

Senate Select Committee on Work and Care

Working Women's Centre, S.A., Working Women Queensland
and N.T. Working Women's Centre

Submission to the Senate Education and Employment Legislation Committee

Introduction

1. The Working Women's Centre, S.A., Working Women Queensland and N.T. Working Women's Centre (WWCs) welcome the opportunity to make this submission to the Senate Select Committee on Work and Care
2. The WWCs are not-for-profit advocacy, legal and industrial relations centres that provide free legal and industrial advice, information, support and representation to vulnerable, non-unionised workers about their rights at work. We provide community education, policy advocacy and workplace training. We predominately service people identifying as women and we are experts in gender-based workplace issues.
3. The WWCs have extensive and lengthy experience in advocating for and responding to the serious and complex issues faced by those combining work and care responsibilities. The inadequacy of Australia's work and care arrangements in supporting the well-being of workers, carers, and those they care for has been spotlighted during the last period of the pandemic. The work and care policies and practices currently in place are discriminatory and do very little to achieve gender, regional, racial and socio-economic equality. This situation has a long history, and we acknowledge and credit the efforts of the many activists and agencies who have worked to improve the conditions of work and care in Australia.
4. Current policy settings and practices for work, care and family are not suitable to support an equitable and gender inclusive society. We therefore welcome this inquiry into the most equitable and efficient policies and practices to achieve work and care well-being and equality.
5. In response to the Terms of Reference (TOR), we have selected 3 of the issues that most strongly impact on our clients, and that require urgent reform:
 - I. Secure and flexible work.
 - II. Paid Care – training, wages and conditions
 - III. Access to care services and support

Secure and flexible work.

6. Workers, carers and those they care for all depend on liveable incomes, directly and indirectly. Decent and secure work makes it possible for workers to manage their work and care responsibilities. When work is secure and predictable, workers are able to make regular care arrangements as well as meet emergencies, which

inevitably arise. Secure work also has the benefit that care providers are able to make predictable arrangements in response.

7. Insecure work has increased so that Australia has a relatively high proportion of workers in insecure work in all its forms at approximately 25%. Casual employment is more common among women than men, reflecting the sectoral and occupational composition of female employment, and also women's disproportionate concentration in part-time jobs. In 2019 (before the pandemic), women accounted for over 53% of all casual employees, but only 48% of permanent staff.¹ The labour force participation rates of Australian mothers have been low by international standards (OECD, [2014](#))². Australian mothers are more likely than Australian fathers to be in casual employment (ABS, [2017b](#))³
8. The precariousness of such work was clear during the first 2 years of the pandemic:
 - ❖ Casual and part-time workers accounted for over half of all job losses in the first lockdowns in 2020, and an even larger share in the later wave in 2021.
 - ❖ Casual workers were 8 times more likely to lose work in the 2021 lockdowns than permanent staff. Part-time workers were 4.5 times more likely to lose work than full-timers.
 - ❖ Workers who are *both* casual and part-time experienced the largest proportional job losses. In the 2021 lockdowns, casual part-time workers accounted for three-quarters of all job losses.⁴
9. In practice, only half or fewer casual workers are actually paid their full casual loading, reflecting the lack of information among employers and the equal lack of enforcement of loading requirements among employers. Indeed, ABS data indicates that over one-third of casual employees report not receiving any casual loading at all.⁵ This has become so prevalent that it has its own term: *wage theft*.
10. Insecure work is not only unreliable in terms of hours, but also in terms of pay. This has serious consequences for workers (predominately women) attempting to manage their care responsibilities. It serves to exacerbate inequality for all those already experiencing discrimination in the workforce.

