



MONASH University

**AUSTRALIA'S REGULATORY FRAMEWORK OF SUPPORTS FOR
WORKER-CARERS: A GENDER JUSTICE PERSPECTIVE**

Amanda Darshini Selvarajah

LLB (Honours)

A thesis submitted for the degree of *Doctor of Philosophy* at

Monash University in 2023

Department of Business Law and Taxation, Monash Business School

COPYRIGHT NOTICE

© Amanda Darshini Selvarajah (2023).

ABSTRACT

While women's workforce participation in Australia has steadily increased over at least the last four decades, women continue to work on unequal terms. Compared to male workers, female workers are more likely to work in part-time or casual roles, work fewer hours, and work in lower-paying jobs and industries. These discrepancies are often due to women's disproportionate caregiving responsibilities. Feminist scholars such as Nancy Fraser have long argued that gender equal patterns of care are essential to achieving gender equality more broadly. In line with this view, Fraser and other scholars posit that the only acceptable gender equal society is a universal caregiving society where the worker-carer (someone with both work and care responsibilities) is the norm. Such a society would embody Fraser's concept of 'gender justice' — the principle that all individuals, regardless of gender, should be able to participate equally in all valuable aspects of life, including work and caregiving. Realising this aspiration requires appropriate work-care supports (supports for balancing work and caregiving).

Building on the work of Fraser and her contemporaries, this thesis evaluates Australia's regulatory framework of work-care supports against original gender justice criteria comprising of four evaluative dimensions — universal availability, enforceability, substantiveness, and gender-neutrality. These criteria operationalise the principles of redistribution and recognition that underpin Fraser's theory of gender justice. The thesis uses the criteria to answer the question, *To what extent does Australia's regulatory framework facilitate the provision of gender just work-care supports that enable the realisation of a universal caregiving society?*

The study adopts a mixed methods approach, using doctrinal, quantitative, and qualitative analyses. The doctrinal analysis draws upon legislative materials and secondary sources to determine the relevant components of Australia's regulatory framework and assess them against the gender justice criteria. The quantitative analysis examines the work-care supports offered in nearly 5000 Australian workplaces to identify the market offerings of these supports and the factors that influence their provision. These quantitative findings are contextualised and supplemented by the analysis of qualitative data drawn from semi-structured interviews with company representatives.

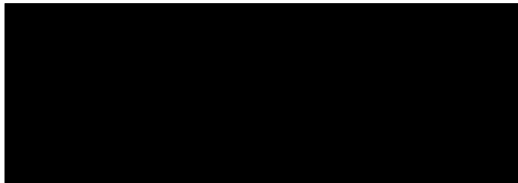
Collectively, these methods allow for contemporary insights into the adequacy of Australia's regulatory framework in providing gender just work-care supports. Australia's regulatory framework of work-care supports was predicated on the assumption that market offerings would supplement legislated work-care supports. However, the findings reveal that market-

offerings of work-care supports are generally rare and motivated by compliance or commercial reasons. The result is an uneven spread of legislated and employer-sponsored work-care supports that have key deficiencies when evaluated against the gender justice criteria. By assessing Australia's work-care supports against the gender justice criteria, the study also provides an evidence base to inform further regulatory reform and policy development that will help achieve a universal caregiving society. These findings are particularly timely given the heightened policy focus on work-care supports in Australia at the federal level.

DECLARATION

This thesis is an original work of my research and contains no material which has been accepted for the award of any other degree or diploma at any university or equivalent institution and that, to the best of my knowledge and belief, this thesis contains no material previously published or written by another person, except where due reference is made in the text of the thesis.

Signature:



Print Name: AMANDA DARSHINI SELVARAJAH

Date: 19 October 2023

ACKNOWLEDGEMENTS

I would like to express my deepest gratitude to all those who have contributed to the completion of this doctoral thesis. I could not have reached this milestone without the support, guidance and encouragement that was generously and selflessly extended to me throughout the last few rewarding but challenging years.

I want to extend my heartfelt appreciation to my supervisors, Associate Professor Catrina Denvir and Professor Carolyn Sutherland, for their unwavering support and mentorship. Their expertise, patience and dedication to my academic and personal growth have been instrumental in shaping this thesis and my own personal sense of self. I am truly fortunate to have had them as mentors and inspirations. I am also immensely grateful to the members of my milestone committee panels for their valuable insights and constructive feedback during the various stages of this PhD process — Associate Professor Dominique Allen, Associate Professor Genevieve Grant, Dr Petra Mahy, and Dr Vivien Chen. I would also like to thank Adriana Orifici for her thoughtful insights into chapters of my thesis. My sincere thanks to my friends and colleagues in the Department of Business Law and Taxation who supported me with their encouragement, camaraderie, and shared experiences throughout my candidature. My thanks too to The Expert Editor thesis editing service that reviewed the thesis in compliance with the Institute of Professional Editors guidelines. Their services focussed on grammar, syntax, spelling and punctuation; word use, flow and sentence structure; clarity of expression; consistent terminology and spelling; and correct referencing — not content.

I would also like to acknowledge the financial support that made this research possible. This research was supported by an Australian Government Research Training Program (RTP) Scholarship and a departmental scholarship from the Department of Business Law and Taxation at Monash University.

I am deeply appreciative of my family for their unwavering love and encouragement. Their belief in me has been a constant source of motivation and I dedicate this achievement to them.

Lastly, I want to express my gratitude to the participants who contributed their time and insights to this research. Your willingness to be part of this study was invaluable, and I am deeply thankful for your contributions.

To all those who have played a role big or small, please accept my heartfelt thanks, which I intend to find many ways to shower upon you in person.

CONTENTS

COPYRIGHT NOTICE	ii
ABSTRACT	iii
DECLARATION	v
ACKNOWLEDGEMENTS	vi
GLOSSARY	x
LIST OF TABLES	xi
LIST OF FIGURES	xiii
CHAPTER ONE: OVERVIEW	1
1.1 Introduction	1
1.2 Work, Care, and Gender in Australia	1
1.3 The Universal Caregiver Model and Gender Justice.....	8
1.3.1 <i>Male Breadwinner</i>	8
1.3.2 <i>Caregiver Parity</i>	9
1.3.3 <i>Universal Breadwinner</i>	10
1.3.4 <i>Universal Caregiver</i>	11
1.4 Research Question & Thesis Structure.....	12
1.5 Summary	14
CHAPTER TWO: THEORETICAL FRAMEWORK AND METHODOLOGY	16
2.1 Introduction	16
2.2 Gender Justice Criteria for Work-Care Supports	16
2.2.1 <i>Fraser’s Gender Justice Principles</i>	17
2.2.2 <i>Four Key Criteria</i>	19
2.3 Methodology	24
2.3.1 <i>Overview</i>	24
2.3.2 <i>Doctrinal Method</i>	26
2.3.3 <i>Quantitative Method</i>	27
2.3.4 <i>Qualitative Methods</i>	34
2.4 Summary	40
CHAPTER THREE: AUSTRALIA’S LEGISLATED WORK-CARE SUPPORTS	41
3.1 Introduction	41
3.2 Paid Parental Leave Scheme	41
3.2.1 <i>The PPL Act before 1 July 2023</i>	42
3.2.2 <i>The PPL Act after 1 July 2023</i>	49
3.3 Childcare Subsidies	52
3.4 National Employment Standards.....	56
3.4.1 <i>Introduction: Relevant Work-Care Standards</i>	56
3.4.2 <i>Maximum Weekly Hours</i>	57

3.4.3 <i>Right to Request Flexible Work</i>	60
3.4.4 <i>Unpaid Parental Leave</i>	65
3.4.5 <i>Other Forms of Leave</i>	68
3.5 Modern Award System	69
3.5.1 <i>Introduction</i>	69
3.5.2 <i>Flexibility Terms</i>	71
3.5.3 <i>Consultation Terms</i>	73
3.5.4 <i>Right to Request Flexible Work</i>	74
3.6 Conclusion	75
CHAPTER FOUR: MECHANISMS THAT INFLUENCE WORKPLACE OFFERINGS OF WORK-CARE SUPPORTS	77
4.1 Introduction	77
4.2 Enterprise Bargaining	77
4.2.1 <i>Procedural Safeguards in Enterprise Bargaining</i>	79
4.2.2 <i>Feminist Critiques of Enterprise Bargaining</i>	81
4.2.3 <i>Approval Requirements for Enterprise Agreements</i>	84
4.3 Fringe Benefits Tax Exemptions for Childcare	89
4.4 Gender Equality Reporting	91
4.5 Anti-Discrimination and General Protections Frameworks	96
4.5.1 <i>Anti-Discrimination</i>	96
4.5.2 <i>General Protections Framework</i>	103
4.6 Conclusion	106
CHAPTER FIVE: PARENTAL LEAVE IN THE AUSTRALIAN WORKPLACE	108
5.1 Introduction	108
5.2 Quantitative Results	109
5.2.1 <i>The Provision of Parental Leave</i>	109
5.2.2 <i>The Drivers of Parental Leave Provision</i>	112
5.2.3 <i>Summary</i>	126
5.3 Qualitative Results	127
5.3.1 <i>Availability of Parental Leave</i>	127
5.3.2 <i>Payment of Parental Leave</i>	136
5.3.3 <i>Duration of Parental Leave</i>	137
5.3.4 <i>Organisational Factors Affecting the Provision of Parental Leave</i>	139
5.3.5 <i>Influence of the PPL Act on Parental Leave Provision</i>	142
5.4 Discussion and Conclusion	143
CHAPTER SIX: FLEXIBLE WORK IN THE AUSTRALIAN WORKPLACE	150
6.1 Introduction	150
6.2 Quantitative Results	152
6.2.1 <i>The Provision of Flexible Work</i>	152

