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# SENATE SELECT COMMITTEE ON WORK AND CARE

## ACCI Submission

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Chamber of Commerce  
and Industry

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# 1. INTRODUCTION

1. The Australian Chamber of Commerce and Industry (ACCI) thanks the Senate Select Committee on Work and Care (Committee) for the opportunity to contribute to the Work and Care Inquiry (Inquiry).
2. For over a decade, ACCI has championed the benefits of increasing workforce participation and diversity to Government and the Australian business community. Combining ongoing caring responsibilities with paid employment is good for the economy and for social inclusion.
3. Current labour and skills shortages emphasise the need to maximise the number of people in the workforce. In particular, more needs to be done to encourage workforce participation among women. The fact that most carers are women helps explain why women's workforce participation rates still lag well behind those of men.
4. Good employers recognise the important part they play in supporting employees with caring responsibilities. They will afford employees greater flexibility in their roles to undertake caring responsibilities, subject only to legitimate resourcing and cost limitations.
5. While most employers already do the right thing, Australia's workplace laws provide adequate and balanced protection to employees with caring responsibilities. For instance, section 65 of the *Fair Work Act 2009* (Cth) (FW Act) provides employees with the right to request flexible working arrangements, such as changes to hours, patterns or locations of work. This is an important measure that balances the needs of the employee with the needs and limitations of the business.
6. While Australia's workplace laws provide adequate protections and rights for carers, the Fair Work framework, with its rigid Modern Award system, does not provide employers with the flexibility necessary to adequately support employees with caring responsibilities.
7. In summary, ACCI encourages the Committee to make the following recommendations as part of the Inquiry:
  - a. A balanced approach must be adopted to labour market change. This should recognise the important role that casual and part-time employment, labour-hire and the gig economy play in our labour market, especially to ensure that people with caring responsibilities have access to paid work.
  - b. Australia's workplace laws provide adequate protection and entitlements to support employees with caring responsibilities, and provisions such as section 65 of the FW Act (requests for flexible work) should remain in their current form to ensure that rights and protections for employees are balanced with reasonable business needs.
  - c. Throughout the COVID-19 crisis, employers have worked to introduce increasingly flexible working arrangements such as remote work and part-time flexibility arrangements. Further strengthening these provisions in our workplace system is essential to promote workforce participation among those with caring responsibilities.
  - d. A review of Australia's safety net of terms and conditions of employment should be

- undertaken to ensure that any barriers to flexible working arrangements that exist can be identified and removed.
- e. Employed carers must be better equipped for successful labour market transitions.
  - f. Government must further strengthen women's workforce participation as a key economic reform, including by providing more accessible early childhood education and care.
8. ACCI notes that the Government is already set to amend the Fair Work Act relevant to the intersection of work and care, based on:
- a. Implementing Labor's 2021 Secure Australian Jobs Plan [policy](#).
  - b. Pursuing the [outcomes](#) of the Jobs and Skills Summit, in particular those announced by the Minister for Employment and Workplace Relations at the completion of the workplace relations sessions on 1 September.
9. The Productivity Commission (PC) is also inquiring into "the economic and social impacts of allowing informal carers to take extended unpaid leave from their work to care for older people who are frail and living at home". In the wake of the Aged Care Royal Commission, the [PC inquiry](#) is:
- a. Exploring the adequacy of current leave arrangements in providing informal support for older Australians.
  - b. Considering the impact on the labour market and employers from potential changes to employment standards.
  - c. Considering the economic and social costs and benefits from any change to the National Employment Standards (NES), including those that will impact older Australians, residential aged care services, and broader regulatory, economic, and social impacts.
  - d. Considering alternative ways to support informal carers to support older Australians.
  - e. Considering the application of paid leave or long-term unpaid carer's leave for other types of care, such as caring for people with disability or having temporary or terminal illness.
10. ACCI will continue to work constructively with Government and contribute input to both the PC inquiry and ongoing consultation on workplace law change.

## 2. ADEQUACY OF EXISTING WORKPLACE LAWS

11. Employed carers already benefit from considerable levels of support in Australia:
- a. The traditional sick leave standard has been broadened to become carers leave and can be used to take paid time off to care for an immediate family or household member who is sick or injured or where an employee is required to help during a family emergency. There is both a paid entitlement and a further, back-up unpaid entitlement.
  - b. There is a right under the National Employment Standards to request changes in hours, patterns or locations of work, and a process employers must follow to properly consider and respond to such requests.<sup>1</sup>

Employers can only refuse requests if there are “reasonable business grounds”. Examples of “reasonable business grounds” include:

- i. The requested arrangements are too costly;
- ii. Other employees’ working arrangements can’t be changed to accommodate the request;
- iii. Its impractical to change other employees’ working arrangements or hire new employees to accommodate the request; and
- iv. The request would result in significant loss of productivity or have a significant negative impact on customer service.