Case Study

Sam worked as a casual labourer in a small business in the construction industry and worked a lot of overtime. Sam and their partner had newborn twins and had very little family support in Australia. One of the twins became ill and had to spend some time in hospital. One morning, when arriving at work at 7am, Sam told their boss they had to leave at 3pm to go home and care for the other baby. At 3pm Sam packed up their tools. Sam's boss became angry and told them that if they weren't dedicated to the job to not bother showing up tomorrow.*

We filed a general protections' involving dismissal claim on behalf of Sam but ultimately Sam chose to discontinue the claim as the boss apologised. Sam was also being underpaid but was afraid of causing trouble and getting a bad reference.

Case Study

Faith worked as a casual employee in the hospitality sector. During the COVID pandemic, her employer shut down their tourism-driven business and she had no income, nor any entitlement to government COVID support, as she is not an Australian citizen. Faith has been supporting two children. Faith needed to use all of her savings and then access emergency relief from a local charity to get by.

11. The case demonstrates the weaknesses of workers' right inherent in insecure work arrangements, exacerbated by the pandemic, and the value of being able to gain support from bodies such as the WWC as well as unions.
12. The value of flexibility has been endorsed by advocates in the work/care field for many decades. The WWCs strongly support workplace flexibility, particularly for those managing care responsibilities. However, the current system fails on 3 counts:
13. **First**, the definition of 'family' which is used to determine eligibility is too narrow, as the case above illustrates. Sometimes kinship care arrangements for Aboriginal and Torres Strait Islander employees are taken into account, but overall the usual definition does not reflect contemporary conditions in our society.

WWCs recommend the adoption of a broader **definition of family** for the purposes of taking carers' leave.

Family will mean those persons included within the definition of 'immediate family' contained in the Fair Work Act 2009 (Cth) as well as:

- ❖ any person who is a member on an employee's household;
- ❖ any of the employee's children (including adopted children, step-children, and ex nuptial children);
- ❖ any of the employees' siblings (including a sibling of their spouse);
- ❖ an employee's parent-in-law, aunt, uncle, niece, or nephew and
- ❖ **any other significant person to the employee.**

14. This definition allows for the experiences of those workers within the LGBTQIA+ community whose immediate family may not fit the current definition in the FWA. It also allows for example for situations where a person may not be responsible for caring for their nephew, but the situation may change so that they do need to care for him, and thus entitled to flexible leave because of the significant relationship.
15. **Second**, there is a degree of protection of flexibility for workers with caring responsibilities, but it is weak and limited in scope. Employees have the right to request a flexible work arrangement under Section 65 of the Fair Work Act, and their employer must not refuse that request except on 'reasonable business grounds'. However, the Fair Work Act effectively removes any means of challenging such a decision on the basis that it is unreasonable. The only recourse employees have is to pursue their employer for failing to provide a written response within the allowed time frame. Even then, all an employer need do to comply is provide a written response.

16. WWCs find that the conditions established by the Fair Work Act often fail to enable the needs of workers with care responsibilities to be met.

WWCs recommend that this right be framed as a '**positive obligation**' on the part of employers to provide workplace flexibility.

17. **Third**, workers who seek to exercise their right to workplace flexibility can put their employment and conditions at risk. This is especially evident in the following case taken up by a WWC:

Case study

A client who was a grandmother had enjoyed a flexible work arrangement for 5 years that allowed her to provide regular care for her grandchild. The arrangement was revoked in circumstances that we and our client considered to be unreasonable. A dispute was lodged under a relevant term in the enterprise agreement in relation to flexibility, although the dispute in substance related more to the withdrawal of the flexible work arrangement than anything else. The Fair Work Commissioner (FWC) conducted a conference, and expressed sympathy for our client, but essentially counselled her to withdraw her dispute, and find a practical resolution by asking her daughter to make changes to her own work arrangements. The Commissioner recognised that the FWC had no power in that case, nor did our client have any further avenues to pursue to appeal the removal of her flexible work arrangement.

18. The risks from exercising the right to leave are further evident in instances of flexible parenting leave. Forms of limited parenting leave have been available since 1973, but is still mostly taken by women. The right of return to work following parenting leave too often results in loss of position, status and even employment.