6.2.2 <i>The Drivers of Flexible Work Provision</i>	157
6.2.3 <i>Summary</i>	170
6.3 Qualitative Results	172
6.3.1 <i>Availability of Flexible Work in Practice</i>	172
6.3.2 <i>Organisational Factors Affecting the Provision of Flexible Work</i>	184
6.3.3 <i>Influence of the National Employment Standards</i>	187
6.3.4 <i>COVID-19 and the Provision of Flexible Work</i>	188
6.4 Discussion and Conclusion	191
CHAPTER SEVEN: OTHER WORK-CARE SUPPORTS IN THE AUSTRALIAN WORKPLACE	196
7.1 Introduction	196
7.2 Quantitative Results	197
7.2.1 <i>The Provision of Other Work-Care Supports</i>	197
7.2.2 <i>The Drivers of Other Work-Care Supports</i>	199
7.2.3 <i>Summary</i>	209
7.3 Qualitative Results	211
7.3.1 <i>Childcare</i>	211
7.3.2 <i>Breastfeeding Facilities</i>	218
7.3.3 <i>Returning to Work after Parental Leave</i>	221
7.3.4 <i>Information, Support, or Other Training Mechanisms</i>	224
7.4 Discussion and Conclusion	227
CHAPTER EIGHT: CONCLUSION	232
8.1 Thesis Findings	232
8.1.1 <i>Deficiencies in the Legislative Framework of Work-Care Supports</i>	234
8.1.2 <i>Deficiencies in the Market-Provision of Work-Care Supports</i>	237
8.1.3 <i>Thesis's Main Findings</i>	242
8.2 Potential Areas for Reform	243
8.3 Future Research	249
8.4 Conclusion	250
APPENDIX	252
BIBLIOGRAPHY	265

GLOSSARY

AAT	Australian Administrative Tribunal
ALR	Australian Law Reports
BOOT	better off overall test
the citation	Employer of Choice for Gender Equality citation
EA	enterprise agreement
EU	European Union
FCR	Federal Court Reports
<i>FW Act</i>	<i>Fair Work Act 2009</i> (Cth)
FWCFB	Fair Work Commission Full Bench
FWC	Fair Work Commission
FWO	Fair Work Ombudsman
gender justice criteria	universal availability, enforceability, substantiveness, gender-neutrality
IFA	individual flexibility arrangement
NES	National Employment Standards
OECD	Organisation for Economic Co-operation and Development
PPL	paid parental leave
<i>PPL Act</i>	<i>Paid Parental Leave Act 2010</i> (Cth)
SRQ	subsidiary research question
TOIL	time-off-in-lieu
WGEA	Workplace Gender Equality Agency
<i>WGE Act</i>	<i>Workplace Gender Equality Act 2012</i> (Cth)

LIST OF TABLES

Table 2.1 How the organisation of the chapters relates to the SRQs and research methods.....	26
Table 2.2 Overview of interview participants.....	37
Table 5.1 Primary and secondary carer’s leave offerings by gender	110
Table 5.2 The availability of 12 weeks or more, fewer than 12 weeks, or no primary carer’s leave by the offering of 10 days or more, fewer than 10 days, or no secondary carer’s leave.....	112
Table 5.3 Binary logistic regression model predicting availability of some form of primary or secondary carer’s leave based on organisation’s gender dominance, size, industry type, and gender dominance*organisation size (Model 5A).....	113
Table 5.4 Multinomial logistic regression model predicting length of primary carer’s leave offering based on organisation gender dominance, size, industry type, and gender dominance*organisation size (Model 5B)	116
Table 5.5 Multinomial logistic regression model predicting length of secondary carer’s leave offering based on organisation gender dominance, size, industry type, and gender dominance*organisation size (Model 5C)	121
Table 5.6 Reasons given by organisations for not offering primary and secondary carer’s leave.....	125
Table 6.1 Compressed week offerings by formality and whether the offerings were not available (‘none’), available but limited by managerial status or gender (‘limited’), or available to all employees irrespective of managerial status/gender (‘unlimited’)	153
Table 6.2 Telecommuting offerings by formality and whether the offerings were not available (‘none’), available but limited by managerial status or gender (‘limited’), or available to all employees irrespective of managerial status/gender (‘unlimited’)	153
Table 6.3 Flexible hours offerings by formality and whether the offerings were not available (‘none’), available but limited by managerial status or gender (‘limited’), or available to all employees irrespective of managerial status/gender (‘unlimited’)	153
Table 6.4 TOIL offerings by formality and whether the offerings were not available (‘none’), available but limited by managerial status or gender (‘limited’), or available to all employees irrespective of managerial status/gender (‘unlimited’)	154
Table 6.5 Formal part-time work and job-sharing offerings and whether limited by managerial status or gender (‘limited’) or not (‘unlimited’)	155
Table 6.6 The prevalence of accountability, embedding, monitoring, and training flexible work mechanisms	156
Table 6.7 Binary logistic regression models predicting the availability of some form of flexible work based on organisation gender dominance, size, industry type, gender dominance*organisation size, organisation size*industry type, and industry type*gender dominance.....	158
Table 7.1 Offerings of other work-care supports — childcare supports, breastfeeding facilities, return-to-work bonuses, information or support services, and training mechanisms.....	198
Table 7.2 Binary logistic regression model predicting the availability of on-site and/or subsidised childcare (‘childcare’), breastfeeding facilities, return-to-work bonuses, and at least one information, support or training mechanism based on organisation gender dominance, size, industry type, and all possible two-way interactions	200
Table A.1 Table of variables from the WGEA’s 2018–19 dataset used in the analysis of employer-funded parental leave.....	252
Table A.2 Table of variables from the WGEA’s 2018–19 dataset used in the analysis of flexible work...254	
Table A.3 Table of variables from the WGEA’s 2018–19 dataset used in the analysis of other work-care supports.....	258

Table A.4 Cross tab of some offerings of primary or secondary carer’s leave by industry type, organisation size, and gender dominance.....	259
Table A.5 Cross tab of no primary carer’s leave, fewer than 12 weeks of primary carer’ leave, and 12 weeks or more of primary carer’s leave by industry type, organisation size, and gender dominance	260
Table A.6 Cross tab of no secondary carer’s leave, fewer than 10 days of secondary carer’s leave, and 10 days or more of secondary carer’s leave by industry type, organisation size, and gender dominance	261
Table A.7 Proximity matrix of flexible work/employment offerings (Jaccard Measure).....	262
Table A.8 Cross tab of some form of flexible work by industry type, organisation size, and gender dominance.....	263
Table A.9 Cross tab of on-site or subsidised childcare (‘childcare’), breastfeeding facilities, return-to-work bonuses, and at least one information, support or training mechanism (‘information or training’) by industry type, organisation size, and gender dominance	264

LIST OF FIGURES

Figure 5.1 Primary and secondary carer’s leave offerings for adoption, surrogacy, and stillbirth	110
Figure 5.2 Predicted probability (simulated from the model outlined in Table 5.3) of some form of primary or secondary carer’s leave being offered based on organisation size and gender dominance (holding the effect of industry type constant)	115
Figure 5.3 Predicted probability (simulated from the model) of some form of primary or secondary carer’s leave being offered based on industry type (holding the effect of gender dominance and organisation size constant)	116
Figure 5.4 Predicted probability (simulated from the model) of being offered ‘no weeks’, ‘>0 to <12 weeks’ and ‘≥12 weeks’ of primary carer’s leave based on organisation gender dominance and size (holding the effect of industry type constant).....	119
Figure 5.5 Predicted probability (simulated from the model) of being offered ‘none’, ‘1–11 weeks’ and ‘12+ weeks’ of primary carer’s leave based on industry type (holding the effect of gender dominance and organisation size constant)	120
Figure 5.6 Predicted probability (simulated from the model) of being offered ‘none’, ‘>0 to <10 days’, and ‘≥10 days’ of secondary carer’s leave based on organisation gender dominance and size (holding the effect of industry type constant)	124
Figure 5.7 Predicted probability (simulated from the model) of being offered ‘none’, ‘>0 to <10 days’, and ‘≥10 days’ of secondary carer’s leave based on industry type (holding the effect of gender dominance and organisation size constant)	125
Figure 6.1 Predicted probability (simulated from the model outlined in Table 6.8) of some form of compressed weeks being offered based on organisation size, gender dominance, and industry type	161
Figure 6.2 Predicted probability (simulated from the model outlined in Table 6.8) of some form of telecommuting being offered based on organisation size, gender dominance, and industry type	163
Figure 6.3 Predicted probability (simulated from the model outlined in Table 6.8) of some form of flexible hours being offered based on organisation size and gender dominance (holding the effect of industry type constant)	165
Figure 6.4 Predicted probability (simulated from the model outlined in Table 6.8) of some form of TOIL being offered based on organisation size, gender dominance, and industry type	167
Figure 6.5 Predicted probability (simulated from the model outlined in Table 6.8) of some form of part-time work being offered based on gender dominance, and industry type	168
Figure 6.6 Predicted probability (simulated from the model outlined in Table 6.8) of some form of job sharing being offered based on organisation size, gender dominance, and industry type.....	170
Figure 7.1 Predicted probability (simulated from the model outlined in Table 7.1) of some form of subsidy or on-site childcare being offered based on organisation size, gender dominance, and industry type	203
Figure 7.2 Predicted probability (simulated from the model outlined in Table 7.1) of breastfeeding facilities being offered based on organisation size, gender dominance, and industry type.....	205
Figure 7.3 Predicted probability (simulated from the model outlined in Table 7.1) of some form of other support mechanisms being offered based on organisation size, gender dominance, or industry type	207

