



# AUSTRALIAN PRODUCTIVITY COMMISSION – CARERS LEAVE

Submission by Women Lawyers Association of  
Queensland

August 2022

## Australian Productivity Commission – Carers Leave Submissions

The Women Lawyers Association of Queensland Inc (WLAQ) welcomes the opportunity to provide a submission in response to the Australian Productivity Commissions Carers Leave Paper.

As at 2020, there were 83,643 practising solicitors in Australia, 53% of whom are women,<sup>1</sup> whilst there are approximately 6,800 barristers, 25% of whom are women.<sup>2</sup>

WLAQ is the peak body for women lawyers in Queensland. It is an organisation dedicated to women who are jurists, practising professionals, legal academics, legal graduates, and students of law. One area in which the WLAQ seeks to assist its members is in raising awareness and proposing changes on issues facing women in law. WLAQ provides input into State and Commonwealth policy development in relevant areas to advance the organisational objectives of the association. The most recent statistics from the Australian Bureau of Statistics<sup>3</sup> showed that of the 2.65 million carers in Australia, females were more likely to be carers (12.3% of all females cf. 9.3% of all males), and that seven in ten (71.8%) of primary carers were women. Given the large population of women who carry out carer roles, WLAQ considered it appropriate to provide submissions based on the concerns which face women in law. We believe we are in a unique position to advocate on behalf of our members in relation to the carers leave enquiry.

The below submissions do not respond to the request for views on each matter set out in the issues paper, rather it summarises those matters which are relevant to our organisation and its members. For ease of reference, the questions which are responded to are included as headings.

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<sup>1</sup> Urbis, 2020 National Profile of Solicitors, released 1 July 2021.

<sup>2</sup> Travis Schultz, 'Why are there so few female barristers?', *QLS Proctor*, 17 August 2021.

<sup>3</sup> Released on 24 October 2019.

## Carer employment entitlements

When do employees use paid or unpaid leave or request flexible working arrangements to care for an older person? In what circumstances are the provisions inadequate?

For the purposes of this submission, we surveyed our membership base (women lawyers practicing, and women in law, in Queensland) in relation to the adequacy of the current entitlements for leave. Our survey received 80 responses, encompassing women lawyers from a range of ages, experience and backgrounds.

75% of those who responded to the survey indicated that the current entitlements are inadequate for those respondents who have caring responsibilities for older people, while 55% indicate that they have had, or currently have, a caring responsibility for older people.

Given the demands of caring for older people, unpaid leave or flexible working arrangements are frequently adopted by those women working in law who have multiple caring responsibilities, of which caring for older people is one. Paid personal/carer's leave is inadequate to meet these needs, forcing women to take other forms of paid leave (usually annual leave) or unpaid leave.

This is because paid personal/carer's leave can often be required for the individual employee to manage their own health and care requirements and that of younger families/children. Therefore, where older people require care, paid leave may already have been exhausted.

It is noted that access to unpaid leave or flexible working arrangements will largely depend on the flexibility and support of the workplace and are not always accessible by all women who work in law. Many of our survey respondents indicated that there is limited flexibility in their workplaces, even for the purposes of taking paid personal/carer's leave when personally ill.

Well over half of respondents indicated that they are concerned that managing their care responsibilities will interfere with their career progression or lead to negative perceptions from colleagues. Further, 30% of respondents are concerned about discrimination arising from their care responsibilities.

When it comes to the availability of unpaid leave, our respondents indicate that this is unworkable for a range of reasons. The primary reason given is that respondents are simply unable to absorb the financial impact.

The current provisions of the NES are therefore inadequate to address the requirements of those who have informal caring responsibilities for both younger and older people. Overwhelmingly, our members indicate that where they do have caring responsibilities for older people, they often have a young family and children to care for as well. This means that those with such responsibilities will effectively need to 'split' their leave allowances between caring for both younger and older people as well as themselves.

