Ai GROUP SUBMISSION

Senate Select Committee
Work and Care

Work and Care Inquiry

19 September 2022

Introduction

The Australian Industry Group (**Ai Group**) welcomes the creation of a new Senate Select Committee on Work and Care and the opportunity to provide a written submission to the Work and Care Inquiry (**the Inquiry**).

The ability to combine paid employment with ongoing caring responsibilities is an important social and economic objective. Workforce connection and participation are an important part of social inclusion and wellbeing and delivers greater economic security for persons who are carers.

Australia is also witnessing a labour market where job vacancies have risen to record levels. Nationally, job vacancies began rising in the third quarter of 2020, and have since more than doubled to 480,000. This is more than twice the normal rate of vacancies in the Australian economy. [1]

Employers have an important role to play in supporting employees with caring responsibilities and many do so in diverse ways commensurate with capacity and resources.

A range of matters covered in the terms of reference of this Inquiry were identified in the Australian Government's *Jobs and Skills Summit – Outcomes document* and we have mentioned some of these in this submission. Ai Group will continue to play a considered and constructive voice for employers in further consultations with the Australian Government on these issues.

As part of this Inquiry, Ai Group urges the Committee to recommend:

- Policy objectives to support combining work and care should focus on access to workforce participation by carers supported by appropriate levels of labour market flexibility, evolving remote working arrangements, diverse forms of employment and flexible work arrangements.

- Section 65 of the FW Act must be preserved to ensure it provides a facilitative framework for employers and employees to discuss an employee request for a change to working arrangements in way that recognizes the business needs of the employer.

- Enduring flexible and remote working arrangements resulting from the pandemic, bring opportunities for combining work and care. Australia's safety net of terms and conditions of employment does not presently meet the needs of contemporary workplaces or remote working arrangements. Many modern awards for example provide barriers to flexible working arrangements by regulating working hours so they must be worked continuously. This is a barrier to employees who have caring commitments, such as breaking from work to pick up children from school.

- Reform is needed for not just more affordable, but more accessible early childhood education and care (**ECEC**). Many households are locked out of ECEC because their working arrangements cannot be accommodated by the locations and hours of operation of centre-based case. New models of ECEC are needed.

- Considering the Government's recent announcement to provide stronger access to unpaid parental

[1] Source: ABS, LabourForce, detailed and Job Vacancies, May 2022

leave, it is important that a formal review of the *Paid Parental Leave Act 2010 (Cth)* (**PPL Act**) take place. The PPL Act plays a significant role in regulating and influencing the sharing and caring responsibilities within families. The review should consider, amongst other things, the impact and design of Government-funded paid parental payment schemes in shaping how families manage work and care.

- Given that the majority of carers are women, policy considerations should include assessing the impact on women, including their economic well-being.

The current Productivity Commission Inquiry

In parallel with this Inquiry is the current Productivity Commission Inquiry into Carer Leave.

The Productivity Commission Inquiry (**PC Inquiry**) was commissioned by the former Australian Government on 23 February 2022 in response to recommendation 43 made by the Royal Commission into Aged Care Quality and Safety in their *Final Report: Care Dignity and Respect* (**RC Report**). That recommendation was:

> **Recommendation 43**
>
> …the Australian Government should examine the potential impact of amending the National Employment Standards under Part 2-2 of the Fair Work Act 2009 (Cth) to provide for an additional entitlement to unpaid carer's leave.

In making the recommendation, the Royal Commission referred to the objectives of:

(a) supporting carer wellbeing;

(b) care recipient wellbeing by supporting preferences to remain at home while receiving informal care;

(c) alleviating the burden on the aged system in terms of reducing demands on formal care.

The terms of reference for the current PC Inquiry concern:

- The potential impact of amending the National Employment Standards (NES) in Part 2-2 of the *Fair Work Act 2009* (Cth) to provide for a minimum statutory entitlement to extended unpaid carer's leave for national system employees providing informal care to older people who are frail and living at home.
- The social and economic costs and benefits from any change to the NES, including the impact on residential aged care services, and broader net impact on the economy.

On 4 September 2022, Ai Group lodged a submission into that Inquiry which can be accessed here.

A summary of Ai Group's position in the PC Inquiry is:

- Ai Group is not convinced that a new FW Act entitlement to unpaid extended carer leave for the

purpose of caring for the aged and frail is the most effective solution to support carers.

- Given that most caring arrangements extend beyond 2 years in a wide variety of circumstances, employed carers need flexibility in the labour market rather than withdrawing from paid employment for extended periods on unpaid leave. This is best facilitated through the FW Act's right to request flexible work arrangements which currently makes employees who meet the definition of a carer in the *Carer Recognition Act 2010 (Cth*) eligible to make such requests.

- The regulatory effect on employers is an important consideration with an obligation to provide an extended leave entitlement attracting a range of compliance and productivity costs, not to mention the difficulty in sourcing replacement employees with equivalent skills.