CHAPTER ONE: OVERVIEW

1.1 Introduction

Australia's employment framework was founded upon a gendered approach to work and care within an entrenched male breadwinner/female caregiver paradigm.¹ After World War II, work-care supports,² such as entitlements to parental leave, flexible work rights, and childcare subsidies, were introduced. These supports were intended to help bridge the once segregated and gendered realms of work and care. The reforms signalled a shift in government policy to recognise that dismantling the male breadwinner/female caregiver paradigm would require accommodating workers' caregiving responsibilities. Before this, caregiving needs existed outside policy consideration as uncompensated women's work.

Despite these changes, gendered patterns of work and care persist, compromising the many benefits of a more gender equal division of work and care. This gendered division of labour may be attributed to the design of Australia's work-care supports as measures to help *women* balance their work and care responsibilities, as opposed to measures that would dismantle women's disproportionate carer responsibilities altogether by encouraging gender equal patterns of care.³ This chapter discusses the current gendered division of work and caregiving in Australia and the various societal models of work, care, and gender reflected in Australia's history of offering support to carers. In doing so, it establishes the importance of considering the extent to which Australia's regulatory framework of work-care supports reflects a universal caregiving society.

1.2 Work, Care, and Gender in Australia

For much of the early 20th century, Australia's regulatory framework reflected and entrenched the male breadwinner/female caregiver paradigm by assuming that the average Australian household would feature a male member engaged in paid work and a female member who

¹ Ray Broomhill and Rhonda Sharp, 'The Changing Male Breadwinner Model in Australia: A New Gender Order?' (2005) 16(1) *Labour & Industry: A Journal of the Social and Economic Relations of Work* 103, 103–4.

² This thesis uses the terms 'work-care' and 'worker-carer' as they appear to be the terms most used in the literature. 'Work', for the purposes of this thesis, refers to paid employment. This is not to suggest that caregiving is not also valuable work.

³ Barbara Pocock, Sara Charlesworth and Janine Chapman, 'Work-Family and Work-Life Pressures in Australia: Advancing Gender Equality In "Good Times"?' (2013) 33 *International Journal of Sociology and Social Policy* 594, 608.

undertook the necessary (unpaid) caregiving responsibilities.⁴ Policies over this period rewarded those who adhered to this dynamic and created negative consequences for those who did not.⁵ Examples include the dependent spouse tax deduction that financially discouraged the employment of married women.⁶ Also, from 1907, the ‘male basic wage was fixed as a family wage’ while ‘the female basic wage was fixed as a wage for a single woman without dependents’.⁷ Women’s wages were set at 54% of that of a man’s and were only raised to 75% in 1950 before the Commonwealth Conciliation and Arbitration Commission formally disavowed this practice in 1969.⁸ Australia’s regulatory framework, therefore, reflected a clear segregation of work and care where the roles of worker and carer were to be held predominantly by men and women respectively and to the exclusion of the other.

Policy shifts in the 50s and 60s marked the beginning of increased state intervention in undermining the male breadwinner model, ‘albeit unwillingly and sometimes unwittingly’.⁹ By the 70s, Australia began to assert an interest in the once segregated and gendered spheres of work and care through the introduction of work-care supports — supports designed to help employees (but mostly female employees) balance their work and care responsibilities. For example, the government began funding childcare providers in 1972 and providing fee relief for childcare centres in 1984; childcare subsidies continue today.¹⁰ In 1973, twelve weeks of paid maternity leave and 40 weeks of unpaid maternity leave were introduced for Commonwealth public servants, leading to unpaid maternity leave for all workers in 1979, followed by the introduction of Australia’s federal paid parental leave (‘PPL’) scheme in 2011.¹¹ Also of relevance was the passing of the *Affirmative Action (Equal Employment*

⁴ Broomhill and Sharp (n 1) 103–4.

⁵ Ibid.

⁶ John Murphy, ‘Reply to Humphrey McQueen’ (2003) 13(3) *Labour & Industry* 99, 103.

⁷ Fair Work Commission, ‘Equal Pay Case 1969’ (Web Page, 10 Jan 2017) <<https://www.fwc.gov.au/waltzing-matilda-and-the-sunshine-harvester-factory/historical-material/equal-pay-case-1969>>.

⁸ *Equal Pay Case 1969* (1969) 127 CAR 1142.

⁹ Melanie Nolan, ‘The High Tide of a Labour Market System: The Australasian Male Breadwinner Model’ (2003) 13 *Labour & Industry* 73, 77.

¹⁰ Greg McIntosh, ‘Childcare in Australia: Current Provision and Developments’ (Background Paper 9, Parliament of Australia, 1997–98)

<[¹¹ See, eg, *Maternity Leave \(Commonwealth Employees\) Act 1973* \(Cth\); Steve O’Neill, ‘Paid Maternity Leave’ \(E-Brief, Parliament of Australia, 11 August 2004\)](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/Background_Papers/bp9798/98bp09#:~:text=The%20Commonwealth%20Government%20first%20became,of%20working%20and%20sick%20parents>; A New Tax System (Family Assistance) Act 1999 (Cth) sch 2, sub-cl 3(2).</p></div><div data-bbox=)

<[Page | 2](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/archive/maternityleave>; Paid Parental Leave Act 2010 (Cth).</p></div><div data-bbox=)

Opportunity for Women) Act 1986 (Cth), which required private companies and higher education institutions with over 100 employees to report on their affirmative action programs for women.¹² These reporting requirements persist today and are overseen by the Workplace Gender Equality Agency (‘WGEA’) established in 2012 to promote and improve gender equality in Australian workplaces.¹³ Two years later, under Australia’s presidency in 2014, G20 leaders committed to reducing the gender participation gap for women in the workforce by normalising flexible work and improving childcare choices.¹⁴

These reforms exemplify Australia’s attempts to dismantle the male breadwinner/female caregiver paradigm by successively introducing or enhancing work-care supports. The nature and substance of such supports have been a key feature of public policy debates.¹⁵ In August 2022, for example, a Senate Select Committee on Work and Care was appointed to consider ‘the extent and nature of work and care arrangements, the adequacy of current support systems, and effective work and care policies and practices in place in Australia and overseas’.¹⁶ In October 2022, the Labor government further directed attention to the balancing of work and care by committing to reform the federal government’s parental leave payments in its Budget announcement.¹⁷ On 6 December 2022, amendments to the *Fair Work Act 2009* (Cth) (‘*FW Act*’) enshrined the promotion of gender equality within the objectives of the *FW Act* and added breastfeeding as a protected attribute.¹⁸ The amendments also included additional obligations for employers when responding to requests for flexible work or increases to unpaid parental leave durations under the National Employment Standards (‘NES’),¹⁹ with these changes

¹² *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* (Cth), later the *Equal Opportunity for Women in the Workplace Act 1999* (Cth) and then the *Workplace Gender Equality Act 2012* (Cth).

¹³ *Workplace Gender Equality Act 2012* (Cth).

¹⁴ Australian Government, *Towards 2025: An Australian Government Strategy to Boost Women’s Workforce Participation* (Commonwealth of Australia, 2017); Australian Government, ‘Women’s Workforce Participation — An Economic Priority’, *Towards 2025: An Australian Government Strategy to Boost Women’s Workforce Participation* (Web Page) <<https://womensworkforceparticipation.pmc.gov.au/index.html>>.

¹⁵ R W Connell, ‘A Really Good Husband: Work/Life Balance, Gender Equity and Social Change’ (2005) 40 *Australian Journal of Social Issues* 369; Barbara Pocock, *The Work/Life Collision: What Work is Doing to Australians and What to Do about It* (Federation Press, 2003); Barbara Pocock, Natalie Skinner and Philippa Williams, *Time Bomb: Work, Rest and Play in Australia Today* (University of New South Wales Press, 2012).

¹⁶ Parliament of Australia, ‘Select Committee on Work and Care’ (Web Page) <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Work_and_Care>.

¹⁷ Commonwealth of Australia, ‘Budget October 2022–23: Expanding Paid Parental Leave’, *Budget Australia* (Web Page) <https://budget.gov.au/2022-23-october/content/factsheets/download/factsheet_parental_leave.pdf>; *Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Act 2022* (Cth).

¹⁸ *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) pts 4, 9.