Case study

Ashley is a middle-aged, migrant woman who contacted the Working Women's Centre when she was trying to return to her workplace from maternity leave. Ashley had been employed with this company for over 10 years. Ashley had to make multiple attempts to contact her employer about her return to her job after her maternity leave. Her employer only offered her 10 hours of casual work, which is significantly less than her pre-maternity leave position where she was a permanent full-time employee. The employer paid out Ashley's Long Service Leave and Annual leave entitlements and in effect terminated her employment.

The Working Women's Centre filed a general protections' claim involving dismissal with the Fair Work Commission on the basis of her rights to return to work from parental leave and facing discrimination for taking parental leave. Although she was granted compensation of \$6,000, Ashley was not returned to her fulltime job.

Case study

Skylar works for a company in the construction industry. Skylar became pregnant at 44 years of age, having what is defined as a 'geriatric pregnancy'. This required her to

have regular medical appointments, all of which she booked on her day off so that she did not miss work. For the last 15 months she has worked 8 hours per day on Mondays, Wednesdays and Fridays. Since telling her workplace about her pregnancy, Skylar's employer informed her that there was a restructure happening and that her job would be at risk. They also said, they 'don't know if we can keep [you]'. Her employer then cancelled some of her usual shifts and asked her to work on her day off, even though they knew she had medical appointments on those days. The employer has also made various discriminatory comments towards her about her pregnancy and not being fit for work.

In the discussion about her maternity leave, Skylar requested to be able to return to her pre-maternity leave position. Her employer rejected her request because they wanted someone to work for 5 half days per week, rather than three full days. If she does not agree to this schedule, she would not have a job at all.

19. Each of these cases illustrate the difficulties and discrimination that women face in attempting to take parental leave, and in exercising their right to return to work following their leave.

Paid Care

20. The inadequacies and inequalities of the Australian care workforce were exposed by the pandemic. Workers in early childhood education and care, aged care and disability support were revealed to be amongst the lowest paid with casualised conditions, underemployment, and unpredictable work rosters. It should have been no surprise that all care sectors experience staff shortages, especially when the reliance on temporary visa workers was stopped by border closures. The pandemic caused significant upheavals to an already vulnerable workforce, which in turn had a direct influence on the quality of all care services.
21. However, the problems in the care work sector were already severe. The individualisation and marketisation of care services had eroded long standing poor working conditions. Homecare and disability support workers had highly variable hours involving fragmented working time and long days of short, broken shifts. In disability services, 42% of employees are casual (NDS, 2018: 11).⁶ Underemployment rates are high, reflected in high levels of multiple job-holding. Low pay and poor working conditions, aggravated by the pandemic led to high levels of staff turnover.
22. The recent increase to the national Minimum Award Wage by the Fair Work Commission is welcome, but not enough. It did however serve the purpose of giving visibility to the low wages and conditions of care workers.
23. Disability support workers in the NDIS system have been brought under increasing pressure by the inadequacies and limitations of this system. We note in particular that Aboriginal and Torres Strait Islander workers face the challenges caused by lack

of recognition of cultural differences where for example, mores based on gender differences hinder their access to these services.

Case study

Olivia works as a Disability Support Worker on a casual basis. She is employed with multiple NDIS providers to make up her hours. She has no formal qualification or training. She takes care of Charlie who has personal discriminatory views and behaviour towards her due to her ethnicity. Due to the NDIS provider's lack of support, she has been missing out on shifts. So, to make extra money she sleeps over at another participant's home for \$60 a night, when they do not require care.

Case study

June identifies as Aboriginal and Torres Strait Islander and is currently working as a Disability Support Worker. Due to her cultural heritage, she feels uncomfortable caring for male NDIS participants and this presents a barrier to her continued employment, with her NDIS provider, as they provide support for independent living to both male and female participants in shared accommodation.