The experiences of our members suggest a number of ways that the current provisions are inadequate, which include:

- (a) a lack of flexibility - caring for older people requires longer periods of care, the needs of which can fluctuate from day-to-day, making it impossible to plan ahead for such care.
- (b) insufficient number of days –caring for the individual and/or children may exhaust the annual 10 day entitlement, leaving no additional leave to care for older people (which may be more ad hoc). The current entitlement includes both personal and caring responsibilities. This is particularly insufficient where an individual has their own health needs.
- (c) insufficient number of days – current entitlements allow for fewer than one day per month in paid leave and don't allow for additional caring requirements – particularly during pandemics or even the flu season, for example.
- (d) older people often have a number of appointments – current allowances for paid leave doesn't take into consideration the requirement that older people often have to attend on a number of businesses or institutions often multiple times per week (such as health care providers), and that those institutions or businesses are only available during the week, during business hours.
- (e) do not take into consideration indigenous and other cultural ideas of what constitutes a family, significantly restricting who can access leave for the care of older people.
- (f) do not take into consideration that those from indigenous and other cultural backgrounds can have additional caring responsibilities for elders.

Do the eligibility requirements for the paid and unpaid leave entitlements allow them to be used by informal carers of older Australians? If not, why?

The current eligibility requirements for those who informally care for older people, particularly where the need for care is not necessarily related to health, do not allow access by most employees.

Current definitions are understood to cover health or other emergencies and not day-to-day caring. It is submitted that the current entitlements do not take into consideration the nature of ageing and the requirement for informal carers to provide support for not only health related matters, but also general living requirements – for example, cooking, cleaning, personal hygiene and care needs, transport to routine medical appointments (only available during business hours) and attending to shopping.

The number of paid leave days are insufficient to allow for the day-to-day care often required for older people, particularly where those care requirements are split between not only older people, but also younger people and the individual themselves.

It is further submitted that the caring responsibilities for those who have informal care of older people are often onerous – requiring care on a daily or weekly basis. Approximately 21% of respondents spend at least 1-4 hours per week in informal

caring for older persons, and therefore those responsibilities are completed without ability to claim these entitlements (which are soon exhausted).

This is particularly relevant to those who are caring for older people who are disabled, or those who are experiencing a significant illness, which requires increased time to be spent caring, often substantially more time than 10 days per year.

Do the eligibility requirements for the paid and unpaid leave entitlements allow them to be used by informal carers of older Australians? If not, why?

Our survey demonstrates that the eligibility requirements are a barrier to the provision of informal care to older Australians in two main ways.

The first, as outlined above, relates to the definition of when an employee can take paid or unpaid carer's leave. That definition requires either a personal illness or injury, or an unexpected emergency. It simply does not take into account the nature of the care provided to older persons, which takes place day-to-day. Ageing is not illness, injury, or emergency. As indicated by one of our respondents, "care responsibilities do not only occur in discrete incidents. They are often daily requirements and involve significant regular time."

The second barrier, according to our respondents, is the definition of immediate family, which excludes many family members (great-grandparents, aunts, uncles, cousins and other relatives are all excluded). 30% of respondents indicate that it would be beneficial for them if the definition was extended to include these relatives, while 27.5% would take be benefitted if the definition was extended to include non-family members for whom the respondent has care responsibilities.

The point is made that the current definition "does not include Indigenous and other non-Anglo Saxon cultural ideas of what constitutes a family member". Another respondent stated that it is important to recognise non-familial care relationships because "families often have issues that fracture relationships. If someone is caring for an older person, then they should have that recognition. As a community we have to look after each other".

Are there barriers that limit informal carers of older people from using the entitlements?

For those women who work in the legal profession, there are several barriers to using entitlements, including:

- (a) financial impacts when utilising unpaid leave.
- (b) limited career progression - being passed over for opportunities at work because they are 'busy with outside responsibilities'.
- (c) the stigma of taking time off work – being seen by colleagues as 'not contributing'.
- (d) being negatively judged by employer and colleagues.

It should also be noted that 25% of respondents have not disclosed their responsibilities to their employer at all.

In many cases it appears that the requirement to care for older people is currently completed around work responsibilities and where caring is required during a workday, employees may be 'making up' time after hours. Again, such flexibility needs to be supported by the workplace, and may be difficult in areas where employees are unable to work remotely or flexibly. In law, particularly this poses a difficulty where women have a court-facing or client-facing role, which requires them to be physically present.

How often does the decision to become a carer necessitate changed work arrangements or leaving the workforce? How often is this a planned decision versus an impromptu decision triggered by an emergency?