- Ai Group is concerned that the creation of a new FW Act entitlement to extended unpaid carers leave could create adverse consequences for the sustainability of the aged care workforce (in which most informal carers are employed) and contribute to reduced earnings for women. Significantly more women are primary carers and further time out of the paid workforce is likely to extend the gender pay gap.

Access to workforce participation by carers is important

Policy objectives to support combining work and care should focus on access to workforce participation by carers supported by appropriate levels of labour market flexibility, evolving remote working arrangements, diverse forms of employment and flexible work arrangements.

Workforce participation delivers benefits of social inclusion, economic security and mental well-being. Australia is also experiencing an extreme shortage of skilled workers with job vacancies at double the rate at what is ordinarily the case.

A summary of current labour market characteristics of carers is attached to Ai Group's Productivity Commission submission regarding Carer Leave and can be accessed here.

In summary:

- There are 350,000 employed primary carers in Australia, accounting for 3% of the workforce.
- There are another 947,000 employed non-primary carers in Australia.
- Employed primary carers are concentrated in the healthcare/social assistance, education and retail sectors.
- There is a large gender disparity in terms of primary caring roles: 5.9% of working age women are primary carers, compared to 1.9% of men. This gender disparity disappears for non-primary caring roles.
- Over half of primary carers have caring obligations (>20 hours per week) which arguably prevent full labour market participation.
- 87% of primary care relationships last for longer than 2 years.

Given that most carers have primary care responsibility for more than 2 years, it is important that policy outcomes focus on access to workforce participation by carers and labour market flexibility.

The diversity of the caring population and their caring circumstances should not be shoehorned into one form of employment. To maximise continued workforce participation by carers, it is essential that the Fair Work Act supports the ongoing availability and viability of different employment arrangements, such as full-time, part-time, casual, and fixed-term employment to ensure that carers are provided with maximum work opportunities.

A focus solely on full-time permanent employment for carers is likely to lock out many from the labour market who may have no desire to commit to the same working hours each week. For example, the many mature age workers who are carers may not wish to conform to ongoing permanent working arrangements for a variety of reasons including work preferences, a desire to exercise a greater level of choice as to when and how they work, and a desire to engage in other non-work related or unplanned activities.

To this end, non-full-time employment such as part-time or casual employment should remain viable alternatives for carers and their employers. The Government's recent *Jobs and Skills Summit Outcomes document* confirms its existing commitment to "set an objective test in legislation for determining when a worker is casual."

In respect of casual employment, ABS statistics show that the level of casual employment has not been increasing. The level of casual employment has been around 20% of the workforce for the past 24 years. It dropped markedly at the start of the pandemic and has not yet fully returned to the 20% level. It currently sits at 1.5% lower than pre-pandemic levels.[2]

In respect of casual employment, it is essential that the Fair Work Act's recent amendments in 2021 regarding casual employees is preserved.

The changes that were made last year to the FW Act were fair and practical, and delivered much needed certainty to businesses and employees. The decisions of the Federal Court in the *WorkPac v Skene*[2] case and the *WorkPac v Rossato*[3] case created $39 billion in cost risks for employers and led to litigation funders pursuing several speculative class actions. The uncertainty has been comprehensively addressed through the High Court overturning the Federal Court's decisions and through the recent amendments to the FW Act to:

- Define a 'casual employee' for the purposes of the entitlements in the NES;
- Protect employers from 'double-dipping' claims by casual employees and ex-employees who claim they are entitled to annual leave and other entitlements of permanent employment;
- Require employers to give each casual employee a copy of a Casual Employment Information Statement; and
- Give eligible casual employees the right to convert to permanent employment in certain circumstances.

[2] *ABS, Source: ABS, Labour Force, detailed, May 2022*

Under the amended legislative provisions, the meaning of a 'casual employee' is clear, and casuals have robust rights to convert to permanent employment should they wish to do so. In addition, all modern awards were recently varied to align award provisions with the new legislative provisions.

Further amendments to disturb the current definition of a 'casual employee' or repeal of the 'double-dipping' protection in s.545A of the FW Act would undoubtedly lead to plaintiff lawyers and the litigation funders they partner with, once again targeting businesses with speculative 'double-dipping' claims.

The last thing that businesses, employees or the community needs is more uncertainty about casual employment arrangements. Such uncertainty would be a major risk to jobs and investment.

In respect of fixed term employment arrangements, Ai Group notes the Government's current policy commitment to limit the use of fixed term employment contracts to the shorter duration of two consecutive contracts or a 2-year period.

Ai Group does not support this restriction. The use of fixed term employment by employers is genuinely driven by constraints beyond an employer's control and already subject to restrictions for the purpose of unfair dismissal (see s.386(3)) and redundancy (s.123(2)), in respect of their use to avoid statutory obligations.

The impact of this restriction is likely to cause unintended job loss and disadvantage those employers and workers engaged in industries with a prevalence of project work or Government-funding arrangements, such as business and workers in the social, community and care sector.

Current FW Act leave provisions that facilitate combining work and care

The FW Act presently provides a variety of entitlements and measures to support the role of employed informal carers in the community. These are largely contained in the National Employment Standards (**NES**) and include the provision for paid personal/carers leave, unpaid carer's leave, compassionate leave and unpaid parental leave in addition for the right for eligible employees to request a change in work arrangements.

