

2 September 2022

Commissioner Catherine de Fontenay,
Commissioner Paul Lindwall and Commissioner Martin Stoke
Carer Leave Inquiry
Productivity Commission
Locked Bag 2, Collins Street East Melbourne Vic 8003
Email: carersleave@pc.gov.au

Dear Commissioners,

Submission to the Productivity Commission's Carer Leave Inquiry

Thank you for the opportunity to provide input in relation to the above inquiry considering the Issues paper dated July 2022.

We note that the inquiry arises from findings of the Royal Commission into Aged Care Quality and Safety ('the Royal Commission') which found that the current aged care system fails to adequately support informal (unpaid) carers.

Informal carers include family members and others who provide care and support for older people ('informal carers').

The Royal Commission expressed that many informal carers struggle to balance the care they provide with their work and other personal commitments and how this can be associated with adverse effects on health, financial wellbeing and in other ways.

The Royal Commission recommended that that the Government consider amending the Fair Work Act 2009 (Cth) to provide for an additional entitlement to unpaid carer's leave.

The Royal Commission also made other recommendations to improve the quality, availability, and outcomes of aged care. This included recommendations relating to the aged care workforce, which are being considered separately by the Productivity Commission in the Aged Care Employment Study ('AGE Study').

The Darwin Community Legal Service ('DCLS') submission dated 23 May 2022 to the AGE Study ('the first submission') referred to age care demographics and needs in the NT and canvassed a range of issues. The submission also outlined multiple ways DCLS is involved, including via advocacy, legal assistance, networks, and collaborations. This occurs through the DCLS Seniors and Disability Rights Service, and teamwork involving SDRS and our other program areas including the General Legal Service (includes social security, credit and debt, consumer, employment, discrimination, adult guardianship, NDIS), Tenants' Advice Service (focusing on tenant's rights, housing, and housing issues) and the Veteran's Legal Service.

The first submission provided more background about DCLS and issues in aged care in the NT. That submission is attached, and we request that it be considered.

Older Persons Advocacy Network

DCLS is a member of the Older Person's Advocacy Network ('OPAN') which is a national network delivering advocacy, information, and education services to older people across Australia.

DCLS endorses the OPAN submission to the current inquiry, which supports increasing legal and other supports for carers.¹

Key issues regarding the present inquiry

1. Amending the Fair Work Act

DCLS supports amending the Fair Work Act to provide for an additional entitlement to unpaid carer's leave as we consider that:

- This measure will reflect and make a societal level contribution to reducing barriers carers experience in considering, seeking, and maintaining employment.
- The measure will contribute to increased understanding of the needs of carers and the roles workplaces, including workplace culture, can play.
- There will be positive economic impacts from increased workforce participation for the individual, their communities, including a reduction in negative impacts associated with current barriers.

The Issues Paper asks whether the underlying rationales and principles for assessing an entitlement to extended unpaid leave to care for older people may also apply to other types of care situations including younger people and people with a disability. In our view all carer situations raise the same or similar issues, and all carer situations should be included.

DCLS endorses the recommendations of the National Aboriginal Community Controlled Health Organisation ('NACCHO') - regarding amendments to the National Employment Standards, embedding additional supports in the aged care system, improving aged care support services for carers and reviewing the carer payment and carer allowance for carers who wish to undertake part-time work.²

As the capacity of different employers, and workplaces to manage legislative changes will vary, a system of direct and indirect government supports is also likely to be required. This could, for example, include subsidies and workforce measures such as increased portability of entitlements, provision for backfill and special measures in support of:

¹ OPAN, submission to the Productivity Commission Carer Leave Inquiry (August 2022), <https://www.pc.gov.au/__data/assets/pdf_file/0003/345198/sub015-carer-leave.pdf>

² NACCHO, Submission to the Productivity Commission Carer Leave Inquiry (August 2022), <https://www.pc.gov.au/__data/assets/pdf_file/0015/345003/sub005-carer-leave.pdf>

- the universal nature of care³
- foster and kinship carers⁴
- carers with multiple care responsibilities, and
- carers facing challenges such as waiting times for formal care formal care arrangements breaking down.