Our survey responses suggest that 25% of respondents have not disclosed their responsibilities to their employer. Of those that have, approximately 43% disclosed only because of an emergent or critical incident affecting their loved one. Of these, 17% have indicated that this has necessitated them leaving the workforce.

#### Effects of an entitlement to extended unpaid carer leave

How many employees would likely take extended unpaid carer leave and provide more informal care if they were entitled to do so?

Many women employed in law would take advantage of extended unpaid carers leave to provide more informal care for older people if this were available. However, other members are self-employed or would otherwise be unable to take unpaid leave due to their own financial needs. Other members have indicated that taking an extended leave period would then subject them to difficulties in managing their workload, and also having a reduced income.

While extending unpaid leave might allow for an increase in informal care, such increase is likely to come at the expense of the earning capacity of the women who undertake the carer's role. Further, while employees may take up extended unpaid carer leave, unpaid leave undermines the value offered by informal carers, and particularly the career and financial trade-off for those women who will do the majority of this informal care.

The latest figures from the Workplace Gender Equality Agency indicate that on average, women earn \$255.30 less per week than men<sup>4</sup>. Extending unpaid carers leave would significantly burden women, and further reduce their income earning capacity.

While there should be greater flexibilities offered to those who have informal caring responsibilities for older people, any extended carers leave must carry some compensation for this valuable role, whether that compensation is employer based or

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<sup>4</sup> <https://www.wgea.gov.au/publications/australias-gender-pay-gap-statistics>

government based, to address the flow-on effect of women bearing the majority of caring responsibilities - with unpaid leave women are disproportionately left to bear the financial cost – not only of relevant lost wages, but also in terms of building superannuation for the future. Reduced income and superannuation serve only to delay the cost to government (and the national economy) of providing care to the next generation of workers.

Are there are costs and benefits of leaving formal employment to provide informal care that carers don't take into consideration?

The obvious cost of leaving formal employment to provide informal care - the loss of earning – must not be overlooked or minimised. Many women who work in law find themselves sandwiched between providing care for their own young family members (i.e. children) as well as providing care for older parents, and most women lawyers work in order to maintain their standard of living. Many women who work in law would be financially unable to leave formal employment to provide informal care or would be significantly financially disadvantaged (both now and in their own retirement) by doing so.

In terms of women in law, there does not appear to be any benefit to leaving formal employment to provide care, other than to enable an informal carer to continue to undertake those caring responsibilities without the added pressure of managing a formal workload. It is submitted that those who undertake informal care often do so because the formal care system available is wholly inadequate and requires vigilance from those who place family members into care.

It would be WLAQ's submission that there would be little benefit for women in law in leaving formal employment to provide informal care. It is also noted that because women are more likely to take on the caring role for older people, leaving formal employment will mean that they are also financially affected in the future – where superannuation is tied to paid employment, which could make them more vulnerable in the future where they would have accumulated less superannuation.

To what extent and how do carers consider the following factors when deciding whether to provide informal care:

- their ability to return to work
- their future income, including retirement income
- the health and wellbeing of the care recipient
- their own health and wellbeing
- the cost of alternative care arrangements
- any other important matters?

The ability to return to (or indeed remain in) work is a critical factor in the decision to provide informal care. This is particularly so for older women in law, who may take a break during the later stages of their working life. It is known that there are barriers

and difficulties faced by those returning to the workplace after age 55,<sup>5</sup> and this is a matter which affects the decision making of those considering providing informal care.

Many women in law seek out flexible working arrangements which allow them to maintain a relationship with their employer, and therefore allow flexible working arrangement or a return to work following care, and this may be a significant factor in recruitment and retention decisions.

Our respondents indicate that income, including future income, is the dominant factor. As one respondent put it: "I have taken leave for 2 years so have lost my salary for that time, which is the time when I expected to be pumping the majority of my income into my superannuation." Other respondents indicate that they would like to provide more informal care to their loved ones, but simply cannot afford to do so. This is particularly so for those respondents that are self-employed (e.g. barristers and sole practitioners).

When it comes to health and well-being of the carer it should be noted that carers feel that their "caring responsibilities place a heavy load on [them], emotionally and physically". A resounding theme is that the lack of paid leave forces carers to choose between the provision of care to others and taking care for their own health concerns.