Leave Arrangements

Specifically, the FW Act's personal/carer's leave (s.97) entitles an employee, other than a casual employee, to accrue 10 days of paid persona/carer's leave per year that may be taken because the employee is not fit for wok because of a personal illness, or personal injury, affecting the employee; or relevantly:

> To provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of:
>
> (i) a personal illness, or personal injury, affecting the member; or
>
> (ii) an unexpected emergency affecting the member.

Paid personal/carers leave is cumulative. Any unused leave accrues year to year. There is no statutory cap on the accumulation of the entitlement. This enables employees to access unused portions of leave if and when they need to in accordance with the provisions.

In many instances unused personal/carer's leave can amount to a large number of days for employees who have accrued several years of service with their employer, entitling them to use the leave in circumstances that include caring for the aged and frail who are immediate family or household members.

In addition, the FW Act's unpaid carers leave provisions (s.102) also entitle all employees, including casual employees, to two days of unpaid leave for each occasion when a member of the employee's immediate family, or a member of the employee's household, requires care of support because of:

(a) a personal illness, or personal injury, affecting the member; or

(b) an unexpected emergency affecting the member.

Further, the FW Act's compassionate leave provisions (s.104) entitle employees to two days of paid leave for each occasion when a member of the employee's immediate family or a member of the employee's household contracts or develops a personal illness that poses a serious threat to his or her life; or sustains a personal injury that poses a serious threat to his or her life; or dies. In these circumstances employees may take the leave to spend time with the affected member of their family or household as one continuous period, in separate single days, or for a longer period as agreed by the employee's employer. Casual employees are entitled to two days of unpaid leave.

Protective Mechanisms

In addition, the FW Act provides for a range of protective mechanisms to guard against unfair or unlawful treatment against employees who may require time off to attend to caring responsibilities. These include:

- the FW Act's General Protections in Chapter 3, Part 3-1 which prohibit an employer from taking adverse action against an employee because the employee has exercised a workplace right in relation to requesting a flexible work arrangement (s.341(2)(i)), accessing personal/carer's leave (s.341(1)(a)) or because the employee has caring responsibilities (s.351); and

- the FW Act's unfair dismissal provisions in Chapter 3, Part 3-2.

Commonwealth and State and Territory anti-discrimination legislation also exist and provide additional protections for employees who are carers and require time off work or flexibility around working hours. Specifically, these provisions provide employees with remedies such as compensation and/or reinstatement if they experience detriment at work by their employer because of their caring responsibilities.

Accordingly, the current FW Act framework recognizes and accommodates employees who are carers both through explicit paid entitlements and through protective measures to guard against detriment should those entitlements be utilised.

Section 65 – the 'right to request'

A key legislative enabler to support flexible work arrangements for carers is the current right for eligible employees to request a change in work arrangements in section 65 of the FW Act. The provision entitles eligible employees to request a change in working arrangements from their employer. Under section 65(1A)(b) an eligible employee includes an employee who is a carer, within the meaning of the *Carer Recognition Act 2010 (Cth).*

The meaning of carer in the *Carer Recognition Act 2010 (Cth)* (**CR Act**) is an individual who provides personal care, support and assistance to another individual who needs it because that other individual:

(a) has a disability; or

(b) has a medical condition (including a terminal or chronic illness); or

(c) has a mental illness; or

(d) is frail and aged.

In addition to carers under the CR Act, other eligible employees entitled to request a change in work arrangements include employees:

- who are parents of a child who is of school-age or younger;
- who are 55 years of age or older;
- who have a disability;
- who are experiencing violence from a member of the employee's family;
- who are providing care or support to a member of their immediate family, or a member of the their household, who requires care or support because the member is experiencing violence from the member's family.

Eligible employees must also have served 12 months of continuous service with their employer before making the request. Eligible employees also include casual employees if they have been employed as a regular casual for a sequence of periods for at least 12 months and have an expectation of continuing employment with the employer on a regular and systematic basis.

An employer who receives a request for a change in work arrangements may only refuse the request on reasonable business grounds. Section 65 (5) does not limit the range of reasonable business grounds that may be relied upon but expressly recognizes the following as reasonable business grounds:

(a) that the new working arrangements requested by the employee would be too costly for the employer;

(b) that there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested by the employee;

(c) that it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the new working arrangements requested by the employee;

(d) that the new working arrangements requested by the employee would be likely to result in a significant loss in efficiency or productivity;

(e) that the new working arrangements requested by the employee would be likely to have a significant negative impact on customer service.

An employer must provide a written response to the employee's request within 21 days of receiving it, stating whether the employer grants or refuses the request.

Modern awards also impose additional consultation obligations upon employers of employees who make a request under s.65.

The FW Act's section 65 – 'right to request' must remain relevant and facilitative

A key purpose for the FW Act's right to request a change in working arrangements was for the provision to provide a framework to facilitate discussions between eligible employees and their employers about their need to change their working arrangements in the employer's business operations. This facilitative framework of section 65 is important and must be preserved to ensure an appropriate balance between the interests of employers in maintaining a business operation and the individual needs of the eligible employee.