2. Additional ways of reducing barriers to workforce participation by informal carers

DCLS also supports additional ways of reducing barriers to workforce participation by informal carers.

We would like to highlight five key areas relating to the NT namely:

- social security system
- National Disability Insurance Scheme
- housing and homelessness
- locational issues, especially for Aboriginal people living in remote and very remote communities, and
- access to independent advocacy and legal help.

2.1 Social security system

Much more focus is needed on the interface between the social security system and participation in the paid workforce as it relates to informal carers.

The current dynamics relating to paid employment and carer responsibilities are driving carers out of the workforce, in many cases onto social security. Women are disproportionately disadvantaged and this is compounded by the social security system being poorly tailored to the needs of informal carers.⁵

Additionally, social security conditionalities in the Northern Territory, disproportionately impact on First Nations people and reflect assumptions which are racially, linguistically, culturally, and locationally discriminatory.⁶

³ HREOC, *It's about time: Women, men, work and family - final paper* (Human Rights and Equal Opportunity Commission, 1 March 2007), Ch. 8, Government Support: Care for adults and support for carers, <https://humanrights.gov.au/our-work/publications/its-about-time-chapter-8>

⁴ NT Government, *Kinship and Foster Carers Handbook, A day to day guide for Kinship and Foster Carers, caring for children and young people in care in the Northern Territory* (NT Government n.d). https://tfhc.nt.gov.au/_data/assets/pdf_file/0004/640417/kinship-foster-carers-handbook.pdf

⁵ See for example Elise Klein, Unpaid care, welfare conditionality and expropriation. *Gender Work Organ* (2021), accepted manuscript, <https://doi.org/10.1111/gwao.12679> and Professor Klein's submission to this inquiry

⁶ Regarding discrimination on the basis of geographic location, see for example the DCLS Submission to the NT Department of Attorney-General and Justice on the Exposure Draft Anti-Discrimination Amendment Bill 2022, 12 August 2022, <https://www.dcls.org.au/events-and-publications/submissions/>, and others on this point including: Tangentyere Council, Submission to the draft Anti-Discrimination Amendment Bill 2022, August 2022 and the Australian Discrimination Law Experts Group submission, August 2022; regarding other discriminatory aspects, see submissions by the Aboriginal Peak Organisation NT, North Australian Aboriginal Justice Agency and Change the Record to the Senate Community Affairs and Legislation Committee inquiry into the Social Security (Administration) Amendment (Repeal of

Aboriginal people in remote and very remote parts of the NT face multiple hurdles to workforce participation, including balancing carer responsibilities.

Informal carers are highly represented and insufficiently identified among:

- those subject to compulsory income management in the NT
- those impacted by the deep structural problems with eligibility criteria and requirements for the disability support pension,⁷ and
- those on social security who are subject to conditions which are not sufficiently responsive to their caring responsibilities.

Northern Territory Housing has recently referred to the continuing issue of social security non-participation rates in remote and very remote communities in the NT in the context of the proposed NT Remote Rent Reform Framework. Social security non-participation refers to people who are eligible for social security but are not receiving their entitlements, for example because they have not applied or have disengaged. Social security non-participation is under-researched in the NT and nationally, however in the NT the complexity and harshness of the social security system are contributors.⁸

Social security non-participation can increase the burden of care on families and communities, increase vulnerability and have impacts on health and levels of contact with the criminal justice system.

We strongly call for a review of the direct and indirect impacts of the social security system on informal caring requirements especially in the NT and for Aboriginal people living in remote and very remote communities in the NT.

2.2 National Disability Insurance Scheme

The NDIS is not yet operating to adequately support the workforce participation rights and needs of informal carers. Over the last 18 months the DCLS Seniors and Disability Rights Service and DCLS General Legal Service have supported numerous families who have been left struggling due to NDIS decision making.

In many cases NDIS decision making places incoordinate and impossible expectations on informal carers. Informal carers are often assumed to be willing and capable of providing levels of care which are totally unrealistic and unreasonable.