Comments made by our membership base include that this "leave[s] older persons in vulnerable circumstances where they cannot access support from family"; balancing your own needs and those of your loved ones "becomes even more unmanageable if a single parent and/or caring for more than one older person".

It is further submitted that the cost of alternative care arrangements and their quality are each significant factors in the decisions of women in law to take on informal caring roles. The cost being generally prohibitive and the quality of care being difficult to monitor.

### Alternative policies to support informal carers of older people

Income supports and services currently offered to informal carers. To what extent does eligibility for the existing payments affect carers' employment decisions?

Many of our member base are eligible for the 10 days of paid carers' leave; however, only those who are employed. WLAQ equally represents members who are self-employed, and in that way do not have access to paid or unpaid carers leave in any form. Those members may find it difficult to maintain their informal carer role and balance this with the need to generate income.

Further, of those that are employed, the results of our survey resoundingly indicate that our respondents do not or cannot access unpaid carers leave due to the significant financial impost.

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<sup>5</sup> On average, since data has been collected (commencing in 1991), it has taken jobseekers aged 55-64 19.2 weeks longer to find work than those aged 25-34: ABS, *Labour force Australia, Detailed*, Table 14d.



Accordingly, it is our submission that the government should consider an extended benefit that would allow informal carers to access funding to allow carers, particularly women, to take time off work, without detriment to their financial health. As the burden of care largely falls to women, where women earn less than men on average, funding of some type must be available for those who care informally.

It is noted that the provision of informal care is “a critical element of the care system”,<sup>6</sup> valued at nearly \$80 billion, and costing informal carers \$15.2 billion.<sup>7</sup> As one member put it, “our elderly parents are depending on family more and more, as a means to supplement entrenched under resourcing of the aged care sector.”

Over 61% of respondents indicated that extra paid leave would be of most benefit in assisting those with caring responsibilities, while also stating that they would be more inclined to take carer’s leave if:

- (a) it were paid - more than 52%.
- (b) they were able to access regular government carer’s benefits - 39%.
- (c) they were able to access one-off or ad hoc government carer’s benefits – 30%.

Of our 80 survey respondents, only one indicated that she receives financial support in the form of Carer Allowance. This is clearly inadequate to meet the needs of this group (and, it may be assumed, other carers suffering financial detriment as a result of their care responsibilities).

These statistics tell us that the benefits currently available are financially inadequate (or unavailable) to meet the needs of this group of professional women. It is submitted that these impacts would be equally (if not more) burdensome across the entire population of women carers.

It is noted that the Commonwealth Government has already determined to fund parental leave, in part because the lifetime earning capacity of women is “often severely reduced as a result of leaving the workforce” to bear children, with the affect including lower income and loss of superannuation.<sup>8</sup>

The problems faced by (predominantly) women in the provision of care to older people is akin to the problems faced by (predominantly) women in taking unpaid leave to care for their children.

A holistic and fair approach, which appropriately values the contribution of carers, requires recognition of the significant financial impost faced by workers who find themselves in the position of requiring time off to care for elderly loved ones. As one WLAQ member put it, “providing care for an elderly member of the family tak[es] pressure off the aged care system so more paid leave should be afforded to people that take on that responsibility”.

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<sup>6</sup> Commonwealth of Australia, *Final Report: Care, Dignity and Respect*, vol. 2, p. 30.

<sup>7</sup> Commonwealth of Australia, *Final Report: Care, Dignity and Respect*, vol. 2, p. 30.

<sup>8</sup> Explanatory Memorandum, Paid Parental Leave Bill 2010 (Cth), p 4 of Regulation Impact Statement.

However, our respondents are also concerned about the impact of additional paid leave on their employers. Possible solutions proposed include:

- (a) government funded leave for employees of SMEs (perhaps funded through a levy system).
- (b) access to Carers Allowance on a one-off or ad hoc basis, to improve financial standing for longer periods of care.
- (c) tax credits, in a manner similar to the Family Tax Benefit.

What challenges do informal carers of older people face in accessing the supports they need? What are the main types of supports that informal carers rely on?