¹⁹ *Ibid* pts 11, 25B.

taking effect from 6 June 2023.²⁰ Alongside these changes, the 2022 Budget announced amendments to increase existing childcare subsidy rates from July 2023,²¹ to make childcare more affordable.²²

The regulatory framework of work-care supports in Australia is wide-ranging and diverse. It includes the federal government's PPL scheme,²³ childcare subsidies,²⁴ and minimum standards relating to work-care balance under the NES and modern awards.²⁵ The regulatory framework also includes mechanisms to encourage workplaces to provide their own work-care supports to accommodate worker-carers — for example, the enterprise bargaining system, fringe benefits tax exemptions for certain childcare offerings, the gender equality reporting requirements mentioned above, and anti-discrimination and general protection frameworks to protect carers in the workplace.²⁶

Despite these mechanisms, Australian women continue to shoulder a disproportionate share of caring responsibilities. While women's workforce participation in Australia has seen steady increases over at least the last four decades,²⁷ women continue to work on unequal terms to men. Women are more likely than men to work in part-time or casual roles, work fewer hours, and be over-represented in lower-paying jobs and industries.²⁸ This discrepancy has been

²⁰ *Fair Work Act 2009* (Cth) ss 65A–65C ('*FW Act*'); Fair Work Ombudsman, 'Pay Secrecy, Job Ads and Flexible Work' (Web Page, 6 January 2023) <<https://www.fairwork.gov.au/newsroom/news/secure-jobs-better-pay/pay-secrecy-job-ads-and-flexible-work#job-ads>>.

²¹ Family Assistance Legislation Amendment (Chapter Child Care) Bill 2022 (Cth).

²² Commonwealth of Australia, 'Budget October 2022–23: Cheaper Child Care, *Budget Australia* (Web Page) <https://budget.gov.au/2022-23-october/content/factsheets/download/factsheet_child_care.pdf>.

²³ *Paid Parental Leave Act 2010* (Cth).

²⁴ *A New Tax System (Family Assistance) Act 1999* (Cth) sch 2, sub-cl 3(2).

²⁵ *FW Act* (n 20) pts 2-2–2-3.

²⁶ See, eg, the rules governing enterprise agreements: *FW Act* (n 20) pt 2-4; requirements of the *Workplace Gender Equality Agency 2012* (Cth); fringe tax benefit exemptions relating to childcare: *Fringe Tax Benefits Assessment Act 1986* (Cth) s 47(2), (8); *Equal Opportunity Act 1984* (SA); *Anti-Discrimination Act 1977* (NSW); *Equal Opportunity Act 1955* (Vic); *Equal Opportunity Act 1984* (WA); *Anti-Discrimination Act 1991* (Qld); *Discrimination Act 1991* (ACT); *Anti-Discrimination Act 1992* (NT); *Sex Discrimination Act 1994* (Tas); *Australian Human Rights Commission Act 1986* (Cth); *Sex Discrimination Act 1984* (Cth); *FW Act* (n 20) s 340–2.

²⁷ Australian Bureau of Statistics (ABS), *Labour Force, Australia, Detailed–Electronic Delivery*, cat. no. 6291.0.55.001, ABS, December 2020. 1978 was the first year the ABS started reporting on employment participation rates.

²⁸ See, eg, Elizabeth Hill et al, 'Australian Women's Working Futures: Are We Ready?' (Research Paper, International Labour Organisation, 2018) <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_616211.pdf>; Workplace Gender Equality Agency, 'Towards Gender Balanced Parental Leave: Australian and International Trends' (Insight Paper, Workplace Gender Equality Agency, 11 October 2017) 5 <<https://www.wgea.gov.au/sites/default/files/documents/gender%20balanced%20parental%20leave.pdf>>.

attributed, in large part, to women's disproportionate care and family responsibilities. In 2022, the impact of women's disproportionate care and family responsibilities on their workforce participation accounted for 33% of Australia's gender pay gap, amounting to a loss of \$319 million in national earnings per week.²⁹ Findings released in the same year by the Australian Treasury found that women's earnings were reduced by an average of 55% in the first five years of parenthood, while men's earnings remained unaffected over the same period.³⁰ This loss of income has been dubbed the 'motherhood penalty' because it is caused by women's increased caregiving responsibilities and decreased workforce participation upon becoming a mother.³¹ In heterosexual couples with dependent children, women had the highest gap in unpaid care work of all other relationship types, accruing approximately 20.9 hours of additional unpaid care work a week in 2019 when compared to their male partners.³² Where the youngest child was under six years of age, this disparity increased dramatically, with women undertaking an average of 60.8 hours of unpaid care work per week in contrast to men's 31.6 hours.³³

The discrepancy in women's caregiving responsibilities has only been exacerbated by COVID-19, with research finding that while increases in unpaid care work rose overall, '[w]omen's care time went up more than men's'.³⁴ Although men increased their involvement in childcare during the pandemic, these efforts merely narrowed the relative gender differences in caregiving between men and women rather than rectified it; mothers still report absolute time increases in unpaid work post-COVID-19.³⁵

The persistent division of work and care along gender lines has been attributed in part to the framing of Australia's work-care supports. Rather than attempting to de-gender work and care, these supports are 'more appropriately characterized as a set of positive steps to mitigate the penalties that attach to being a working carer, helping *women* adjust' to balancing work and

²⁹ KPMG, Diversity Council of Australia, and Workplace Gender Equality Agency, *She's Price(d)less* (Report, 2022) 9.

³⁰ Elif Bahar et al, 'Children and the Gender Earnings Gap' (Treasury Roundup, Department of Treasury, October 2022) 38.

³¹ Ibid.

³² Roger Wilkins et al, *The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 19* (16th Annual Statistical Report, 2022) 87.

³³ Ibid 89.

³⁴ Lyn Craig, 'Coronavirus, Domestic Labour and Care: Gendered Roles Locked Down' (2020) 56 *Journal of Sociology* 684, 687.

³⁵ Lyn Craig and Brendan Churchill, 'Dual-Earner Parent Couples' Work and Care During COVID-19' (2020) 28 *Gender, Work and Organization* 66, 73.

care.³⁶ Indeed, policy rhetoric surrounding work-care supports in Australia has often focussed on increasing women's capacity to work or helping women balance their caregiving and work responsibilities without corresponding discussion as to how to distribute caregiving responsibilities across gender lines.³⁷ Australia's employment landscape has been described as one organised 'around the "ideal" male worker with few care responsibilities [that] reinforces the gendered division of labor [sic] in the workplace and the home'.³⁸ Work-care supports, to date, have attempted to integrate unpaid care labour into working life but without necessarily implementing social interventions that would target the gendered impact of these caregiving responsibilities.³⁹ Australia's post-COVID-19 recovery plan, for example, saw very little consideration of women's contributions to unpaid care work, the impact of this on their workforce participation, or the 'extant structures that have contributed to the ongoing inequalities in the formal and informal domains of work'.⁴⁰

In this vein, conversations surrounding the efficacy of work-care supports often focus on their capacity to achieve 'equality or difference, where equality means treating women exactly like men, and where difference means treating women differently insofar as they differ from men'.⁴¹ Supports are, therefore, often discussed in terms of their ability to achieve relative improvements or address weaknesses in either of these limbs. For example, discussions of the efficacy of work-care supports have tended to focus either on how to help feminine identities enter masculine spaces by increasing women's workforce participation or presence in higher-level leadership or authority positions (having women be more like men) or how work-care supports can accommodate uniquely feminine attributes such as the effects of childbirth and

³⁶ Pocock et al (n 3) 608 (emphasis added).

³⁷ See, eg, Julia Gillard, Wayne Swan and Jenny Macklin, 'Productivity Commission to Investigate Paid Maternity Leave' (Media Release, Department of Education, Skills and Employment, 17 February 2008); Tony Abbott and Scott Morrison, 'Jobs for Families Child Care Package Delivers Choice for Families' (Joint Press Release, Prime Minister's Office, 10 May 2015) 1

<<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F3825778%22>>; Australian Government, 'Women's Workforce Participation' (n 14); Jane Lewis and Susanna Giullari, 'The Adult Worker Model Family, Gender Equality and Care — The Search for New Policy Principles and the Possibilities and Problems of a Capabilities Approach' (2005) 34 *Economy and Society* 76, 96.

³⁸ Sara Charlesworth and Fiona Macdonald, 'Employment Regulation and Worker-Carers: Reproducing Gender Inequality in the Domestic and Market Spheres?' in David Peetz and Georgina Murray (eds), *Women, Labor Segmentation and Regulation: Varieties of Gender Gaps* (Springer, 2017) 79.

³⁹ Lyn Craig, *Contemporary Motherhood: The Impact of Children on Adult Time* (Ashgate, 2016) 5–6, 136–7.

⁴⁰ Banu Ozkazanc-Pan and Alison Pullen, 'Reimagining Value: A Feminist Commentary in the Midst of the COVID-19 Pandemic' (2020) 28 *Gender, Work and Organization* 1, 2.