In many client cases, the NDIS approach of cutting plans as a cost saving measure has plunged NDIS participants and informal carers into crisis and resulted in informal carers giving up their

Cashless Debit Card and Other Measures) Bill 2022 at:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/CashlessDebitCardBill ('CDC Repeal Inquiry')

⁷ DCLS, Submission to the Senate Community Affairs References Committee Inquiry into the purpose, intent and adequacy of the disability support pension, (Darwin Community Legal Service 17 September 2021), <https://www.dcls.org.au/wp-content/uploads/2021/11/DCLS-Submission-Dsiability-Support-Pension-2021.pdf>

⁸ Jon Altman, Modern Slavery in Remote Australia? Arena, No 150, October 2017, <https://arena.org.au/modern-slavery-in-remote-australia-by-jon-altman/>; NSSRN, Community Development Program — The impact of penalties on participants (Economic Justice Australia, National Social Security Rights Network 2020), https://www.ejaustralia.org.au/wp-content/uploads/2020/03/NAAJA-NSSRN-Report_FINAL.pdf

employment or reducing their work hours. Informal carers are frequently overwhelmed by the extent to which systems are against them.

This has been compounded in remote and very remote parts of the NT, by insufficient steps to ensure access to support providers including Occupational Therapists and Speech Therapists, followed by participant plans being cut due to under-utilization.

When NDIS participants need to appeal NDIS decisions, they, or their support providers including informal carers, often need advocacy and legal representation. However, there is a NDIS appeals crisis in the NT with chronically insufficient access for participants and informal carers to independent appeals advocacy and legal representation.

The Seniors and Disability Rights Service and other advocacy organisation in the NT raised this in a joint public statement in March 2022 and in other ways, however the crisis is continuing.⁹

2.3 Housing and homelessness

DCLS has addressed issues regarding the chronic undersupply of affordable housing in the NT, chronic maintenance issues in remote and very remote communities and low accessibility of housing for people with a disability in several recent submissions. This includes the DCLS submission to the Productivity Commission in relation to the National Housing and Homelessness Agreement Review.¹⁰

The availability, suitability, and quality of housing impacts directly and indirectly on informal carers in many aspects of their day-to-day lives. For some carers, housing issues substantially increase and complicate what is involved in providing and trying to sustain care.

Affordability of housing is a major factor in the NT as is rent stress, including in remote and very remote communities. That the NT Government has recently waived almost \$70mill in rent debt for people in remote and very remote communities is symptomatic of chronic mismatch between Government capacities and remote and very remote community needs. There are also serious concerns about a new proposed NT Remote Rent Framework which is likely to substantially increase rents in a high proportion of cases.¹¹

⁹ DCLS, DAS, NPYWC, Northern Territory Disability Advocates call for action on NDIS Appeals crisis (Darwin Community Legal Service, Disability Advocacy Services, Alice Springs and NPY Women's Council (DCLS, DAS, NPYWC, 16 March 2022), <https://www.dcls.org.au/wp-content/uploads/2022/03/NDIS-Appeals-advocacy-statement-DAS-NPYWC-DCLS-170322.pdf>

¹⁰ DCLS and NAAFLS, Joint Submission of Darwin Community Legal Service and the North Australian Aboriginal Family Legal Service to the Productivity Commission's National Housing and Homelessness Agreement Review, (Darwin Community Legal Service and North Australian Aboriginal Family Legal Service, March 2022), <https://www.dcls.org.au/wp-content/uploads/2022/04/sub089-housing-homelessness.pdf>

¹¹ Francis Markham and Michael Klerck, 'NT government cancels \$70m in rental debt for remote Indigenous community, (ABC News 10 August 2022); Simplifying the system or deepening poverty? The New Remote Rent Framework in the Northern Territory, (Centre for Aboriginal Economic Policy and Research ANU, 2022); <https://caepr.cass.anu.edu.au/research/publications/simplifying-system-or-deepening-poverty-new-remote-rent-framework-northern> Oliver Chaseling, Rent hike looms for many Northern Territory residents under new remote rent system (ABC News 16 August 2022) <https://www.abc.net.au/news/2022-08-16/nt-belyuen-public-housing/101333920>; The Guardian, <https://www.theguardian.com/australia-news/2022/aug/10/nt-government-cancels-70m-in-rental-debt-for-remote-indigenous-community>; Oliver Chaseling, Northern Territory remote rent

In the NT housing and homelessness are issues that affect living standards, wellbeing and human rights of older people, others requiring care and of informal carers and others involved.