WLAQ submits that the biggest challenges for women working in law is the support and flexibility of the workplace to take into consideration their caring responsibilities outside of the workplace.

To that end, it is submitted that there should not only be a focus on increasing the access to paid and unpaid leave, but also a more flexible approach to allowing leave including the following arrangements:

- (a) staggered/split hours /shifts – to allow informal carers to attend appointments during weekday/work hours (39% of respondents would utilise).
- (b) the ability to start early or late (i.e. outside usual business hours) (64% of respondents would utilise).
- (c) opportunities to work from home or to expand the hours working from home – particularly where carers have the responsibility of caring for older people in their own homes (70% of respondents would utilise).
- (d) tax credits/benefits for those who are unable to access carers payments (suggested by respondents – no statistic available).

It is noted that the workplace's attitude is central to employees feeling as though they are able to take leave for the informal care of older people. It is therefore likely that further steps would need to be taken to ensure that employers put into practice flexibility where the workplace can accommodate such flexibility.

WLAQ thanks the Australian Productivity Commission for the opportunity to make submissions on carers leave and would be happy to answer any questions arising from the above submission.

Ms Jessica McClymont  
President – WLAQ

## REFERENCES

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AUSTRALIAN PRODUCTIVITY  
COMMISSION – CARERS LEAVE  
SUBMISSION BY WOMEN LAWYERS  
ASSOCIATION OF QUEENSLAND  
APPENDIX 1 - COLLATED SURVEY RESULTS

1

### Why do you not consider the current entitlements adequate?

The amount of care older people requires can fluctuate and is almost impossible to plan for, requiring flexibility and additional days when needed

Our elderly parents are depending on family more and more, as a means to supplement entrenched under resourcing of the aged care sector. The aged care sector (commercial owners and government regulatory bodies) has also lost the trust of the community. Families need to be vigilant and often advocate on behalf of their parents

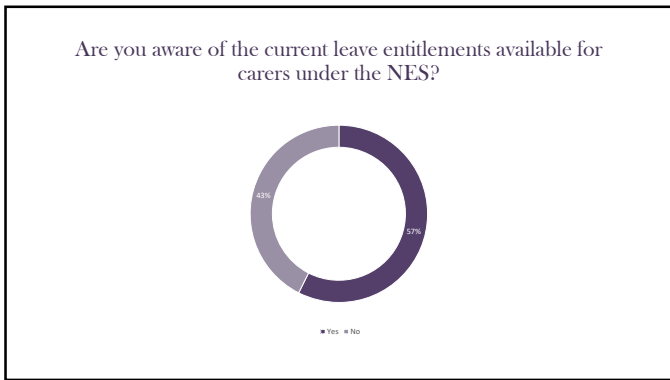
No accommodation for self employed people (...barristers must be self employed)

Providing care for an elderly member of the family takes pressure off the aged care system so more paid leave should be afforded to people that take on that responsibility

Caring responsibilities place a heavy load on you emotionally and physically. As it stands you have to choose how you use these days you have to ensure that you can access the days you need for yourself as well as those you need to care for others

They're not adequate, but there has to be a balance for employers to be able to afford to employ them

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### Why do you not consider the current entitlements adequate?

Does not include Indigenous and other non-Anglo Saxon cultural ideas of what constitutes a family member

Caring for another person requires flexibility particularly if you are caring for an older person

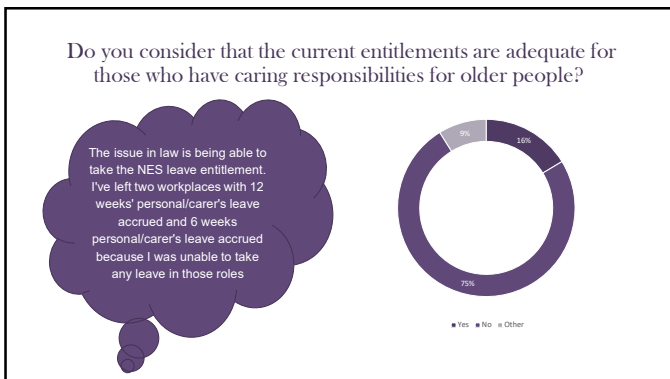
Care responsibilities do not only occur in discrete incidents. They are often daily requirements and involve significant regular time