Grounds to refuse requests are limited and the overwhelming majority of such requests are either agreed to as sought, or an agreed approach is successfully negotiated.<sup>2</sup> Research commissioned by the General Manager of the Fair Work Commission indicates that:

Most interviewees that responded commented that requests were agreed by employers or agreed following negotiations. Refusals were rare, particularly among employers who provide greater access to flexibility than the statutory provisions.<sup>3</sup>

Section 65 (right to request) gets the balance between the needs of the employee and the business right, and must be preserved in its current form.

- c. A 12-month unpaid parental leave entitlement, with a right to request a second 12 months, and a right to return to the same job, or a suitable alternative job. There is also a well-established practice of returning to work part time following parental leave.

<sup>1</sup> Section 65 of the *Fair Work Act 2009*.

<sup>2</sup> <https://www.fwc.gov.au/documents/sites/admingmreporting/gm-nes-2021.pdf>, p.10

<sup>3</sup> <https://www.fwc.gov.au/documents/sites/admingmreporting/gm-nes-2021.pdf>, p.20

- d. 18 weeks' government provided paid parental leave, payable the level of the National Minimum Wage. This includes a 12-week set period, and a second 30 days of flexible paid leave.
  - e. 10 keeping touch days (paid) which allow an employee who is on unpaid parental leave to go back to work for a few days, allowing them to participate in planning, receive training or attend a conference.
  - f. Dad and partner pay, in which eligible working dads and partners (including same-sex partners) get 2 weeks leave paid at the National Minimum Wage. These payments are made directly to the employee by the Australian Government.
  - g. Modern Awards made taking into account 'assisting employees to balance their work and family responsibilities by providing for flexible working arrangements'<sup>4</sup>, as well as 'the need to promote social inclusion through increased workforce participation'<sup>5</sup>, and a requirement that Modern Awards 'not include terms that discriminate against an employee because of, or for reasons including, ... family or carer's responsibilities'.<sup>6</sup>
  - h. Modern Award clauses directed to how the s.65 'rights to request' are exercised in particular industries.
12. These generic or safety net rights are also complemented by agreement making under the FW Act, which includes:
- a. Collective bargaining through enterprise agreements that address the intersection between work and caring.
  - b. Individual Flexibility Agreements (IFAs), designed to address individual accommodations in how work is organised, including those sought on a work and caring basis.
13. Although both collective and individual agreement making could be more widely used to support the balancing of working and caring responsibilities in contemporary Australia.
14. This is also supported by:
- a. A world leading anti-discrimination framework.
  - b. Specific protections against unfair dismissal and against taking adverse action against an employee based on their 'family or carer's responsibilities'.<sup>7</sup>
  - c. The promotion of good practices, such as through the Workplace Gender Equality Agency.<sup>8</sup>

<sup>4</sup>Fair Work Act 2009, s.3(d)

<sup>5</sup> Fair Work Act 2009, s.134(c)

<sup>6</sup> Fair Work Act 2009, s.153(1)

<sup>7</sup> Fair Work Act 2009, s.351(1)

<sup>8</sup> See for example: <https://www.wgea.gov.au/tools/Developing-flex-policy>

## Support Flexibility and Agreement on Working Arrangements

15. Carers have also been fundamentally underserved by the active retreat from individual accommodation and negotiation in our workplace relations system since 2008. Caring needs are highly individual and case specific, not only to the person being cared for, but in the interaction of those care needs with particular family and living arrangements, and with the working arrangements of primary and secondary cares, other household members and with other family members.
16. It seems clear that caring will demand more individualised flexibility than other intersections of working and non-working lives.

### Recognise the Role of Bargaining

17. One of the key workplace relations priorities of the Government is rejuvenating enterprise bargaining. Effective, efficient collective bargaining should be a core mechanism to better accommodate the intersection between working and caring.
18. A bargaining system that operates properly, which is attractive, accessible and reliable for both employers and employees, needs to form part of the measures used to better support the accommodation of working and caring. In fact, given the centrality of enterprise bargaining in our workplace relations system, bargaining facilitated solutions should be prioritised in future efforts to better support work and caring.

