</sup> In taking this position, the Productivity Commission assumed that families have access to alternative income sources and accumulated assets to smooth their consumption during the parental leave period. Families are assumed to be in possession of significant savings, and consistently living a comfortable lifestyle with sufficient buffer that they have room to 'reduce consumption'.<sup>24</sup> The Commission appears to have envisioned the terms of the parental leave system to accommodate a household that is heteronormative, two-parent, and likely dual-income.

To illustrate the lack of an evidence basis for the Commission's position on co-funding, we need look no further than its reference to home equity as a possible co-funding source. Here, they assume not only that the household in question is home-owning, but also that the family has sufficient equity in the home to materially contribute to the co-funding of parental leave. Yet this assumption is belied by the

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<sup>22</sup> Ibid 4.53.

<sup>23</sup> Ibid.

<sup>24</sup> See also Fiona Allon, 'The Feminisation of Finance: Gender, Labour and the Limits of Inclusion' (2014) 79 *Australian Feminist Studies* 12.

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statistics on home ownership. In 2011–12, fewer than half of young couples (45%) owned their home, with or without a mortgage.<sup>25</sup> Also in that year, couple-households with and without children made up the majority of first-time home buyers with a mortgage (65%),<sup>26</sup> and nearly one-third (30%) of all first-time homebuyers with a mortgage that year were couples with dependent children.<sup>27</sup> The newness of these households' mortgages severely constrains their ability to draw on home equity to finance any ongoing, unpaid parental leave to reach the 26-week benchmark. The assumption about co-funding through home equity also does not account for the existence of real estate market fluctuations across Australia.<sup>28</sup> In assuming that 'most parents' could co-fund their parental leave through housing equity and other sources, extending an 18-week period of leave to 26 weeks, the Commission drew its conclusions without reference to financial data or evidence.

The Commission's assumption about parents' co-funding of parental leave not only lacks a basis in evidence; it is also tautological. The Commission report notes that, at the time of writing in 2008, parents were self-funding their leave, but of course this was the case. At that time, there was no federally funded parental leave pay.

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<sup>25</sup> Australian Bureau of Statistics, *Housing Occupancy and Costs, 2011-12* (4130.0, 28 August 2013) <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4130.02011-12?OpenDocument>>.

<sup>26</sup> Ibid.

<sup>27</sup> 65% of first-time home buyers with a mortgage were couple-households, and 47% of these couples had dependent children: Ibid.

<sup>28</sup> This assumption clearly does not account for the disparate experience of first-time home buyers with children in Sydney and Melbourne, where house prices are significantly higher than those in other parts of Australia. See Australian Bureau of Statistics, *Housing Finance, Australia, December 2016* (5609.0, 10 February 2017) <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/5609.0December%202016?OpenDocument>>.

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Without such a funded system, parents had no choice but to cobble together their own arrangements to provide parental care and to allow for maternal recovery as necessary. Parents privately funded what little leave they could afford, either on their own or with the assistance of employers or family resources. To suggest that these improvisations amount to a sort of 'co-funding' scheme, and that such use of co-funding should be expected and encouraged in the new system, is to miss the point of establishing such a system in the first place: to support families' need to provide high quality care, particularly in the early weeks and months of a child's life. It further ignores the changing socio-economic landscape of Australian demographics.<sup>29</sup> The expectation of familial co-funding implicitly undermines the goal of protecting care work by pushing carers to return to paid work as quickly as possible. This privileges economically productive labour over the temporalities of care, further entrenching gendered norms of waged work and unpaid labour. In other words, a parental leave system premised on co-funding does not fix the problem.

### **Problem 2: The Eligibility Requirements for Parental Leave Pay**

Who is Australia's parental leave pay system designed to benefit? Whatever the system's stated purpose, the true answer to this question can be found in the system's eligibility requirements: the criteria it uses to determine who will receive paid parental leave and who will be excluded. The system allows for both primary

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<sup>29</sup> Recent data suggests that younger Australians are worse off than earlier generations due to a number of reasons, including stagnant wages and a rapidly increasing cost of living. See John Daley and Danielle Wood, *The Wealth of Generations* (Grattan Institute, December 2014) 11 <<https://grattan.edu.au/wp-content/uploads/2014/12/820-wealth-of-generations3.pdf>>.