⁴¹ Nancy Fraser, 'After the Family Wage: Gender Equity and the Welfare State' (1994) 22 *Political Theory* 591, 594; Lewis and Giullari (n 37) 96.

breastfeeding, or the disproportionate caregiving and domestic responsibilities of women (treating women differently insofar as they differ from men).⁴²

This is a worryingly narrow approach that can ‘entrench gender inequality further, ensuring that women remain responsible for reconciling work and care through part-time work and flexible working arrangements, but without improvement in the terms and conditions of their paid work or more equal distributions of work and care’.⁴³ Instead of limiting conversations of gender to that of ‘equality, difference or something else’, conversations should centre on an overarching vision in which society is liberated from the constraints that gender norms impose.⁴⁴ Such conversations would allow us to identify the tensions between gender norms, moving us beyond attempting to mitigate the differences between men and women and towards a broader conceptualisation of gender equality that will allow all people to live beyond restrictive gender norms.⁴⁵

Fraser’s conceptualisation of *gender justice* offers a principle against which to frame a vision of the future. The principle of gender justice prioritises ‘parity of participation’ — that is, the fundamental principle that all individuals, regardless of gender, should be able to participate as peers in all valuable aspects of life.⁴⁶ Fraser’s vision of a gender just society in the context of work and care is a world where people of all genders can participate as peers in paid employment and caregiving. Fraser describes this society as a universal caregiving society where gender roles are transformed by ‘promoting men’s and women’s equal engagement in paid and unpaid work’.⁴⁷ Analysing Australia’s regulatory framework against this aspiration would contribute to answering the longstanding calls by feminist legal scholars to consider how unpaid care labour may be appropriately accommodated and valued within labour law.⁴⁸

⁴² Pocock et al (n 3) 608.

⁴³ Ibid.

⁴⁴ Fraser (n 41) 595.

⁴⁵ Pocock et al (n 3) 608.

⁴⁶ Nancy Fraser, ‘Feminist Politics in the Age of Recognition: A Two-Dimensional Approach to Gender Justice’ (2007) 1 *Studies in Social Justice* 23, 27; Anca Gheaus, ‘Gender Justice’ (2012) 6 *Journal of Ethics & Social Philosophy* 1, 7.

⁴⁷ Rossella Ciccio and Inge Bleijenbergh, ‘After the Male Breadwinner Model? Childcare Services and the Division of Labor in European Countries’ (2014) 21 *Social Politics* 50, 55–6.

⁴⁸ Joanne Conaghan and Kerry Rittich, ‘Interrogating the Work/Family Divide’ in Joanne Conaghan and Kerry Rittich (eds), *Labour Law, Work and Family* (Oxford University Press, 2005) 1–16; Nicole Busby, *A Right to Care? Unpaid Work in European Employment Law* (Oxford University Press, 2011); Grace James and Nicole Busby, *Families, Caregiving and Paid Work: Challenging Labour Law in the 21st Century* (Edward Elgar, 2011); Pocock et al (n 3) 608; Tom Dreyfus, ‘Paid Parental Leave and the “Ideal Worker”’: A Step towards the “Worker-Carer” in Australian Labour Law’ (2013) 23 *Labour & Industry* 107, 112–3; K Lee Adams, ‘Indirect

1.3 The Universal Caregiver Model and Gender Justice

To support the argument that Fraser's universal caregiving model ought to form the basis of Australia's framework of work-care supports, we need to consider the deficiencies of other possible societal arrangements.⁴⁹ Four societal models, each representing a different conceptualisation of the 'extent of men's and women's engagement in paid and care work, carers' financial independence, and the underlying gender (in)equality ideal', are discussed below.⁵⁰ Australian examples, which demonstrate how each model has manifested itself within Australian work-care policies throughout history, are used to contextualise each of these models and reinforce the legitimacy of the 'universal caregiver' model as the only gender just societal model.

1.3.1 Male Breadwinner

Existing as the dominant employment framework in most early Western societies, including Australia, the male breadwinner model refers to a heteronormative system in which men are predominantly responsible for paid work while women financially depend on men, supporting them with unpaid care labour.⁵¹ Over time, particularly from the 20th century onwards, this model evolved to a 'one and a half breadwinner model' wherein women acquired some work responsibilities but generally remained reliant on male incomes and continued to be predominantly responsible for caregiving.⁵²

Discrimination and the Worker-Carer: It's Just Not Working' (2005) 23 *Law in Context* 18, 36; Ray Broomhill and Rhonda Sharp, *Australia's Parental Leave Policy and Gender Equality: An International Comparison* (University of Adelaide, 2012); Melissa Graham, Hayley McKenzie and Greer Lamaro, 'Exploring the Australian Policy Context Relating to Women's Reproductive Choices' (2018) 39 *Policy Studies* 145, 152–3. Although this thesis's focus is rooted in labour law, it is worth noting that feminist scholars in economics, politics, and sociology have made similar arguments around the importance of recognising the value of and therefore accommodating unpaid care labour: Ozkazanc-Pan and Pullen (n 40) 1.

⁴⁹ See, eg, Rosemary Crompton, *Restructuring Gender Relations and Employment: The Decline of the Male Breadwinner* (Oxford University Press, 1999); Birgit Pfau-Effinger, 'Welfare State Policies and the Development of Care Arrangements' (2005) 7 *European Societies* 321; Kimberly J Morgan, 'The Political Path to a Dual Earner/Dual Carer Society: Pitfalls and Possibilities' (2008) 36 *Politics & Society* 403; Marcia K Meyers and Janet C Gornick, *Gender Equality: Transforming Family Divisions of Labor* (Verso, 2009); Barbara Haas and Margit Hartel, 'Towards the Universal Care Course Model' (2010) 12 *European Societies* 139; Ciccica and Bleijenbergh (n 47) 50.

⁵⁰ Ciccica and Bleijenbergh (n 47) 55.

⁵¹ Rossella Ciccica, 'A Two-Step Approach for the Analysis of Hybrids in Comparative Social Policy Analysis: A Nuanced Typology of Childcare between Policies and Regimes' 51 *Quality and Quantity* 2761; Anna Chapman, 'The Continuing Resonance of Breadwinner Norms: The Australian Labour Law Experience' (2018) 34 *International Journal of Comparative Labour Law and Industrial Relations* 351; Rosemary Crompton (n 49); Ciccica and Bleijenbergh (n 47) 50; Broomhill and Sharp (n 1) 103–4.

⁵² Ciccica (n 51) 2761; Crompton (n 49).

In this model, gender differences in work and caregiving are expected and reinforced, with caregiving considered a private matter unaddressed by established societal structures. Many scholars have argued that this model best encapsulates the reality of Australia's workforce today, given the prevalence of women in part-time or casual roles and women's dominant caregiving responsibilities.⁵³

1.3.2 Caregiver Parity

The caregiver parity model maintains the division of roles and responsibilities along gender lines, but the state compensates women's caregiving responsibilities by providing certain allowances or benefits.⁵⁴ This societal model encompasses attributes of maternalism, an ideology that exalts motherhood and culturally and economically values the role, with the state even viewing motherhood as a national duty.⁵⁵ So, while gender differences are entrenched in society (as with the male breadwinner model described above), those differences are also valued.⁵⁶

While the organisation of care and work in Australia has its foundations in the male breadwinner model, policies that embody aspects of caregiver parity have been seen over time — for example, the *Maternity Allowance Act 1912* (Cth), which provided five pounds, or the equivalent of two weeks' wages, to all women who had a child.⁵⁷ Though since dismissed as a 'patriarchal pro-natalist bribe', the policy was actually the result of a battle by Labor women who applauded then Prime Minister Andrew Fisher for 'this instalment of the mother's

⁵³ See, eg, OECD, 'How Do Partners in Couple Families Share Paid Work?', *Organisation for Economic Co-operation and Development* (Web Page) <<https://www.oecd.org/gender/data/how-do-partners-in-couple-families-share-paid-work.htm>>; Sara Charlesworth et al, 'Parents' Jobs in Australia: Work Hours Polarisation and the Consequences for Job Quality and Gender Equality' (2011) 14 *Australian Journal of Labour Economics* 35; Marcel van Egmond et al, 'A Stalled Revolution? Gender Role Attitudes in Australia, 1986–2005' (2010) 147 *Journal of Population Research* 147; Senate Economics References Committee, '*A Husband Is Not a Retirement Plan*': *Achieving Economic Security for Women in Retirement* (Commonwealth of Australia, 2016) ch 4

<https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Economic_security_for_women_in_retirement/Report/c04>.

⁵⁴ Fraser (n 41) 591; Ciccio (n 51) 2761; Ciccio and Bleijenbergh (n 47) 50.

⁵⁵ Seth Koven and Sonya Michel, *Mothers of a New World: Maternalist Politics and the Origins of Welfare States* (Routledge, 1993) 4; Jo Ailwood, 'Mothers, Teachers, Maternalism and Early Childhood Education and Care: Some Historical Connections' (2007) 8 *Contemporary Issues in Early Childhood* 157, 170.

⁵⁶ Ciccio and Bleijenbergh (n 47) 50.

⁵⁷ *Maternity Allowance Act 1912* (Cth); Marilyn Lake, 'State Socialism for Australian Mothers: Andrew Fisher's Radical Maternalism in its International and Local Contexts' (2012) 102 *Labour History* 55; National Museum Australia, 'Maternity Allowance Introduced' (Web Page, 28 April 2021) <<https://www.nma.gov.au/defining-moments/resources/maternity-allowance-introduced>>.

maternal rights’ and hoped for further support by way of a child pension.⁵⁸ Maternalism or caregiver parity was, therefore, an implicit driver in the policy. The maternalism movement of the late 19th and early 20th centuries made some progress towards realising gender equality by detaching ‘motherhood from wifhood’ and, in line with the sentiments of modern feminists, advocating that mothers should enjoy economic independence without single-handedly combining work and care to do so.⁵⁹ This was reflected in the slogan adopted at the time by Labor women: ‘One Woman, One Job’, which reflected women’s desire to achieve social and cultural recognition of the value of motherhood and to not be economically dependent on a spouse.⁶⁰ However, whilst the caregiver-parity model reflects institutionalised respect and recognition of the value of caregiving, it continues to construct a society in which caregiving and parenthood are coded as inherently feminine and paid labour as inherently masculine. As such, this model assumes and perpetuates gender differences and merely diverts women’s economic dependence from men to the state.