### Unleashing the power of IFAs

19. Individual Flexibility Agreements (IFAs) are the designated mechanism for securing individual flexibility under the Fair Work Act.
20. However, IFAs are not working well and are not widely used. In 2015<sup>9</sup> the Productivity Commission identified various obstacles and disincentives to the use of IFAs which are holding back their usage, and their utility and relevance to individuals and their employers, including those with caring responsibilities. Feedback to ACCI is that IFAs have fallen into even greater disuse in the seven years since the PC undertook its analysis, and recommended changes.
21. The PC made the following three recommendations on IFAs which should be revisited to ensure this potentially useful mechanism under our workplace relations system becomes more accessible and attractive to carers and their employers:

#### RECOMMENDATION 22.1

(SECTION 22.3)

The Australian Government should amend the *Fair Work Act 2009* (Cth) so that the flexibility term in a modern award or enterprise agreement can permit written notice of termination of an individual flexibility arrangement by either party to be a maximum of 1 year if agreed by the employee and employer. The Act should specify that the default termination notice period should be 13 weeks.

<sup>9</sup> <https://www.pc.gov.au/inquiries/completed/workplace-relations/report>

## RECOMMENDATION 22.2

(SECTION 22.3)

The Australian Government should amend the *Fair Work Act 2009* (Cth) to introduce a new no-disadvantage test to replace the better off overall test for the assessment of individual flexibility arrangements.

To encourage compliance the Fair Work Ombudsman should:

- provide more detailed guidance for employees and employers on the characteristics of an individual flexibility arrangement that satisfies the new no-disadvantage test, including template arrangements
- investigate the desirability of upgrading its website to provide a platform to assist employers and employees to assess whether the terms proposed in an individual flexibility arrangement satisfy a no-disadvantage test including non-monetary terms.

## RECOMMENDATION 22.3

(SECTION 22.3)

The Fair Work Ombudsman should develop an information package on individual flexibility arrangements and distribute it to employers, particularly small businesses, with the objective of increasing employer and employee awareness of individual flexibility arrangements. It should also distribute the package to the Australian Small Business and Family Enterprise Ombudsman, the various state government offices of small business, major industry associations and employee representatives.

22. The guidance and template elements of Recommendation 22.2 could be pursued notwithstanding the retention of the BOOT.

### Removing barriers to greater flexibility

23. Throughout the COVID-19 crisis, employers have worked to introduce increasingly flexible working arrangements such as remote work and part-time flexibility arrangements. The majority of these flexibilities were only available to employers and employees because of legislative change enacted by the former Government as part of its JobKeeper scheme. In addition, changes to Modern Awards were made by consent between employer groups and unions on application to the Fair Work Commission.
24. It is usually the case that many Modern Awards have terms which act as a barrier to flexible working arrangements, such as restrictions on working hours. For instance, some Modern Awards require that working hours be worked continuously, others may have strict rules around rostering. Restrictions on working hours and penalty/ overtime rates can also act as a financial penalty on employers who support employees working additional hours at certain times.
25. A review of Australia's safety net of terms and conditions of employment should be undertaken to ensure that any barriers to flexible working arrangements that exist can be identified and removed.
26. Part-time flexibility arrangements should also be implemented to make it easier for a part-time



employee and employers to agree to that employee working additional hours, without the employer being financially penalised.

## **International Labour Organisation (ILO) Obligations**

27. As Australia's employer representative to the ILO, ACCI has been involved in the making of each major international labour standard supporting the intersection of work and care, their ratification by Australia, and Australia's ongoing reporting on compliance with its international obligations.
28. This includes Australia's ratification of:
  - a. Equal Remuneration Convention, 1951 (C100), ratified 10 December 1974
  - b. Discrimination (Employment and Occupation) Convention, 1958 (C111) ratified 15 June 1973
  - c. Workers with Family Responsibilities Convention, 1981 (C156), ratified 30 March 1990
  - d. Termination of Employment Convention, 1982 (C158), ratified 26 February 1993
  - e. Part-Time Work Convention, 1994 (C175), ratified 10 August 2011
29. Australia has ratified more of these ILO conventions than other comparable nations, with C175 being ratified by only 20 (of 188) ILO member states, and not being ratified by most other OECD countries. C156 has been ratified by just 45 ILO member states, and not by the US, UK, New Zealand, Canada, or Germany. ACCI would also be involved were any complaints made that Australia is not meeting its international law obligations, in full, in regard to these standards.