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and secondary claimants. Birth mothers are the only people eligible to apply as primary claimants, except under extraordinary circumstances such as death or serious illness.<sup>30</sup> In practice, more than 99% of all recipients of PLP in the 2012-13 financial year were female.<sup>31</sup> If the primary claimant returns to waged work, then another individual may qualify as a 'secondary claimant.' The three categories of secondary claimants are (a) the birth mother's partner (e.g. the birth father); (b) the child's other legal parent where the birth parents are not a couple, or (c) the partner of the child's other legal parent.<sup>32</sup> No matter the applicant – primary or secondary, male or female – three types of eligibility requirements apply: residency and visa requirements, income tests, and work tests. Each of these eligibility requirements is problematic in its own way. First, residency and visa requirements can be culturally insensitive and are not widely understood, leading to claimants losing out on PLP they could readily qualify for. Second, and more directly to the point of this article, tests of the claimant's income and work history are based on heteronormative and neoliberal assumptions about household structure and gendered time-use. These eligibility requirements lead to the unwarranted exclusion of certain groups of women from parental leave pay. As discussed below, this article is particularly concerned with the work test's exclusion of two groups of women, those who

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<sup>30</sup> Commonwealth of Australia, 'Paid Parental Leave Guide: 2.2.7 Primary Carer Is Person Other than Birth Mother for PLP Purposes' (20 September 2016) <<http://guides.dss.gov.au/paid-parental-leave-guide/2/2/7>>.

<sup>31</sup> Institute for Social Science Research, *PPL Evaluation: Final Report* (Department of Social Services, November 2014) 189 <[https://www.dss.gov.au/sites/default/files/documents/03\\_2015/finalphase4\\_report\\_6\\_march\\_2015\\_0.pdf](https://www.dss.gov.au/sites/default/files/documents/03_2015/finalphase4_report_6_march_2015_0.pdf)>.

<sup>32</sup> 'Paid Parental Leave Guide', above n 31, 1.1.S.20 (6 November 2017) <<http://guides.dss.gov.au/paid-parental-leave-guide/1/1/s/20>>.

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engage in precarious work and those who have children spaced 'too closely' together. This section will briefly discuss residency and visa requirements before addressing the other eligibility requirements in greater depth.

### *Residency and Visa Requirements*

For Australian citizens and holders of special category visas,<sup>33</sup> the residency requirement is automatically fulfilled merely by being resident in Australia. Matters are more complicated for parents who hold temporary visas. Only some individuals on temporary visas are eligible for PLP, depending on the type of visa;<sup>34</sup> further, only some of these visa holders may leave the country subject to maximum lengths of time and retain their PLP, while some who leave will lose the PLP.<sup>35</sup> Among the general public, there is a significant knowledge gap regarding which visa-holders may temporarily leave and still retain benefits.<sup>36</sup> The confusion around the visa eligibility requirement can present a particular challenge for claimants because PLP cannot be stopped and restarted. As the Department of Social Services found in an earlier review report (June, 2014) evaluating the PLP scheme, a number of mothers with certain temporary visas who were eligible for PLP lost eligibility when they

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<sup>33</sup> Special category visas provide New Zealand citizens the right to remain in Australia, see *Migration Act 1958* s 32.

<sup>34</sup> As determined by the Minister administering the *Migration Act 1958: Paid Parental Leave Act 2010* (Cth) s 45(2).

<sup>35</sup> See Department of Human Services, 'Parental Leave Pay While Travelling Outside Australia' (17 February 2017) <<https://www.humanservices.gov.au/customer/enablers/parental-leave-pay-while-travelling-outside-australia>>.