1.3.3 Universal Breadwinner

In the latter half of the 20th century, policies to encourage women’s workforce participation began to increase, reflecting an intention to promote the full and equal participation of men and women in the workforce — that is, a universal breadwinner model.⁶¹ This model is reflected in much of the contemporary rhetoric around Australia’s aspirations for gender equality, such as Australia’s G20 commitment to reduce the gender participation workforce gap by 25% by 2025.⁶² In this model, however, caregiving is necessarily undervalued,⁶³ with emphasis placed on universal paid employment without any corresponding focus on caregiving. As Fraser observes, ‘in valorizing paid work, [the universal breadwinner model] implicitly denigrates unpaid work’ and institutionalises the androcentric championing of ‘men’s traditional sphere — employment’.⁶⁴

⁵⁸ Marilyn Lake, ‘Women’s Changing Conception of Political Power’ (Papers on Parliament No 29, Parliament of Australia, March 1997)

<https://www.aph.gov.au/About_Parliament/Senate/Research_and_Education/pops/~/_link.aspx?_id=D4C36577D9B24C928B424B01279719F7&_z=z>. See also Lake (n 57) 56–7.

⁵⁹ Lake (n 58); Julie Stephens, ‘Who’s Afraid of Maternalism? Political Motherhood in Postmaternal Times’ in Carla Pascoe Leahy and Petra Bueskens (eds), *Australian Mothering* (Palgrave Macmillan, 2020) 457, 461.

⁶⁰ Stephens (n 59).

⁶¹ Fraser (n 41) 591; Ciccica (n 51) 2761; Ciccica and Bleijenbergh (n 47) 50.

⁶² Australian Government, *Towards 2025* (n 14); Australian Government, ‘Women’s Workforce Participation’ (n 14).

⁶³ Ciccica and Bleijenbergh (n 47) 50.

⁶⁴ Fraser (n 41) 591, 605.

This societal model may or may not be underpinned by government-sponsored supports.⁶⁵ However, generally speaking, caregiving under this model is expected to be ‘removed from the household and performed by paid workers in formal settings’ where it remains undervalued and performed predominantly by women.⁶⁶ The model operates on the unrealistic assumption that caregiving responsibilities can (and should) be wholly addressed by the market, with or without state support.⁶⁷ In essence, the universal breadwinner model constructs a market-oriented approach to gender sameness, where women are expected to orient themselves towards the historically male ideal of professional success.⁶⁸ Caregiving responsibilities, on the other hand, are outsourced as much as possible, implicitly denying their value.⁶⁹

1.3.4 Universal Caregiver

In response to the failings of these models, Fraser conceived an alternative — the universal caregiver model. Fraser described the model as ‘today’s only acceptable perspective of gender equality,’ a model in which society’s ‘institutional scaffolding and structural foundation provides for the equal distribution of productive and reproductive work’.⁷⁰ This model requires the full participation of all citizens on equal terms in a society that values the historically feminised tasks of caregiving ‘enough to ask men to do them too’.⁷¹ In this way, the model escapes the trappings of gender sameness or difference, instead inducing ‘men to become more like most women are now — that is, people who do primary care work’.⁷²

In such a society, the worker-carer, someone with both work and care responsibilities, is positioned as the norm, with the state being responsible for embedding this norm across all facets of social, economic and political life, including within the labour market.⁷³ This echoes calls from other feminist scholars who have highlighted the continued favouring of the unencumbered breadwinner as the ideal worker in Australia’s employment framework and the importance of repositioning the worker-carer as the norm ‘for *all* workers’, not just working

⁶⁵ Ciccio (n 51) 2761.

⁶⁶ Ciccio and Bleijenbergh (n 47) 50.

⁶⁷ Fraser (n 64) 604.

⁶⁸ Ciccio and Bleijenbergh (n 66).

⁶⁹ *Ibid.*

⁷⁰ Fraser (n 64) 612; Gabriele Wagner, ‘The Two Sides of Recognition: Gender Justice and the Pluralization of Social Esteem’ (2011) 12 *Critical Horizons* 347, 351; Jill Rubery, ‘Regulating for Gender Equality: A Policy Framework to Support the Universal Caregiver Vision’ (2015) 22 *Social Politics* 513.

⁷¹ Fraser (n 64) 610.

⁷² *Ibid* 611.

⁷³ *Ibid.*

mothers, in order to achieve a gender equal employment framework.⁷⁴ Under Fraser's model, we are to imagine 'a social world in which citizens' lives integrate wage earning, caregiving, community activism, political participation and involvement in the associational life of civil society — while also leaving time for some fun'.⁷⁵

Given the historical, political, economic, and social forces that have shaped and continue to shape the labour market, achieving the universal caregiver model will not be a process of wiping our legal and economic structures clean and starting again. Practically speaking, efforts to transform society's entrenched perception of gender will need to rely on incremental changes in law and policy. Progress towards this ideal will necessarily include work-care supports, given their capacity to bridge the once segregated and gendered spheres of work and care and their role in allowing employees to embrace the worker-carer identity.⁷⁶

However, as alluded to above, the specific supports provided in Australia have generally neglected the gender implications of caregiving, ignoring the specific gender lens that is required to achieve a universal caregiver society. For this reason, it is expected that progress towards realising a universal caregiver society will require work-care supports that go beyond those that currently feature in Australia's legislative framework for employment. Given this context, Australia's current regulatory framework of work-care supports is evaluated to determine the extent to which it promotes a universal caregiving society and what reforms, if any, may be necessary to realise this goal.

1.4 Research Question & Thesis Structure

In keeping with the aim set out above, the main research question is — *To what extent does Australia's regulatory framework facilitate the provision of gender just work-care supports that enable the realisation of a universal caregiving society?* As discussed further in Chapter 2, this question will be answered by analysing the current work-care supports mandated by law

⁷⁴ Natalie Skinner and Janine Chapman, 'Work-Life Balance and Family Friendly Policies' (2013) *Evidence Base 1*, 13 (emphasis added). See also Wagner (n 70) 347, 351; Jane Lewis and Susan Giullari, 'The Adult Worker Model Family, Gender Equality and Care: The Search for New Policy Principles and the Possibilities and Problems of a Capabilities Approach' (2005) *Economy and Society* 76, 97; Ruth Lister, *Citizenship: Feminist Perspectives* (Plgrave, Macmillan, 1997); Dreyfus (n 48) 111; Adams (n 48) 36; Broomhill and Sharp (n 48); Charlesworth and Macdonald (n 38) 82–8; Larissa Bamberly, 'Restructuring Women's Work: Labour Market and Household Gender Regimes in the Greater Latrobe Valley, Australia' (2016) 23 *Gender, Place & Culture* 1135, 1147.

⁷⁵ Fraser (n 41) 611.

⁷⁶ Charlesworth and Macdonald (n 38) 82–8.

and offered within the employment market against four criteria intended to operationalise the features of Fraser’s universal caregiver model.

The thesis is organised into eight chapters. Chapter 2 sets out the theoretical framework and the development of the gender justice criteria used to evaluate the extent to which work-care supports promote a universal caregiving society. Chapter 2 also outlines the socio-legal and mixed methods approach taken in this study and how this approach connects to the study’s main and subsidiary research questions. These methods include a doctrinal analysis of relevant aspects of Australia’s regulatory framework, a quantitative analysis of work-care supports drawing on data from a 2018–19 WGEA dataset, and a qualitative analysis of semi-structured interviews conducted with human resources professionals.

Chapter 3 presents a doctrinal analysis of Australia’s legislated work-care supports, including federal parental leave payments, childcare subsidies, and minimum standards relating to work and care under the *FW Act* and the modern award system. This is followed in Chapter 4 by an analysis of the mechanisms that influence the market’s provision of work-care supports, including safeguards within the enterprise bargaining process, a fringe benefits tax exemption for certain childcare offerings, gender equality reporting requirements, and Australia’s frameworks for anti-discrimination and general protections.

Chapters 5, 6, and 7 present a quantitative and qualitative analysis of the work-care supports provided in the Australian market and the factors that influence organisations’ provision of these supports. The nature and scope of each work-care support in the market are evaluated against the gender justice criteria. Chapter 5 focusses on employer-funded parental leave; Chapter 6 explores flexible work entitlements; Chapter 7 discusses other work-care supports — namely, childcare entitlements, breastfeeding facilities, return-to-work programs from parental leave, and information, training or support mechanisms for working carers.

Chapter 8 draws together the key findings from the doctrinal, quantitative, and qualitative analyses reported in Chapters 2 through 7. It also identifies recommendations for reform intended to support progress towards a universal caregiving society with gender just work-care supports and points to avenues for further research to address remaining gaps in the evidence base.