## **3. WORKFORCE PARTICIPATION AND LABOUR MARKET CHANGE**

### **Adopting a Balanced Approach to Labour Market Change**

30. Flexible forms of work can offer important solutions / options for carers and should not be uncritically viewed as problems in our labour market.
31. Casual work gives Australian families options to combine working and caring, and the flexibility inherent in casual working can be an important tool in allowing carers to remain in paid work. Casual work also provides additional incomes through a 25% loading which many families value highly.
32. Labour hire work provides both additional income and significant flexibility in when people work which can be ideally suited to those with caring responsibilities. Labour hire is also a significant supplier of labour into the aged care sector.

33. Platform work also creates new opportunities for shift parenting or caring, such as ride share driving in evenings.
34. The Mable online platform provides a significant range of care services on both a short and long-term basis that allow Australians to remain in work and organise care for relatives, such as aged parents, or those discharged from hospital.
35. Forms of work demonised as insecure, and inaccurately treated as homogenously involuntary and undesirable, can in fact facilitate labour market participation for some of those in our community who find it hardest to participate in traditional paid work.
36. Limitations on casual work, agency work, or platform work risk harming carers and those who rely on them and reducing their opportunities to combine work and care.

## **Better Equip Employed Carers for Successful Labour Market Transitions**

37. It is critical to equip those with caring responsibilities with the skills and employability to successfully leave and re-enter work, and scale hours up and down across periods of work and caring.
38. Whether through bridging courses, tools and confidence building to support successful labour market transitions, anything done on the legal side should be properly complemented by ensuring people are able to re-engage with work, or to fully engage with work when they can do so. We encourage the Committee to consider the role micro-credentialling could play in enhancing the employability (and re-employability) of carers.

## **Women's workforce participation**

39. While more Australian women are participating in the workforce than in the past, more needs to be done, with female participation rates still lagging males by about 8 percentage points. Workforce participation dips for women in their thirties, when many start having children. When women with children do undertake paid work, they are much more likely to work part-time than in comparable OECD countries.<sup>10</sup>
40. This is not necessarily by choice — Australian women have one of the highest rates of involuntary part time employment of all OECD countries. The pre-COVID female participation rate (2019) in Australia was 61 per cent, compared to a male participation rate of 71 per cent. This compares with a female participation rate of 65 per cent in New Zealand, where the male participation rate is also higher at 75 per cent.
41. Women are more likely to be primary carers (5.9% of all working age women) compared to 1.9% of men.<sup>11</sup>
42. To achieve an improved participation rate, ACCI supports the Governments proposed increased investment in child care, with a focus on reducing the gap costs particularly for women at lower income levels.

<sup>10</sup> World Bank, Labour force participation rates [female \(national estimate\)](#); [male \(national estimate\)](#)

<sup>11</sup> ABS: Disability, Ageing and Carers, Australia 2018.

43. 272,000 people across the country last year reported they were not in the labour force due to caring for children<sup>12</sup>. The most common childcare service-related reason provided for not being in the labour force was the cost of childcare (26.7 per cent)<sup>13</sup>. Subsidies need to increase to reduce the gap costs particularly for women at lower income levels, the majority of which carers are. The hours worked by carers tend to fall outside of the scope of the operating hours of childcare centres, there needs to be access to childcare for those working non-traditional hours.

<sup>12</sup> Productivity Commission, [Report of Government Services 2022](#)

<sup>13</sup> Productivity Commission, [Report of Government Services 2022](#)

## ABOUT ACCI

The Australian Chamber of Commerce and Industry (ACCI) is the largest and most representative business advocacy network in Australia. We speak on behalf of Australian business at home and abroad.

Our membership comprises all state and territory chambers of commerce and dozens of national industry associations. Individual businesses are also able to be members of our Business Leaders Council.

We represent more than 300,000 businesses of all sizes, across all industries and all parts of the country, employing over 4 million Australian workers.

The Australian Chamber strives to make Australia the best place in the world to do business – so that Australians have the jobs, living standards and opportunities to which they aspire.

We seek to create an environment in which businesspeople, employees and independent contractors can achieve their potential as part of a dynamic private sector. We encourage entrepreneurship and innovation to achieve prosperity, economic growth and jobs.

We focus on issues that impact on business, including economics, trade, workplace relations, work health and safety, and employment, education and training.

We advocate for Australian business in public debate and to policy decision-makers, including ministers, shadow ministers, other members of parliament, ministerial policy advisors, public servants, regulators and other national agencies. We represent Australian business in international forums.

We represent the broad interests of the private sector rather than individual clients or a narrow sectional interest.

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