Sometimes the illness requires more ongoing care than the time allowed. I appreciate that employers need workers, but it is very sad when people feel they have no alternative but to resign in order to meet carer responsibilities. I have been most fortunate to be able to get extended leave without pay

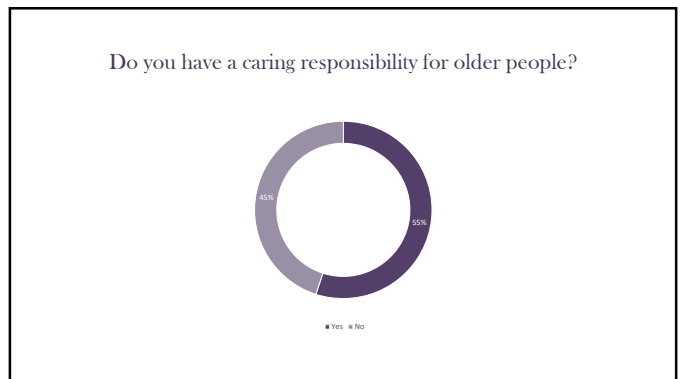
I watched my mother have to work full time and care for my grandmother who developed early onset dementia. She was unable to go into a nursing home as the dementia meant she was unable to settle. The level of around the clock care needed every tremendous, even while working the amount of time for medical appointments was significant

Aging is not an illness injury or unexpected emergency. These events can happen to the elderly but there is a wider level of care required at time for the aging that does not fit within the current requirements such that its dependent on the attitude an employer gives to the circumstances. For example if there is a heart attack or stroke or injury from fall its easy but if the ask is for time to collect washing or take a person shopping and this is a regular day to day activity some employers are not as generous with the permission and request time to be "made up", rather than taken as carers leave

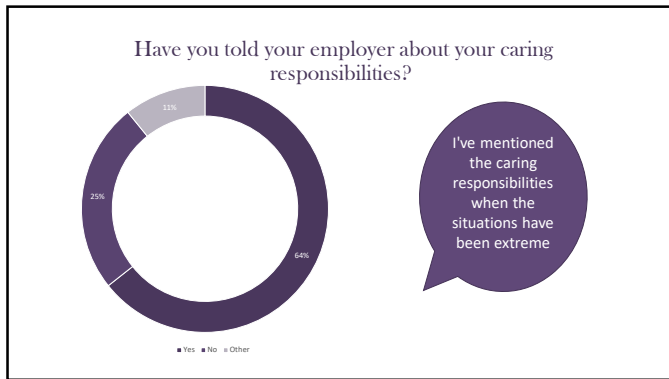
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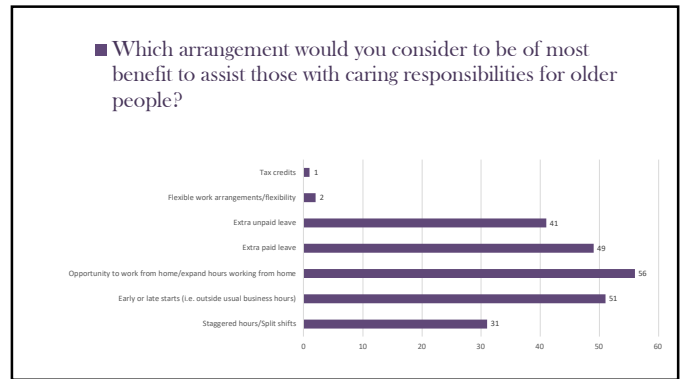
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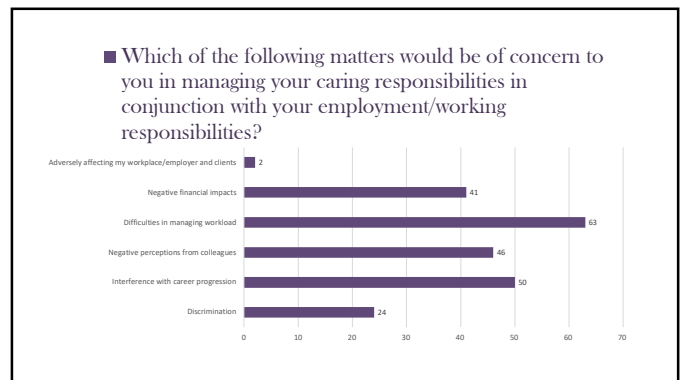


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If you do have caring responsibilities for older people and you have told your employer, what prompted you to disclose those responsibilities?