<sup>36</sup> See Commonwealth of Australia, Department of Social Services, *Paid Parental Leave Scheme: Review Report* (Department of Social Services, June 2014) 66 <[https://www.dss.gov.au/sites/default/files/documents/06\\_2014/paid\\_parental\\_leave\\_scheme\\_review\\_report.pdf](https://www.dss.gov.au/sites/default/files/documents/06_2014/paid_parental_leave_scheme_review_report.pdf)>.

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travelled overseas to introduce their babies to family.<sup>37</sup> Parents who leave Australia for a period of time during the parental leave period may end up sacrificing PLP for important cultural or familial obligations or knowledges.

### *Income Tests*

The second type of eligibility requirement in Australia's PLP scheme is the income threshold. This income test is tied first to the birth mother's income, and then to the income of any secondary claimant. To qualify for federal PLP, as of 2015, a claimant's individual income must be AUD \$150,000 or less.<sup>38</sup> If a secondary claimant would like to receive PLP, 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.<sup>39</sup> The problem with this income test is that it rests on heteronormative assumptions about gendered time use: it is set up to benefit women who are secondary earners in double-income households, taking no account of single-income households or households where the birth mother is the primary or sole income-earner.<sup>40</sup> To illustrate the consequences of this income test, consider a two-parent household where the birth mother works full-time earning \$155,000 and her partner is casually employed earning less than \$10,000 annually. Under the

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<sup>37</sup> Ibid 65.

<sup>38</sup> An individual who earns over this amount may still qualify for unpaid leave or for employer-funded leave pay.

<sup>39</sup> Though she or he may be eligible for unpaid parental leave or parental leave pay as provided privately by her employer.

<sup>40</sup> Admittedly, these are a minority of Australian households; see Australian Bureau of Statistics, *Australian Social Trends* (4102.0, 20 November 2013) <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/5849F483A2C5646ECA257C9E00177D59?opendocument>>.

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current system, because the birth mother earns over the income threshold, neither she nor her low-income earning partner would qualify for PLP. Contrast this to a heteronormative household where the birth mother is a lower-income earning woman earning \$10,000 annually, who has a higher-income earning male partner earning \$155,000. Though the family income may be the same as the family in the previous example, because the income test is tied first to the birth mother, she would qualify for PLP under the income test. As these two cases illustrate, the requirement that the birth mother be the primary claimant in a strict income test fails to account for the variety of possible economic and care structures that households may take. An even more problematic example of the heteronormative basis of the eligibility requirements is seen in the work test, discussed below.

#### *Work Tests*

The most problematic eligibility requirement in Australia's paid parental leave system is the work test. According to this requirement, in order to be eligible for PLP, a claimant must have worked for ten out of the previous 13 months, for a minimum of 330 hours in those ten months, with no more than an eight-week gap between two consecutive working days. The reasoning goes that workers who meet this standard can be assumed to have a 'genuine' attachment to waged work and therefore have earned statutory parental leave pay. However, the work test raises significant concerns which directly contradict objectives enumerated in the Act.<sup>41</sup> In order to receive this pay, the claimant must also qualify, under the separate

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<sup>41</sup> See *Paid Parental Leave Act 2010* (Cth) s 3A.

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requirements of the *Fair Work Act 2009* (Cth), for parental leave. The claimant qualifies for this unpaid leave component by having been employed by the same employer on a 'regular and systematic basis' for at least 12 months. It is possible for an employee to qualify for *leave pay* but not for *leave*. For example, if an employee switches employers part-way through her pregnancy, she could still be eligible for PLP but would not qualify for unpaid parental leave as provided by the *Fair Work Act 2009* (Cth).<sup>42</sup> In short, the Paid Parental Leave Act provides a payment but does not provide a right to take leave under the *Fair Work Act* (Cth).<sup>43</sup>

## **II. Critiquing the Work Test: Consequences of the 'Genuine (vs Disingenuous) Attachment to Work' Heuristic**

Australia's parental leave pay system, as designed by the Productivity Commission and later codified in the *Paid Parental Leave Act 2010* (Cth), explicitly seeks to reward, and thus promote, women's 'genuine' attachments to the waged labour market. It rewards this attachment through what I call a heuristic of genuine vs disingenuous attachment to waged work. The work-test eligibility requirement encodes this heuristic by dictating that in order for a claimant to qualify for parental leave pay, the claimant must have spent a requisite proportion of the preceding weeks or months in waged work. According to this requirement, only claimants who spend