24. There has been much talk about the need to value care workers and their work. The recent increase in the minimum wage as well as the rate for workers in the aged care sector is fine, but remains inadequate. It fails to give equitable value to this work and is certainly insufficient to ensure that services and providers can retain their staff.

WWCs strongly urge that the Inquiry give due weight to the diversity of conditions experienced by care workers and those they care for. WWCs are committed advocates of decent work and job security, which includes the recognition that diversity, as well as location and the nature of the work itself has significant impact on the well-being of care workers.

WWCs strongly recommend that wage rates for all care workers be increased to ensure that workers receive a decent wage that demonstrates the high value of their work to the whole society as well as to families and individuals. The gender pay gap will not close until wages in feminised industries like care work significantly increase and this cannot happen without the tangible action by government, both Federal and State.

Access to care services and support

25. The WWCs welcome the inclusion of attention to the need for equitable access to care services and support for those who need care. Without such access to appropriate care services across the country, in regional, remote and urban areas, women will continue to suffer the well-documented range of gender inequalities. The gender pay gap will not be reduced; superannuation will become more unequal; work and career choice will remain limited and the economy will not expand in ways to benefit the whole society.

26. WWCs note that for the first 12 years of their child's life, most women's careers, finances and ability to participate in the workplace are seriously undermined by the rolling inequities in law and public policy about parenting and family. The main policy issues that impact the early years of parenting are parental leave, affordable and accessible childcare, and flexible working arrangements. In spite of some increase in the unpaid care provided by fathers, women continue to end up with the biggest share of parenting responsibilities in most families.
27. In addition, access to equitable and appropriate disability support services across the country must become universal so that women in particular are not disadvantaged by taking on unpaid care, sometimes for their lifetimes.
28. The same case applies to those who need aged care services. The pandemic, as it did across the whole care sector spotlighted the weaknesses of aged care services in Australia. The Royal Commission for Aged Care Quality and Safety in its interim report observed that the quality of care provided in Australia's aged care system is currently highly variable and "can fall well short of expectations, and at worst, allow substandard care to occur".⁷

WWCs recommend universal access to affordable accessible and high-quality Early childhood education and care.

WWCs recommend equitable access to appropriate disability support services across the country.

WWCs recommend equitable access to appropriate aged care services across the country.

29. Each of the recommendations is based on the recognition that service providers, and care workers need to be adequately funded so that everyone who makes use of these services receives dependable quality care. The achievement of gender equality depends on universal access to quality care services

Quality work and care

30. The **recommendations and case studies** presented here are based on the documented, extensive and lengthy experiences and work of the WWCs.
31. Good quality work and care involves decent pay and conditions of workers, policies to end discrimination, deprivation and poverty and eliminate violence and abuse. Investment in paid care services improves wellbeing through ensuring that people's care needs are met; it improves gender equality because it raises the overall employment rate and reduces the gender pay gap; it improves the wellbeing of First Nations peoples and those living with disability because it provides equitable support services and liveable incomes; and it is sustainable because care jobs are green.⁸

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*All case study names are pseudonyms

¹ Stanford, Jim. (2021). "Shock troops of the pandemic: casual and insecure work in COVID and beyond." The Australia Institute/Centre for Future Work, Briefing Paper.

² OECD. (2014). *OECD family database*. OECD Publishing. <http://www.oecd.org/els/family/database.htm>

³ ABS. (2017b). *Gender indicators, Australia Sep 2017. (Cat No. 4125.0)*

⁴ Stanford, p. 1.

⁵ Ibid. p. 18

⁶ Macdonald, Fiona, and Sara Charlesworth. (2021). "Regulating for gender-equitable decent work in social and community services: Bringing the state back in." *Journal of Industrial Relations* 63 (4):477-500.

⁷ *Royal Commission into Aged Care Quality and Safety. Interim Report. Canberra: Commonwealth of Australia, 2019.*

⁸ <https://wbg.org.uk/commission/>