In reviewing the FW Act in 2015, the Productivity Commission received proposals for additional statutory obligations on employers to reasonably accommodate the request in addition to an employee's statutory right of appeal. In response, the Productivity Commission found:

> Regulatory measures that provide avenues for complaints or appeals by people denied reasonable flexibility (box 16.7) could help, but this may arise primarily from the fact that such regulations would signal the unacceptability of certain conduct by employers. The regulations themselves would most likely be only weakly enforceable given the difficulty of establishing what is reasonable.[3]

This goes to the limited utility of creating an enforceable right for an employee to challenge the outcome of an employer's decision under section 65.

The need for further changes to section 65 is not supported by recent research commissioned by the Fair Work Commission[4] where it was found:

[3] Productivity Commission, 2015, *Workplace Relations Framework,* Final Report, Canberra, Vol 1, p.563

[4] *General Manager's Report into the operation of the provisions in the National Employment Standard relating to requests for flexible work arrangements and extension for unpaid parental leave under section 653 of the Fair Work Act 2009 (Cth) 2018- 2021*, November 2021

- most requests for flexible work arrangements were agreed by employers and that refusals were "rare", particularly among employers who provide greater access to flexibility than the statutory minimum;[5]

- in circumstances where requests were refused, the refusal related to:

    - rostering difficulties such as the need for staff availability at opening hours;

    - no capacity, or it was impractical, to change working arrangements of other employees;

    - adverse impact on customer service; and

    - significant loss of efficiency and productivity if the changes could not be accommodated in an existing shift.

- That a high level of informal requests by employees for flexible working arrangements exist (outside the scope of section 65).

The extremely high rate of employers granting flexible work requests is not an anomaly. Previous research commissioned by the Fair Work Commission in its 2015-2018 Report also reported that the AWRS data showed that 90% of employers who received a request for a flexible work arrangement under section 65 granted that request. [6]

In 2018 and as part of the four yearly review of modern awards, a Full Bench of the Fair Work Commission[7] rejected an ACTU application to vary modern awards designed to supplement section 65 by requiring employers to:

- Accommodate an employee's chosen working hours (Family Friendly Working Hours or FFWH) to support the employee's parenting and/or caring responsibilities if they had completed at least six months' continuous service with the employer;

- Accommodate the employee reverting to their former working hours up until the child was of school age (or later, by agreement); and

- Accommodate an employee with caring responsibilities to revert for a period not exceeding two years from the date of commencement of their FFWH (or later, by agreement).

In its decision, the Full Bench nonetheless imposed a model award term designed to supplement section 65 by providing for additional obligations on the employer in receiving, considering and responding to the flexible work request made by the employee.

Ai Group does not support any attempts to revive the ACTU's claims that have been comprehensively dealt

[5] Ibid at p.20

[6] Fair Work Commission, Australian Workplace Relations Study 2014, reported in *General Manager's Report into the operation of the provisions in the National Employment Standard relating to requests for flexible work arrangements and extension for unpaid parental leave under section 653 of the Fair Work Act 2009* (Cth) 2012- 2015 p.37

[7] [2018] FWCFB 1692

with by a Full Bench of the FWC. In addition, the imposition of an automatic reverting to "pre-request" working hours would be inappropriate for many employees on flexible work arrangements for whom this may not be wanted for various reasons. Many flexible work arrangements can continue for an extended period (including where they may be multiple children and the youngest is not yet of school-age) and the impact on employers required to accommodate a reversion could be significant in various circumstances.

It is essential that the facilitative nature of section 65 be retained in the NES. There is clear evidence that section 65 is working effectively and does not warrant the imposition of additional enforcement avenues such as a statutory right to appeal an employer's decision. Such an approach would inappropriately invite a third party such as the FWC to intervene in the operational and rostering arrangements of a business and other affected employees.

Flexible and remote working present opportunities for carers

Overlaying current legislative mechanisms on flexible working arrangements, is the flexible manner in which both the labour market and working arrangements are evolving. Opportunities for remote and flexible working arrangements should be harnessed to support sustained workforce participation by employed carers that enables them to provide care and receive income from paid employment.

Recent ABS data demonstrate the strong and enduring prevalence of working from home, or 'teleworking', in many Australian businesses. Remote working arrangements obviously increased during the lockdowns of the early COVID pandemic in 2020 and 2021. It is now a core feature of contemporary Australian work patterns:

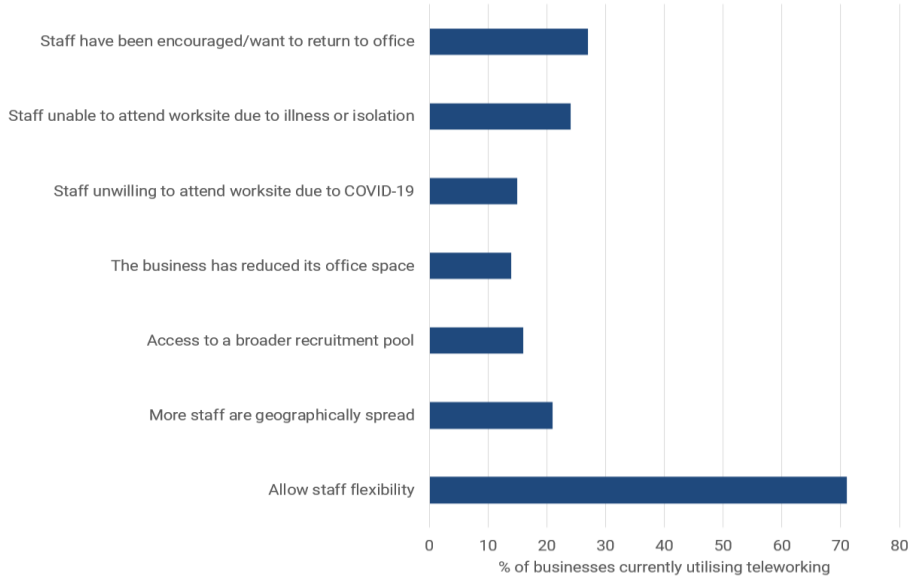
- 34% of all Australian businesses utilise teleworking arrangements for a portion of their workforce;
- 11% of businesses utilise teleworking for nearly all (75-100%) of their workforce;
- 12% of businesses presently intend to increase their teleworking arrangements.[8]

As seen in Figure 1 below factors affecting working from home arrangements in 2022 are also relevant:

- 71% of businesses utilising teleworking do so to allow increased staff flexibility;
- Geographic diversity (21%) and broadened recruitment pools (16%) are also common factors;
- In some cases, teleworking is used to maintain continuity due to absenteeism and isolation requirements (24%)

Figure 1 Factors affecting teleworking arrangements, June 2022

[8] ABS Business Conditions and Sentiments, June 2022



Source: ABS Business Conditions and Sentiments 2022

In addition, and at the employee level, data from the *ABS Household Impacts of COVID -19 Survey, April 2022* show that work from home practices are widespread amongst Australian employees. In particular:

- 46% of all employees worked from home to some degree in April 2022, and 30% did so all or most days;
- Its prevalence has nearly doubled since pre-pandemic levels, when only 24% worked from home to some degree, and 12% on all or most days;
- Work from home practices are unique amongst labour market characteristics for their high degree of gender symmetry;
- Male and female work from home rates are very similar.

It is significant that remote working arrangements rates for men and women are similar. Figure 2 below shows that 29% of men reported working from home on almost all days while this rate was 32% for women (see Figure 3). This should weigh against suggestions that it is mainly women performing remote. The enduring role of remote working in contemporary work arrangements should be seen as an opportunity for the combination of work and care responsibilities.

Figure 2: Male employees work from home practices

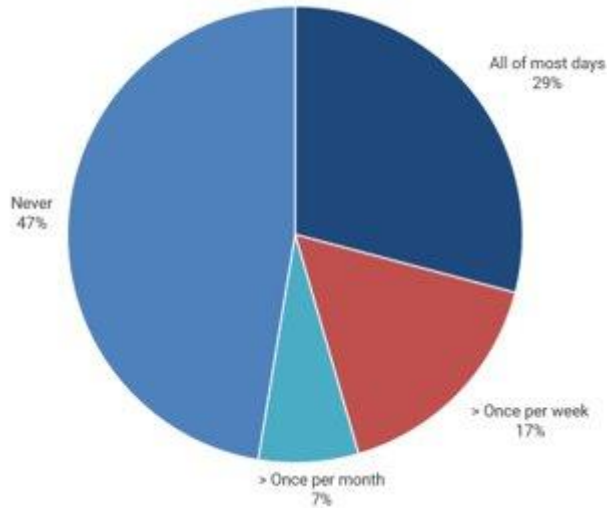
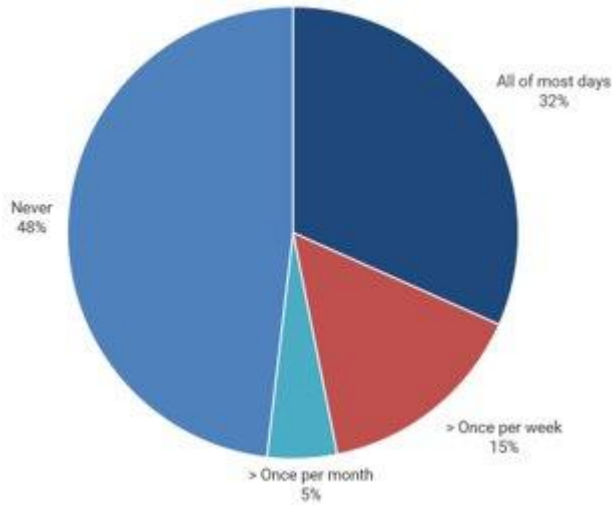


Figure 3: Female employees work from home practices



Source: ABS Household Impacts of COVID-19 Survey, April 202

Remove barriers to flexible working arrangements in modern awards

Australia's safety net of terms and conditions of employment does not presently meet the needs of contemporary workplaces with high levels of flexibility and remote working arrangements. Many modern awards for example provide barriers to flexible working arrangements by regulating working hours so they must be worked continuously. This is a barrier to employees who have caring commitments, such as breaking from work to pick up children from school.