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<sup>42</sup> Employers are only required to pay employees' government-funded PLP if the employee is eligible for unpaid parental leave. If the employee is not eligible for unpaid leave under the *Fair Work Act 2009* (Cth), then PLP will be paid by Centrelink rather than her employer; however some employers have voluntarily opted-in to pay PLP to mandatory and non-mandatory employees. Self-employed, contract, and seasonal employees who are eligible for paid parental leave ('PPL') but do not have the requisite 'attachment' with a specific employer may also receive PLP direct from Centrelink. See also Department of Social Services, above n 36, 46.

<sup>43</sup> See *Paid Parental Leave Act 2010* (Cth); *Fair Work Act 2009* (Cth); see also Department of Social Services, above n 36, 3.

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the specified amount of time in waged work are deemed to have a genuine (vs disingenuous) attachment to waged work, and only those with a genuine attachment are deserving of parental leave pay. This heuristic is premised upon the hegemonic chrononorms of neoliberalism, namely the expectation that time is a commodity to be 'used' or 'spent' in activities that are primarily and maximally economically productive. Applying this heuristic in the determination of parental leave pay eligibility has real consequences. This section examines how the work-test eligibility requirement as presently constituted impacts two groups of women: women in precarious relationships with waged labour and women who have subsequent children closely spaced together. Both groups of women deviate from hegemonic chrononorms and are excluded from the parental leave pay system as a result.

### **Women in Precarious 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 to represent 'genuine' attachment according to the temporal definition provided by the Commission or it occurs or exists 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 hegemonic time'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.<sup>44</sup> The Commission concluded that granting parental leave pay to women with precarious links to waged work would 'create perverse incentives for people to enter the labour force merely to qualify for the benefit, rather than because they seriously wish to obtain a job'.<sup>45</sup>

### **Women with Closely Spaced Subsequent Children**

A second group of women who are penalised by the work test are, ironically, explicitly identified by the Commission as potentially in danger of failing the work test though they are targets of the parental leave payment scheme: women with closely spaced subsequent children. The Commission reported that such women were one of several groups of mothers who could experience the 'undesirable outcome' of impeded workforce re-entry. (The other groups were women providing less than 6 months of care and women significantly delaying subsequent children,

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<sup>44</sup> Productivity Commission, above n 11, 2.22.

<sup>45</sup> Ibid 2.25.

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especially women having children later in life.<sup>46</sup>) According to the Commission, 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'.<sup>47</sup> It aimed to do so by crafting a work test that avoided the 'undesirable outcomes' noted above and by rewarding timely re-integration according to the dictates of chrononorms.<sup>48</sup>

However, under the current system, these undesirable outcomes can and do occur.

For example, imagine a woman who falls pregnant six months after the birth of her first child. Let us assume she has worked full-time for several years prior to the birth of her first child. She had planned to take 52 weeks off after the birth of her first child, 18 of which qualified as paid parental leave. At the end of her 52 weeks of leave, she finds herself 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.<sup>49</sup> Because the unpaid parental leave she took following the 18-weeks of parental leave pay does not count toward the Paid Parental Leave Act's 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 first child.

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<sup>46</sup> Ibid J.4.

<sup>47</sup> Ibid 2.23.

<sup>48</sup> Ibid J.4.

<sup>49</sup> These calculations are based on a year as 52.18 weeks with a month as 4.35 weeks.

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Complicating this is the high level of legal leave literacy required of women to qualify. The convoluted temporal requirements of parental leave pay can be confusing. Though paid leave need not be taken immediately following the birth or adoption, it cannot, as noted above, be stopped and started again. Just as a later Department of Social Services evaluation cautioned, in order for a claimant to retain parental leave pay for subsequent births, a high level of legal leave literacy is required.<sup>50</sup> This demonstrates that parental leave pay is a legal construct; it is not an entitlement based in parental care labour or care-based temporalities, it is a waged-work-based entitlement. What dictates parental leave pay is not simply how the time is actually experienced on leave – which is to care – but rather how the time is statutorily characterised and allocated by the claimant.