This study makes several novel contributions to the existing literature. Firstly, it offers a contemporary, holistic review of Australia’s regulatory framework of work-care supports (as opposed to analyses of individual supports such as parental leave in isolation from other

relevant work-care supports). Secondly, through the development of original gender justice criteria, the analysis of work-care supports is explicitly grounded in a vision of a universal caregiving society where everyone is supported to participate equally in work and caregiving. This sets the analysis apart from past research and policy remarks that discuss a support's contributions to advancing gender equality but only in reference to its ability to help women balance work and caregiving or marginally improve men's involvement. Thirdly, the doctrinal analysis is uniquely combined with empirical findings about how the regulatory framework is influencing market practices. This combined analysis is essential given the positioning of legislated supports in Australia's regulatory framework as complements to or influencers of market behaviour. Finally, the study offers the most thorough and recent analysis of WGEA data to date and are further enhanced by the qualitative data gathered from interviews with human resources professionals. This provides a fuller picture of the motivations for and barriers to providing supports in the employment market and provides further insights into the nature of these supports that could not be ascertained from WGEA data alone.

The focus is on Australia's work-care support landscape today and how it measures up against the Fraser-inspired gender justice criteria. In highlighting potential areas for policy reform and drawing on international examples of existing work-care policies to illustrate the shape of potential reform, this study goes beyond contributing solely to the academic literature. It does not, however, attempt to detail the specifics or practicalities of reform ideas or existing international approaches. In grounding the analysis of the regulatory framework in an original and explicit gender justice objective, the intention is to establish unequivocally the need for reform and highlight where such reforms should be directed. The practicalities and intricacies of such reforms would require further research. Live policy debates surrounding the issue of work-care supports, including changes that have either not yet or only very recently come into force, are highlighted; however, ambiguity about how these changes may operate prevents a thorough examination at the time of writing. Also, while interviewees were asked about the effects of COVID-19, exploring the impact of the pandemic on work-care supports is beyond the scope of this research. This topic will no doubt form the basis of future research.

1.5 Summary

Australia's employment landscape has historically featured a gendered division of work and caregiving in which each exists as a wholly separate sphere. While social attitudes continue to evolve, women continue to undertake a higher amount of unpaid caregiving and are associated with lower rates of workforce participation. A neoliberal ideology would contend that women's

workforce and caregiving responsibilities are the function of rational choice, a view that ignores entrenched social and economic pressures for women to take on a dominant caregiving role and allows the state to deny its responsibility to target the issue through social interventions.⁷⁷

Despite the introduction of various work-care supports that purport to further gender equality in Australia, these supports have been largely directed towards assisting women to balance their work and care responsibilities or have merely made it theoretically possible for men to access these supports without addressing existing social and practical barriers to gender equal caregiving. The result is an employment framework in Australia that continues to embody a one-and-a-half-earner model with men largely participating in work and women largely participating in unpaid caregiving.

As called for by feminist scholars, addressing this entrenched gendering of work and care requires an examination of the extent to which the worker-carer is currently positioned as the norm within Australia's employment framework for all genders.⁷⁸ This study answers these calls, developing a framework for operationalising Fraser's gender justice principles and using this to evaluate Australia's work-care supports, as provided by law and the market. A systemic analysis of this issue makes it possible to identify further reform to realise a universal caregiving society. In doing so, this study enables an assessment of how far we have come in realising a universal caregiving society, how much further we must go, and how we might get there.

⁷⁷ Craig (n 39) 5–6, 136–7.

⁷⁸ See, eg, Belinda Smith, 'Not the Baby and the Bathwater: Regulatory Reform for Equality Laws to Address Work-Family Conflict' (2006) 28 *Sydney Law Review* 689, 730; Conaghan and Rittich (n 47) 1–16; Busby (n 48); James and Busby (n 48); Pocock et al (n 3) 608; Dreyfus (n 48) 112–3; Adams (n 48) 36; Broomhill and Sharp (n 48); Graham et al Lamaro (n 48) 152–3.

CHAPTER TWO: THEORETICAL FRAMEWORK AND METHODOLOGY

2.1 Introduction

This chapter introduces the gender justice criteria used in this study to evaluate the extent to which Australia's legislated work-care supports and the actual work-care supports available in the Australian labour market enable people of *all* gender identifications to participate equally in work and care. As described in Chapter 1, this framework is rooted in a vision of a universal caregiving society wherein the worker-carer is positioned as the norm. Inspired by Nancy Fraser's two core principles of gender justice and addressing extant criticisms of work-care supports, this framework sets out four key criteria that these supports should reflect if we are to progress towards a universal caregiving society: universal availability, enforceability, substantiveness, and gender-neutrality. This delimits the scope of the evaluation of work-care supports as reflected in the central research question: *To what extent does Australia's regulatory framework facilitate the provision of gender just work-care supports that enable the realisation of a universal caregiving society?* Having documented the development of this framework, this chapter sets out the doctrinal, quantitative, and qualitative research methods employed to answer this central research question.

2.2 Gender Justice Criteria for Work-Care Supports

To identify the extent to which Australia's work-care supports reflect a universal caregiving society, Fraser's philosophical ideal is transformed into a tangible framework for moving towards a universal caregiver society.⁷⁹ This framework is centred on Fraser's two core conditions for achieving a gender just society — redistribution and recognition — as discussed further below.⁸⁰

⁷⁹ See, eg, Ciccio and Bleijenbergh (n 47) 50; Jane Lewis, 'Gender and the Development of Welfare Regimes' (1992) 2 *Journal of European Social Policy* 159; Julia S O'Connor, 'Gender, Class and Citizenship in the Comparative Analysis of Welfare State Regimes: Theoretical and Methodological Issues' (1993) 44 *British Journal of Sociology* 501; Gornick and Meyers (n 49); Ciccio (n 51) 2761.

⁸⁰ Fraser (n 46) 23.

2.2.1 Fraser's Gender Justice Principles

Power has been defined as encompassing two key aspects — control over resources and control over ideology.⁸¹ Empowering women requires providing them with the ability to gain control over these two core aspects.⁸² Fraser's central gender justice principles of redistribution and recognition address these aspects. Redistribution focusses on reallocating resources, and recognition focusses on shifting ideologies.

In the context of redistribution, Fraser noted how gender tends to operate as a class-like differentiator, underlying the division of 'paid "productive" labour and unpaid "reproductive" and domestic labour', with women being disproportionately responsible for the latter.⁸³ The principle of redistribution operates on the understanding that feminine norms are undervalued in our society, and it is costly to adopt these norms.⁸⁴ A gender just society must, therefore, provide the necessary resources to overcome these costs and incentivise gender just behaviours.⁸⁵

In the context of work-care supports, redistribution requires acknowledging that the ideal worker in Australia has long been 'an unencumbered (male) citizen available for long hours, without home and care responsibilities', while caregiving is generally considered a feminine endeavour that is undervalued and therefore costly to perform.⁸⁶ Redistribution, therefore, requires that work-care supports provide the necessary resources so that no individual is subject to additional economic or practical barriers in exercising their right to participate as peers in work and caregiving based on their gender.⁸⁷ However, redistribution goes beyond removing relevant barriers, requiring an examination of the present practical and material incentives that

⁸¹ Andrea Cornwall, 'Women's Empowerment: What Works?' (2016) 28 *Journal of International Development* 342, 344, referencing Sritaha Batliwala, *Women's Empowerment in South Asia: Concepts and Practices* (Asian South Pacific Bureau of Adult Education, 1994) and Gita Sen, 'Empowerment as an Approach to Poverty' (Working Paper Series 97.07, UNDP, 1997).

⁸² Cornwall (n 81) 344.

⁸³ Fraser (n 46) 25–6.

⁸⁴ Gheaus (n 46) 7, 8. Costly here is meant to be read expansively to include both literal financial costs and social sacrifices.

⁸⁵ Fraser (n 46) 27; Gheaus (n 46) 16.

⁸⁶ Dreyfus (n 48) 107. See further Sara Charlesworth, 'Managing Work and Family in the "Shadow" of Anti-Discrimination Law' (2005) 23 *Law in Context* 88, 94–5; Ashlee Borgkvist et al, "'I Might Be a Bit of a Front Runner" — An Analysis of Men's Uptake of Flexible Work Arrangements and Masculine Identity' (2018) 25 *Gender, Work Organization* 703, 704–5, 706–7; Belinda Smith, 'It's About Time — For a New Regulatory Approach to Equality' (2008) 117, 118; Jessica Crofts and Julia Coffey, 'Young Women's Negotiations of Gender, the Body and the Labour Market in a Post-Feminist Context' (2017) 26 *Journal of Gender Studies* 502, 505.