The safety net of terms and conditions should remove restrictive clauses relating to working hours to enable more options for changes in work arrangements that are facilitated by the right to request

provisions in section 65 of the FW Act.

Enterprise-led initiatives to support carers

Many employers adopt a diversity of practices and support measures to assist employees care for others. These may involve approving periods of additional paid leave, funding leave entitlements that may otherwise be unpaid; creating new forms of paid leave entitlements, accommodating frequent and/or episodic absences from work (eg part-day absences), providing support through Employee Assistance Programs (EAPs) and applying flexible work policies that may be more generous than the NES in terms of employee eligibility.

In some larger organisations, third-party employee benefits platforms with a focus on caring responsibilities and general wellbeing may also be used to supplement more generous policies.

Employers of course have different capacities to provides these measures with many providing additional support tailored to individual employee need, while others, such as many larger organisations, may have a more structured or standardized approach.

The variety of practices and support employers can provide should obviously be encouraged. Evolving remote and flexible working arrangements also present opportunity for this to continue.

More accessible Early Childhood Education & Care is needed

Reform is needed for not just more affordable, but more accessible early childhood education and care (**ECEC**). Many households are locked out of ECEC because their working arrangements cannot be accommodated by the locations and hours of operation of centre-based case. New models of ECEC are needed.

The availability of ECEC is critical infrastructure to the needs of working parents and carers, including those who want to work, or work more hours.

In the lead up to the Federal Election, Ai Group called for important gender equality reform including the provision of more accessible and flexible childcare options for households working in essential industries with a corresponding investment in early childhood training to support capacity.[9]

ECEC is an essential part of Australia's education framework and the broader economy. ECEC is critical to laying the foundations for lifelong learning. Providing all children with the opportunity to engage in high quality early learning during the earliest stages of their development sets them up for success in school and later life. It is also a key equity measure, ensuring all children are given the best chance to make a strong start.

ECEC is also essential to enabling increased workforce participation for many parents, particularly women.

[9] See Ai Group's pre-election policy paper, *Gender Equality and Workforce Participation*, February 2022

Time spent of out of the workforce caring for children is well recognised as one of the key causes contributing to the gender pay gap and women's economic insecurity later in life.

Employers have a strong interest in the availability of quality and flexible ECEC, enabling greater workforce participation from workers who also have caring or parenting responsibilities. Extensive education, work experience and qualifications obtained by parents are often not utilised in the labour market due to childcare cost barriers and the time and cost spent in transporting multiple children to different care or schooling locations.

ECEC options should be more affordable but also more flexible. ECEC options must be better targeted to the needs of working households, such as an alignment with flexible working and shift arrangements (which often do not involve an employee working consistent hours on the same days each week) or working at different locations. These working arrangements are common in rostering arrangements in many industries including essential services.

Ai Group considers that Government subsidies should also extend to a trial of in-home early childhood educators to households working in essential industries. In-home ECEC provides more coverage and flexibility of care than many traditional childcare centres, particularly for multiple children. Unlike family day care, where households must attend an external family day care household or centre, an in-home early childhood educator would attend the relevant household requiring the care.

Subsidised in-home ECEC should be aimed at ensuring the best possible early learning foundation for children, to improve education, training and skill levels.

The subsidy should be linked to a work-test eligibility and where adult members of the household are unable to care for children because they are engaged in paid employment at the relevant time. The subsidy should strictly apply to in-home early childhood educators who must be registered with the relevant Government Agency and possess a minimum Certificate III for the provision of early childhood care and education recognised by the National Quality Framework.

To support the capacity and supply for more accessible childcare, Ai Group supports greater funding for early child-care training programs.

Ai Group looks forward to the Productivity Commission review of the childcare sector.

Parental Leave is important

The FW Act's unpaid parental leave provisions have been framed as gender -neutral for more than a decade yet we only see a very small percentage of fathers take extended parental leave. Accessing the leave is highly gendered in favour of women.

The Australian Government's Jobs and Skills Summit – Outcomes document identifies "*providing stronger access… to unpaid parental leave so families can share work and caring responsibilities…*" as an immediate action.

While the FW Act regulates unpaid parental leave, policy objectives to support families sharing work and caring responsibilities may be more effectively pursued through changes to the Government's Paid Parental Leave scheme under the PPL Act. The creation of equitable caring arrangements that challenge gender stereotypes and cultural norms are more likely to emerge when there is a combination of financial incentives and structured arrangements that promote more equitable access.

Ai Group is aware that a number of proposals exist to amend the PPL Act and we consider that some of these have merit to better support the economic gains from increased women's workforce participation and greater shared care arrangements. These include recent models of the type announced by the NSW Government in its 2022 Budget where PPL is provided at a nominated quantum with an additional 2 weeks provided if both parents exhaust their allocated parental leave entitlements.

