

12 April 2024

Fair Work Commission  
Level 10, Terrace Tower, 80 William St  
East Sydney, NSW 2011

Carers NSW welcomes the opportunity to provide feedback to the Fair Work Commission (FWC) on the proposed survey research questions. Carers NSW commends the FWC on the procurement and commissioning of this research, as it is likely to provide new insights into the application of work flexibilities in the context of balancing work and care. However, Carers NSW believes that this should be supplemented by an employee survey, and that there are opportunities to refine proposed questions to get a more nuanced understanding of the implementation of flexible work arrangements as they relate to carers.

Carers NSW believes that it is crucial that the term carer is used correctly – in line with the definition outlined in the Commonwealth *Carer Recognition Act 2010* – throughout the course of this inquiry, and in relation to carer-focused policy and supports to ensure that there is no confusion between parents and carers. While Carers NSW recognises that some parents may have additional caring responsibilities, ongoing conflation of parents and carers within the employment context continues to create challenges in understanding and monitoring the unique and diverse experiences of both groups and the impacts of this experience on their ability to participate in work and care.

### **About Carers NSW**

Carers NSW is the peak non-government organisation for carers in New South Wales (NSW). A carer is any individual who provides care and support to a family member or friend who has a disability, mental illness, drug and/or alcohol dependency, chronic condition, terminal illness or who is frail. Carers NSW is part of the National Carer Network and a member of Carers Australia. Our vision is an Australia that values and supports all carers, and our goals are to:

- Be a leading carer organisation in which carers have confidence
- Actively promote carer recognition and support
- Actively support carers to navigate a changing service landscape that will be characterised by ongoing policy reform
- Promote connected community experiences and opportunities for carers that are inclusive of diverse carer groups
- Lead and advocate for carer-specific and carer-inclusive policy making, research and service delivery
- Continue to be a quality-driven, responsive and carer-focused organisation.

### **Background**

Carers NSW commends the FWC for commissioning this research, as the nature and frequency of requests, refusals and uptake of flexible work arrangements to support the balance of work and care in Australia are not well understood. While WGEA reporting captures prevalence of organisations with flexible working policies for carers, not all employers are required to report annually, and it provides limited insights into the implementation of flexible working policies within these organisations. Furthermore, Carers NSW consultation with Carers + Employers accredited organisations to inform

our response to the Productivity Inquiry into Carer Leave, suggested that employee requests for and uptake of flexible working arrangements are not well understood within organisations due to limited internal reporting of these arrangements.

Carers NSW believes that recent changes to the *Fair Work Act 2009* which provide the FWC greater powers to respond to refusals for flexible working arrangements, will provide greater insights into the number and nature of refusals of requests for flexible work. However, Carers NSW believes that this may still be an underrepresentation of refusals, as many carers report to Carers NSW concerns about making complaints or pursuing their rights in the context of employment due to fear of retribution or loss of employment or income.

Carers NSW also believes that while the qualitative nature of the Survey will provide new insights into the operation and implementation of flexible working arrangements within organisations, it is unlikely that this will provide an accurate reflection of what is happening in practice. Carers NSW consultation with carer-friendly employers accredited with our Carers + Employers workplace accreditation program, including those with Level 3 Excel accreditation, suggests that there is limited recording of requests, refusals and uptake of individual flexible working arrangements. This is for a number of reasons, including the following:

- Flexible work arrangements are often negotiated with line managers, and requests and refusals may be captured or recorded in supervision notes or emails, as opposed to HSE systems, making it difficult for longer term data collection and analysis
- Approved flexible working arrangements may be captured in HR systems, however requests and refusals are often not recorded.
- Changes to working hours or location may not be recorded as use of flexible working arrangements.
- Reasons for requests or approvals for flexible working arrangements, such as caring responsibilities, are often not captured when flexible working arrangements are recorded.

This may make it difficult for executives, HR professionals and managers to comment on implementation, including uptake and refusals, within their organisations, especially where there is a disconnect between organisational policy and practice.

Carers NSW believes that to ensure a balanced understanding of how Awards are being applied in practice in relation to flexible working arrangements, it is also important to widely survey a diverse range of employees including carers, parents and non-carers, in collaboration with peak and representative bodies. Carers NSW has concerns that the legalistic nature of this consultation, as well as limited promotion of opportunities to provide input and short consultation timelines may act as a barrier to many carers covered by modern awards participating in this Review.

Carers NSW has also identified additional opportunities to better understand potential barriers to the use of entitlements such as flexible working arrangements that support work and care.

### **Carer identification and understanding of entitlements**

Carers often report to Carers NSW that they are not aware of their workplace entitlements, such as carer's leave or the right to request flexible work, which may act as a significant barrier to uptake. Where carers are aware of their rights, many are reluctant to disclose their caring roles or responsibilities to employers or access entitlements due to fear of discrimination or impacts on their career trajectory. Carers NSW believes that it would be beneficial to add additional questions to the survey to explore how carers are supported or encouraged to identify as carers or access available entitlements, such as:

- What is currently in place to support employees to:
  - Identify as carers – to address the often hidden nature of caring and make the clear distinction from being a parent
  - Understand what leave/flexible work arrangements/support they may be entitled to, and how to access that support.

### **Understanding how Modern Award conditions are implemented for carers vs parents**

A further challenge that Carers NSW has observed throughout the delivery of Carers + Employers program, as well as throughout recent employment-focused government inquiries, is ongoing conflation of parents and carers in relation to workplace policy. Carers NSW acknowledges that many carer-focused entitlements may be able to be accessed by both parents and carers. However, Carers NSW has identified a significant focus of organisations, and recently governments, on improving employment experiences and outcomes for parents. As an unintended consequence, this often makes family and friend carers invisible in workplace policy and practice, including parents of children with disability who may have more complex caring roles than other parents. It also makes it difficult to understand how entitlements and policies apply to and are utilised by family and friend carers in difference to parents of children without additional needs.

The nature of caring for children differs significantly from caring for children or other family members or friends who live with disability, chronic illness, mental illness, or who are ageing or frail. Unlike parental care, which can often be planned for and is generally more regular in nature, caring for a family member or friend is often unplanned, fluctuating and irregular. Parental care is also often better understood and less stigmatised than caring for a family member or friend. Parents therefore may experience fewer barriers to accessing employment entitlements, such as flexible work arrangements.

Carers NSW believes that it is vital that the survey explore where and how the application of policies and practice around requests, refusals and negotiations for flexible work arrangements is different for parents compared to carers. For example, where a carer may be required to provide medical evidence of providing care to support a request for flexible work that would not be required of a parent seeking a similar flexible working arrangement.

Carers NSW again thanks the FWC for the opportunity to provide feedback on the survey questions. Carers NSW believes that this study will provide important insights into the barriers and opportunities in the implementation of modern awards.

Thank you for accepting our submission. For further information, please contact Melissa Docker, Senior Policy and Development Officer at [melissad@carersnsw.org.au](mailto:melissad@carersnsw.org.au) or phone (02) 9280 4744.

Yours sincerely,



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