### **Chrononorms and the Work Test**

When the Productivity Commission undertook the inquiry that would become the basis of Australia's parental leave system, its task was to investigate how women could 'balance' employment with the 'important job' of child-rearing. And yet, the system they devised does not appear to treat child-care labour as 'important' at all. Instead, what we see in the work test is that labour is only important, for the purposes of determining leave pay eligibility, if it adheres to the Productivity Commission's understanding of 'genuine' attachments – that is, 330 hours of waged work completed in ten out of thirteen months with no more than an 8-week gap between two consecutive working days. This demonstrates the Productivity

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<sup>50</sup> Department of Social Services, above n 36, 60.

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Commission's mandated bias in favour of employers, industry, and activities deemed primarily and maximally economically productive.<sup>51</sup> Women whose labour falls outside of this definition – those who engage in labour in disrupted or precarious forms, or who 'only' engage in unpaid care work, eg, child-rearing – are considered to be disingenuous in their attachments to the waged labour market and therefore do not qualify for parental leave pay. In this way, hegemonic time treats disingenuous attachments to waged work as agitations against the hegemony; those falling within the ambit of 'disingenuous' attachments are thus excluded from parental leave pay. Both groups of women are penalised precisely because their waged work is disrupted or replaced by care work. Yet, these are the very women whom the parental leave scheme is meant to address – to 'encourage women to continue to participate in the workforce'<sup>52</sup> and address the consequent disengagement from the waged workforce that often occurs after subsequent children are born or adopted.<sup>53</sup>

### **III. Retemporalising Care Work: Toward a Paradigm of Plural, Embodied Time**

The Productivity Commission's prioritisation of 'genuine' attachment relies on a patriarchal paradigm of labour, one which reflects the gendered temporal norms of a hetero-capitalistic system. I have written elsewhere about neoliberalism's

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<sup>51</sup> See *Productivity Commission Act 1998* (Cth) s 6.

<sup>52</sup> *Paid Parental Leave Act 2010* (Cth) s 3A(1)(c).

<sup>53</sup> Productivity Commission, above n 11, sch J.

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colonisation of time as hegemonic time, manifesting as quantifiable, financialised units of singular time unfolding across a linear trajectory.<sup>54</sup> Without repeating that analysis here, I reference Elizabeth Freeman's interpretation of Pierre Bourdieu to understand how normative, hegemonic time is both inscribed in the body and orients the body toward maximising productivity.<sup>55</sup> In contrast to hegemonic time – the singular conception of capitalism's time – I imagine an alternative temporal paradigm based on pluralistic understandings of time as embodied. Such a paradigm can make room for care by acknowledging that time is not only or singularly valuable when experienced in primary furtherance of immediate, maximum economic productivity. In this section, I conceptualise temporalities as reflexively reverberating between individual agent and collectivities, radiating and reflecting the past, present, and future through embodied practice. To do so, I consider Pierre Bourdieu's concept of time as embodied and Rita Felski's conception of time as a plurality.

### **Embodiment of Time**

In Pierre Bourdieu's theory of temporality, he conceives of time not as a reified 'thing in itself', an object-like concept operating independently of external constructions or influences,<sup>56</sup> but rather as a construct that is reflexively created by the practical action of agents and their habitus. The habitus, according to Bourdieu,

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<sup>54</sup> Starla Hargita, 'Disrupting the Hegemonic Temporality of Superannuation' (2016) 42(2) *Australian Feminist Law Journal* 223.

<sup>55</sup> Elizabeth Freeman, *Time Binds: Queer Temporalities, Queer Histories* (Duke University Press, 2010) 3.

<sup>56</sup> Lisa Adkins, 'Sociological Futures: From Clock Time to Event Time' (2009) 14(4) *Sociological Research Online* 8, [2.1].