In addition, employers need a stable framework where the FW Act and PPL Act work cohesively together and in a manner that is simple to understand and apply. This is particularly important for employers who have implemented or are considering the implementation of their own employer-funded parental leave schemes where both the FW Act and PPL Act form a baseline structure for how these more beneficial schemes may operate.

To give better effect to the Government's objective of supporting families share work and caring responsibilities, Ai Group supports a formal Government review of the PPL Act to assess its overall effectiveness in meeting the evolving needs of families, children and workplaces. Despite the PPL Act receiving discrete amendments over the years, the last formal review of the PPL Act was necessitated by section 307 back in 2013. This was nearly a decade ago. While section 307 does not contemplate further reviews, and nor do we suggest that a review should be limited to its terms (some of these matters have been superseded), we encourage the Government to consider this course 10 years on after the PPL Act's commencement.

To the extent that amendments are to be made by the Government to the FW Act's unpaid parental leave provisions, Ai Group suggests that consideration be given to provisions relating concurrent unpaid parental leave and keeping in touch days. These include:

- Removing the concurrent parental leave time limitations in FW Act (section 72(5)) set at 8 weeks. There is no ongoing rationale as to why this limitation is needed given the way contemporary family and care arrangements are evolving away from concentrating care solely on one parent.

- Removing limitations in section 76(6) regarding special rules for employee couples where a member of an employee couple requests to extend a period of unpaid parental leave under section 76, beyond the 12 months original leave for a further period of up to 12 months.

Recognising that the care of infants does not fall on one parent is a policy objective that has other economic benefits. The amendment must be confined to section 76(6). It is essential that the remainder of the section is preserved to ensure requests for extended unpaid parental leave can be accommodated by employers.

In addition, section 79A of the FW Act provides for 'keeping in touch' days. An employee may take a keeping in touch day "*if the purpose of performing the work is to enable the employee to keep in touch with his or her employment in order to facilitate a return to that employment after the end of the period of leave*."

The keeping in touch days may only be taken with the consent of the employer for the employee to perform work for the employer on that day. Section 79A(2)(d) caps the keeping in touch days at 10 days for the duration of the unpaid parental leave.

Ai Group considers that the current 10-day cap on keeping in touch days could be extended to 20 days. An extension may encourage employed parents to remain connected to their workplace but also supplement periods of unpaid leave with additional income (regardless of whether in receipt of PPL). This may also incentivise dads/partners or higher wage earners to take periods of unpaid leave if there was scope for limited periods of paid work and income.

Caring work is highly gendered

As Figure 4 shows there is a large gender disparity in terms of primary caring roles: 5.9% of working age women are primary carers, compared to 1.9% of men. In addition, the employment of informal carers are concentrated in the female-dominated sectors of healthcare/social assistance, education and retail sectors.

Figure 5 shows the reasons why women perform informal care with the most common cited reason being family responsibility. This sense of family responsibility disproportionately affects women and can be attributed to a variety of reasons such as gender stereotypes around "women's work and role in the home", and broader gendered inequality in the performance of unpaid caring and domestic work. It has been well established that time out of the workforce to attend to unpaid caring responsibilities is one of the key reasons contributing to the gender pay gap.[10]

Policy considerations from this Inquiry should include assessing the impact on women, including their economic well-being.

[10] KPMG, *She's Price(d)less, The economics of the gender pay gap*, 2022

Figure 4: Share of working age persons (15-64 years) by carer status and gender, 2018