- Transparency
- Explanation for time needed
- Impacted my ability to perform my job
- Honesty
- Fairness
- A health crisis
- Distracted at work

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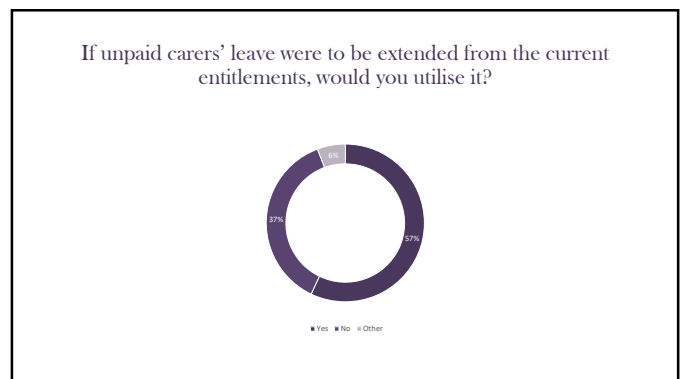


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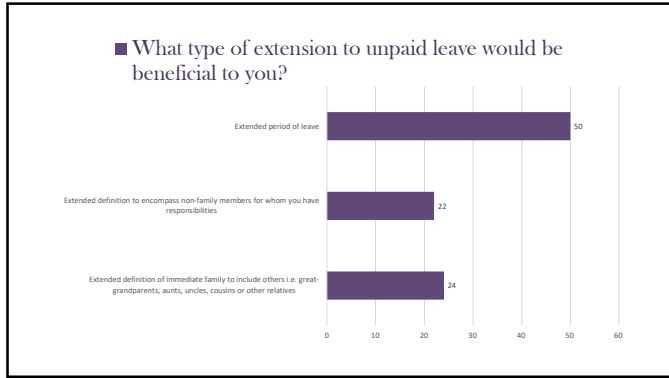
If you do have caring responsibilities for older people and you have not told your employer, what were the reasons for declining to disclose those responsibilities?

- Keep work and home separate
- Don't want to be passed over
- Stigma
- Doubt employer would care
- Negative judgment
- Didn't impact work

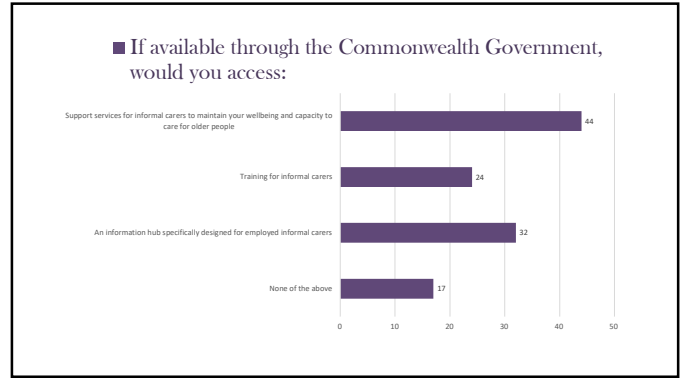
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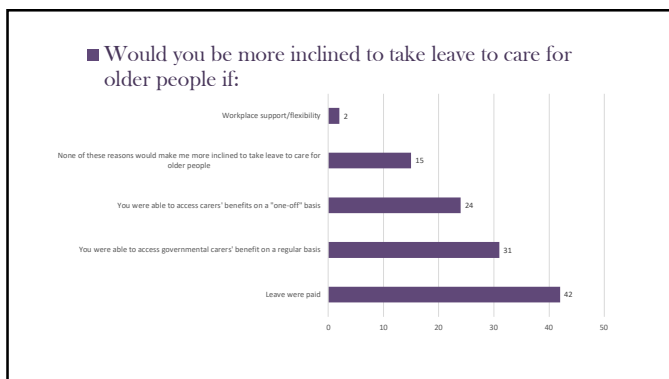
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