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is the conscious and unconscious language, mannerisms, clothes, affect, accent, and other perceivable and embodied affectations that identify a person as part of a group.<sup>57</sup> A 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 habitus, their practical action actually shapes and creates their experience of temporality. Thus, the habitus is necessarily reflexive. This circular and cyclical approach to time suggests co-constructions of time as multiple temporalities.

According to Elizabeth 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'.<sup>58</sup> Freeman illustrates her point with the temporal example of waged work: the shift from agriculture-

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<sup>57</sup> Pierre Bourdieu, *Pascalian Meditations* (Stanford University Press, 2000).

<sup>58</sup> Freeman, above n 55, 3.

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based labour reliant on seasonal and climatological rhythms to waged work of the industrialised, productivised era 'entailed a violent retemporalisation of bodies'.<sup>59</sup> And so the masses of people sharing in the labour of waged work, made temporally possible through the forces of chrononormativity, are a constructed collectivity, a socio-economic inculcation of new temporal norms and practices.<sup>60</sup>

Chrononormativity as we see it today sells time that privileges the legal and ideological temporalities of the neoliberal state. This state treats people as 'formally' equal in gender-neutral statutory language, but relies on a gendered and heteronormative division of labour that preferences waged labour. This is most evident in the hegemonic view of 'domestic time'. Domestic time, as Freeman sees it and as I use it here, is a heterogendered and class-inflected temporal ideology.<sup>61</sup> 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.<sup>62</sup> 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

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<sup>59</sup> Ibid.

<sup>60</sup> Ibid 3–5.

<sup>61</sup> Ibid 39.

<sup>62</sup> Ibid.

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capitalist productivity, using bodies as tools for the capitalist trade and privileging financialised and productivised spaces and temporalities rather than the pluralities of care-based temporalities.

Rita Felski suggests that time is plural, unfolding across three simultaneous levels: the everyday, the life scale and large-scale expansions.<sup>63</sup> Everyday time, Felski argues, is the phenomenological sense of time as we experience it on a day-to-day basis.<sup>64</sup> 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-scale 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.<sup>65</sup> Finally, large-scale time expands the relevance of life time to incorporate a reference to the long-term processes of time.<sup>66</sup>

According to Freeman, time orientates individuals toward maximum productivity through the subtle inculcation of heteronormative expectations and collective actions of inclusion/exclusion.<sup>67</sup> As previously outlined, this view of heteronormativity aligns it with neoliberal capitalism and further views sexual dissonance as deeply connected with temporal dissonance. Bodies, rather than being communal elements

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<sup>63</sup> Rita Felski, *Doing Time: Feminist Theory and Postmodern Culture* (New York University Press, 2000).

<sup>64</sup> *Ibid* 17.

<sup>65</sup> *Ibid*.

<sup>66</sup> *Ibid* 18.

<sup>67</sup> See Elizabeth Freeman, 'Time Binds, Or, Erotohistoriography' (2005) 23(3-4) (84-85) *Social Text* 57.

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of queer erotics, shared melancholia, or sub-cultural politicised identities as suggested by Freeman, are treated as tools of capitalist productivity expressed in waged work.<sup>68</sup> By contrast, Felski's theory of plural temporality enables us to envision bodies as something far more than mere tools of capitalist production. In Felski's model, time is lived, embodied, and relational, experienced simultaneously across the everyday, the life course, and monumental expanses.

This conception of time as pluralistic and embodied antagonises hegemonic chrononorms. Taking 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 (neoliberal) state. Bourdieu suggests instead that the power can be dispersed among individuals operating within social settings, who may live nonlinear, unscripted lives of interruption, disruption, and creation outside the mandate of maximising economic productivity. Care disrupts hegemonic trajectories of labour and transforms intimate relations with waged and unwaged work and becomes embodied and expressed in habitus, expanding from the individual to the collective.