DCLS, the North Australian Aboriginal Justice Agency, the NT Women's Legal Services (Top End Women's Legal Service, Katherine Women's Legal Information and Referral Service and Central Australian Aboriginal Legal Service) and many others have highlighted profound gaps in access to independent advocacy and legal help in relation to tenancy and housing issues which directly impacts on people's ability to advance their rights.

2.4 Locational issues

As outlined in the DCLS Aged Care Employment submission (attached) geographic location permeates many aspects in access to and suitability of aged care in the NT.

Locational issues also permeate informal care and informal care in remote and very remote communities where there increased involvement of family and community members in informal care.

This also factors into patterns regarding informal care and workforce participation.

The locational dimensions of informal carer workforce exclusion need more attention to avoid carers in regional, rural, remote, and very remote locations being multiply disadvantaged in access to employment.

2.5 Access to independent advocacy and legal help

There is insufficient access to independent advocacy and legal help in support of informal carers, vulnerable workers, social security recipients, people facing issues housing issues and/or homelessness and people living remote and very remote communities across the NT.

While the NT has the wonderful NT Working Women's Centre, the funding is insufficient and needs based funding is required.

Additionally, the NT lacks generalist employment law legal help for vulnerable workers. This compares, for example, with Victoria where JobWatch is funded by the Fair Work Ombudsman, Victoria Legal Aid and the Victorian Government.¹² There are no similar arrangements in the NT.

DCLS provides some employment law assistance, but resources are not sufficient to provide a specialist NT wide service, which is required. The Aboriginal Legal Services and Women's Legal Services in the NT could also increase coverage with additional resources.

Social security legal help is also grossly inaccessible in the NT as noted above. Organisations

changes delayed after backlash over rising costs, (30 August 2022) <https://www.abc.net.au/news/2022-08-30/nt-remote-rent-changes/10138604>

¹² JobWatch submission to the Productivity Commission Carer Leave Inquiry (26 August 2022), https://www.pc.gov.au/data/assets/pdf_file/0014/345200/sub017-carer-leave.pdf

calling for access to social security legal help to be addressed nationally include the Australian Council of Social Service and Economic Justice Australia (previously called the National Social Security Rights Network). For example, Economic Justice Australia submitted to the CDC Repeal Inquiry in August 2022:

As stressed in the ACOSS and AIMN submissions to this Inquiry, there is a longstanding unmet need for specialist social security legal services in regional, rural, remote and very remote Australia - with the need most pronounced in regions subject to compulsory income management. There are currently no specific funds provided for social security legal help under the National Legal Assistance Partnership, and no specific funds for social security legal help for Aboriginal and Torres Strait Islander people, despite the disproportionately high number of First Nations people subject to compulsory income management - a cohort also disproportionately affected by adverse Centrelink decisions, including raising and recovery of social security and family assistance debts.¹³

Access to legal help in relation to housing and homelessness is also grossly inadequate in the NT as outlined above.

Additionally, geographic location and legal needs are insufficiently factored into funding models and relevant funding programs.

All of the above impacts on workforce participation by informal carers, the wellbeing of these carers, those requiring care and community members generally.

We recommend that access to justice, voice, rights, and due process be recognised as central issues in a holistic approach.

For any follow up regarding this submission, please contact Judy Harrison on (08) 8982 1111 or at info@dcls.org.au.

Yours sincerely,

Darwin Community Legal Service

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¹³ At para 1.54 in the Senate Committee CDC Repeal Inquiry Report, [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024955/toc_pdf/SocialSecurity\(Administration\)Amendment\(RepealofCashlessDebitCardandOtherMeasures\)Bill2022.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024955/toc_pdf/SocialSecurity(Administration)Amendment(RepealofCashlessDebitCardandOtherMeasures)Bill2022.pdf;fileType=application%2Fpdf)