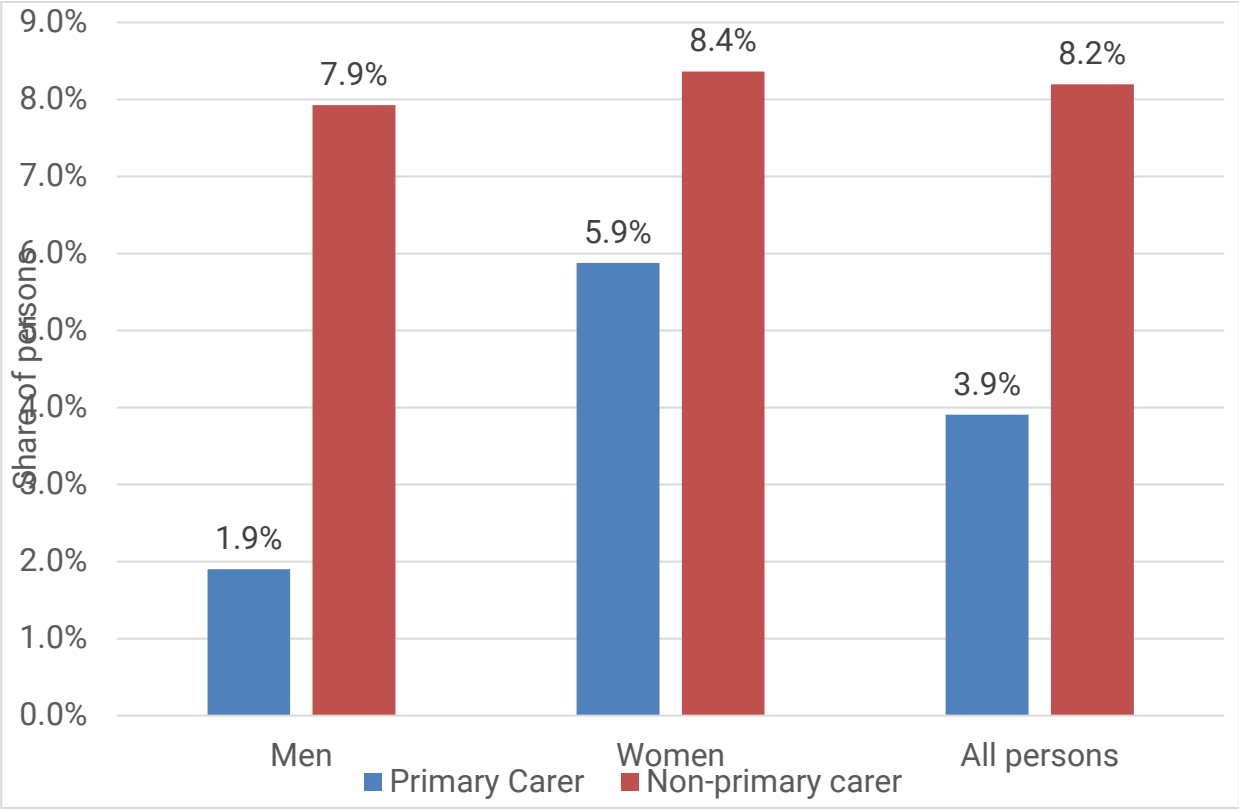
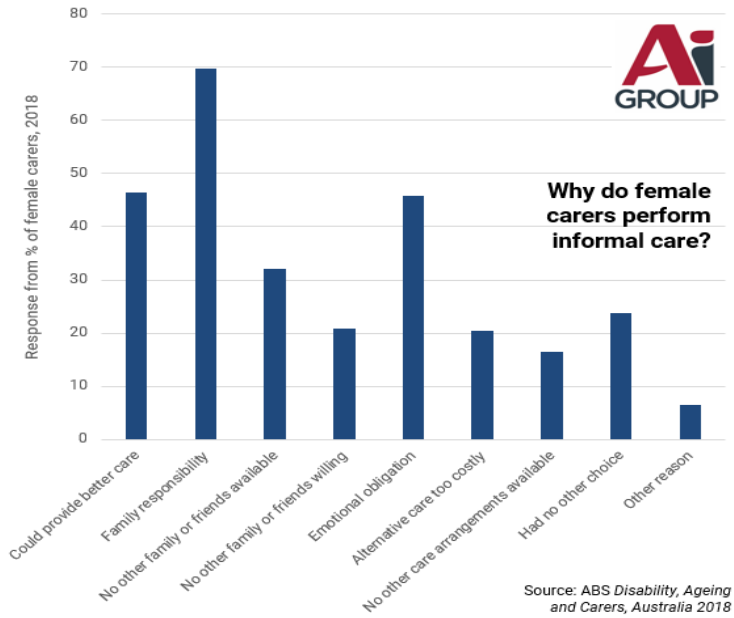


Figure 5: Why do female carers perform informal care?



Conclusion

The ability to combine work and care is an important social and economic objective. Ai Group urges the Inquiry to focus on access to workforce participation by carers, preserve the facilitate nature of section 65 and to remove barriers to flexible work arrangements in our modern award system that has not kept pace with contemporary working arrangements.

More accessible ECEC is needed to support families for whom centre-based care is not an option, including households with irregular working hours. Improvements can be made to parental leave, both in relation to the FW Act but also a formal review of the PPL Act to ensure it is adequate to meet the evolving needs of Australian families, children, employers and the economy.

ABOUT THE AUSTRALIAN INDUSTRY GROUP

The Australian Industry Group (Ai Group®) is a peak employer organisation representing traditional, innovative and emerging industry sectors. We are a truly national organisation which has been supporting businesses across Australia for nearly 150 years.

Ai Group is genuinely representative of Australian industry. Together with partner organisations we represent the interests of more than 60,000 businesses employing more than 1 million staff. Our members are small and large businesses in sectors including manufacturing, construction, ICT, transport & logistics, engineering, food, labour hire, mining services, the defence industry and civil airlines.

Our vision is for thriving industries and a prosperous community. We offer our membership strong advocacy and an effective voice at all levels of government underpinned by our respected position of policy leadership and political non-partisanship.

With more than 250 staff and networks of relationships that extend beyond borders (domestic and international) we have the resources and the expertise to meet the changing needs of our membership. Our deep experience of industrial relations and workplace law positions Ai Group as Australia's leading industrial advocate.

We listen and we support our members in facing their challenges by remaining at the cutting edge of policy debate and legislative change. We provide solution-driven advice to address business opportunities and risks.

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