To conceive of time as reflexively constructed across multiple temporalities agitates against a hegemonic time, suggesting instead an alternative temporal orientation of embodiment. Conceptualising time as a plurality 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

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<sup>68</sup> Ibid.

and experienced. By reference to the disingenuous, a retemporalisation emerges, shifting from hegemonic time's singular emphasis on waged work toward care-based temporalities of day-to-day time, life time, and collectively embodied time. Rather than emerging from an underlying conception of time based on pluralistic, care-based temporalities, the time of parental leave pay is based on neoliberal and hetero-capitalist hegemonic time. The Productivity 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'.<sup>69</sup> The report does contain many references to child welfare and development, yet the predominant language of the report's conclusions and findings is 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 chrononormative 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 plurality of parental experiences of work and care time. 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 legislation supports social reproduction through financial assets and instruments such as home equity and mortgages. Such an

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<sup>69</sup> Productivity Commission, above n 11, V.

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approach relies on market attachment through savings, home equity, and a second income. The hetero-capitalist legal construct of Australia's parental leave pay regime is a result of combined heteronormativity and emphasis on productivity and financialised capital.

#### **IV. Conclusion**

As I have shown, Australia's parental leave policies are problematic because they rest on neoliberal assumptions, that is, on a hegemonic understanding of how time ought to be conceptualised. The policies reward workers whose time-use conforms to chrononorms – who spend their time contributing to the economy through consistent, linear, waged labour – and penalise workers whose experience of time agitates against chrononorms by incorporating the interruptions and disruptions of unpaid care labour. In the hegemonic view, time, the concept, is reified as an object, one that operates independently of external constructions or influences by imposing a rigid, gendered script on how all individuals should spend and sequence their lives.<sup>70</sup> Hegemonic time is the singular conception of capitalism's time. Against this view, this article considers a pluralistic understandings of time as embodied. I have linked Rita Felski's pluralistic temporalities to Pierre Bourdieu's habitus, imagining an alternative in which economically 'productive' constructions of time are not privileged over all others – an alternative in which value is also placed on experiences of time, such as care, that are disruptive, 'disingenuous', and

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<sup>70</sup> See also Adkins, above n 56, [2.1].

transformative.<sup>71</sup> In this conception, time reflexively reverberates between individual agent and collectivities, radiating and reflecting the past, present, and future through embodied practice and suggesting very different implications for how time is, or should be, experienced.

Following Bourdieu, I suggest that temporality should be conceived as embodied and enacted, not imposed or hegemonic. As such, there is room to value labour that is neither bound to linear clock-time, nor waged. Proposing an alternative relationship to 'attachment' that does not rely on hegemonic time's 'genuine' attachment to waged work, I instead suggest an account of attachment that acknowledges 'disingenuous', precarious, and disrupted attachments to waged work. By reference to maternity, I suggest a retemporalisation of the body that shifts the genuine attachment from one focused on waged work toward one that accounts for disrupted temporalities and the disingenuous. A parental leave pay system that accounts for the disruptive qualities of care-based temporalities achieves an alternative relationship to 'attachment' that does not rely on hegemonic time's 'genuine' attachment to waged work.

An alternative to the hegemonic paradigm, a care-based temporal paradigm allows for other priorities beyond waged work and provokes re-examination of the relationships between care, remuneration, and pluralistic experiences of time. As a conceptual tool, it highlights how the legislation's 'genuine' attachments are based

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<sup>71</sup> See Hargita, above n 54 for an in depth discussion of disrupted temporalities and transformative experiences. See also Laurie Ann Paul, *Transformative Experience* (Oxford University Press, 2014).

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on hegemonic time in work-based life-cycles. It further questions the appropriateness of retaining within the legislation recommendations made by the Productivity Commission, a statutory body mandated to serve industry and privilege a specific understanding of economic productivity. By reference to the disingenuous, a retemporalisation emerges, shifting from hegemonic time's singular emphasis on waged work toward care-based temporalities of day-to-day time, life time, and collectively embodied time. Such an account allows, acknowledges, and accepts that disrupted time interrupts and transforms intimate relations with waged and unwaged work and labour. Exploring the disingenuous as a model of radical disruption from capitalist orderings of hegemonic time, this approach rejects as impossible the neoliberal fixation on the atomistic self and hegemonic time.