⁸⁷ Fraser (n 46) 27.

encourage a default to gender norms.⁸⁸ The goal, therefore, is to not merely provide equal opportunities but also to design policies that will achieve ‘equal outcomes and capacities’.⁸⁹

As for the principle of recognition, Fraser argued that gender operates as a status differentiator too, with one’s gender influencing the status one holds in society. Institutions and cultural patterns often ‘privilege masculinity and devalue everything associated with femininity’.⁹⁰ Women and ‘feminine endeavours’ are often denied equal recognition, dignity, and merit in society.⁹¹ Such assumptions permeate social institutions and are often expressly codified in law or entrenched in government policy.⁹² The principle of recognition, therefore, requires social institutions to ‘express equal respect for all participants and ensure equal opportunity for achieving social esteem’.⁹³ Work-care supports must therefore reflect that work and care are equally valuable endeavours and that all patterns of work and care are equally valuable, including non-normative patterns that defy gender norms.⁹⁴

In summary, redistribution looks to address the relevant economic barriers and provide the necessary economic incentives to live a gender-neutral life. Recognition looks to remove the relevant social or cultural impediments and provide the necessary social or cultural incentives to live free of gender norms. Crucially, Fraser made clear that each dimension cannot be addressed to the exclusion of the other and that when addressing gender injustice ‘both the economic structure and the status order of contemporary society’ must be considered.⁹⁵

For example, offering parental leave payments at a father’s full salary can *redistribute* the disproportionately gendered take-up of parental leave in Australia and provide the necessary resources so that the costs of gender-neutral parental leave use may be mitigated. However, this is unlikely to result in meaningful change without the appropriate *recognition* that a father’s decision to take parental leave is a valuable and respectable one that will not be subject to social or cultural judgment or prejudice. Conversely, policies that merely *recognise* the value

⁸⁸ Gheaus (n 46) 1, 20.

⁸⁹ Anne Marie Goetz and Rob Jenkins, ‘Feminist Activism and the Politics of Reform: When and Why Do States Respond to Demands for Gender Equality Policies?’ (2018) 49 *Development and Change* 714, 718.

⁹⁰ Mala Htun and S Laurel Weldon, ‘When Do Governments Promote Women’s Rights? A Framework for the Comparative Analysis of Sex Equality Policy’ (2010) 8 *Perspectives on Politics* 207, 209.

⁹¹ *Ibid.*

⁹² Fraser (n 46) 23, 26.

⁹³ *Ibid* 27.

⁹⁴ Nancy Fraser, ‘Rethinking Recognition’ (2000) 3 *New Left Review* 107, 114–5; Marlene Hanne Dahl, Pauline Stoltz and Rasmus Willig, ‘Recognition, Redistribution and Representation in Capitalist Global Society: An Interview with Nancy Fraser’ (2004) 47 *Acta Sociologica* 374, 377.

⁹⁵ Fraser (n 46) 23, 26.

of an involved father are unlikely to succeed without a corresponding *redistribution* of material resources to enable greater involvement, such as providing an equal and funded period of leave. Ultimately, Fraser concluded that ‘[t]he moral here, is the need for bifocal vision in feminist politics’ that considers the need for redistribution *and* recognition.⁹⁶

These principles have implications for the structuring of work-care supports. Drawing on Fraser’s principles of redistribution and recognition and existing criticisms of work-care supports, it is argued that to achieve a universal caregiving society in which the worker-carer is positioned as the norm, work-care supports must meet the following criteria — universal availability, enforceability, substantiveness, and gender-neutrality. How these criteria reflect Fraser’s principles and address existing criticisms of work-care supports is discussed further below.

2.2.2 Four Key Criteria

As highlighted above, Fraser’s work provides ‘philosophical normative ideals’ in which to root gender just policy reforms.⁹⁷ However, these ideals do not necessarily create a clear policy directive for what gender just reforms should look like. More recent works have instead outlined the practical characteristics that such supports will require to encompass Fraser’s principles of redistribution and recognition.⁹⁸ This study follows in that tradition, outlining four criteria that work-care supports would need to meet to demonstrate substantial progress towards embodying the principles of recognition and redistribution.

In outlining these criteria, the goal has been to envision a worker-carer identity for everyone, regardless of gender, in line with Fraser’s universal caregiving society. This may be an idealistic or utopic conceptualisation.⁹⁹ However, by using Fraser’s universal caregiving society as the ideal, the criteria offer a framework ‘for comparing and evaluating family and other policies across modern welfare states, and for enlarging contemporary debates about

⁹⁶ Ibid 33.

⁹⁷ Ciccio and Bleijenbergh (n 47) 61.

⁹⁸ See, eg, Rossella Ciccio and Mieke Verloo, ‘Parental Leave Regulations and the Persistence of the Male Breadwinner Model: Using Fuzzy-Set Ideal Type Analysis to Assess Gender Equality in an Enlarged Europe’ (2012) 22 *Journal of European Social Policy* 507; Jana Javornik, ‘Measuring State De-Familialism: Contesting Post-Socialist Exceptionalism’ (2014) 24 *Journal of European Social Policy* 240.

⁹⁹ See, eg, Janet C Gornick and Marcia K Meyers, ‘Building the Dual Earner/Dual Carer Society: Policy Developments in Europe’ (Working Paper No 82, Harvard University Center for European Studies, 26–28 January 2001) <<https://core.ac.uk/download/pdf/5081714.pdf>>; Ciccio (n 51) 2761; Ciccio and Bleijenbergh (n 47) 50.

family policy development'.¹⁰⁰ While achieving these criteria across all work-care supports may not be practicable, grounding the analysis in these ideals allows for the identification of the gender justice *potential* and limitations of supports in reflecting a universal caregiving society.¹⁰¹ This will provide the broadest foundation for identifying areas for reform, which may then be used to identify practical steps to *advance* the universal caregiver model, if not achieve it altogether.¹⁰² With this in mind, the elements that form the central gender justice criteria — universal availability, enforceability, substantiveness and gender-neutrality — are discussed next.

2.2.2.1 Universal Availability

Work-care supports are often provided as limited or conditional offerings.¹⁰³ This designation of deserving or undeserving recipients, however, necessarily compromises a particular support's ability to meet the requirements of redistribution and recognition.¹⁰⁴ In the context of redistribution, it is only when all workers have access to work-care supports that a redistribution of work and care can begin.¹⁰⁵ For example, placing conditions on who may access PPL fails the principle of redistribution by creating additional financial and practical barriers for those outside such conditions to participate equally in a worker-carer lifestyle.

As per the principle of recognition, caregiving must be normalised to overturn the longstanding perception of caregiving as an inherently feminine endeavour.¹⁰⁶ *All* workers in *all* types of work must be able to access work-care supports in recognition of the universality, value, and legitimacy of the worker-carer experience. Offering PPL conditionally entrenches a lack of recognition for the universality of the worker-carer experience and fails to recognise the value

¹⁰⁰ Ibid.

¹⁰¹ See, eg, Ciccia and Bleijenbergh (n 47) 50; Amanda Keddie, 'A Framework for Gender Justice: Evaluating the Transformative Capacities of Three Key Schooling Initiatives' (2005) 32 *The Australian Educational Researcher* 83.

¹⁰² Ciccia and Bleijenbergh (n 47) 50.

¹⁰³ See, eg, eligibility requirements in the *Paid Parental Leave Act 2010* ss 32–46; eligibility requirements and restrictions on Australia's childcare subsidies: *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017* (Cth) pt 4A; and eligibility criteria for employees to be protected under the NES: *FW Act* (n 20) ss 13–14.

¹⁰⁴ Graham et al (n 48) 152.

¹⁰⁵ Shae McCrystal and Belinda Smith, 'Industrial Legislation in 2010' (2016) 53 *Journal of Industrial Relations* 288, 295; Sara Charlesworth and Alexandra Heron, 'New Australian Working Time Minimum Standards: Reproducing the Same Old Gendered Architecture?' (2012) 54 *Journal of Industrial Relations* 164, 170–4.

¹⁰⁶ See, eg, Dreyfus (n 48) 107; Gillian Whitehouse and Michelle Brady, 'Parental Leave, Social Inequalities and the Future of Work: Possibilities and Constraints within the Australian Policy Framework' (2019) 29 *Labour & Industry* 257, 267; Rubery (n 70) 513.

worker-carers bring to society and the need to support them. Instead, work-care supports are positioned as something to be earned through the fulfilment of criteria often based on ideal worker norms (eg offering parental leave only to employees with extended periods of service as a full-time employee). In this way, the support is framed as one that exists outside the norm of the worker experience, failing the principle of recognition.

2.2.2.2 Enforceability

Past research has also criticised the enforceability of work-care supports.¹⁰⁷ Supports are often offered in ways that fall short of explicit guarantees — for example, they guarantee the right for employees to *request* a work-care support, not to receive it.¹⁰⁸ Work-care supports must be reliable for them to be of any material use in redistributing gendered patterns of work and care. Having appropriate sanctions or remedies is necessary so worker-carers may rely on the receipt of work-care supports. For example, if carer’s leave is legally required, but there are no enforceable consequences for the employer in not meeting such an obligation, an employee who is deprived of their leave will have no recourse to ensure its receipt. In this case, it is as good as the employee having no leave at all — making the resource practically useless and failing the principle of redistribution.

As for the principle of recognition, it is also important to demonstrate the value of work-care supports and the importance of making such supports available. Ensuring each support has adequate sanctions and remedies is a key way of publicly recognising its importance.¹⁰⁹ Where society’s laws and policies do nothing to hold workplaces accountable for not providing the right to work-care supports, it signals an indifference to the offering of these supports in the first place and, by extension, an indifference to carers and their needs. Inadequate enforcement measures also fail to recognise the public value of work-care supports, instead perpetuating the long-standing perception that balancing care responsibilities is a private affair and the responsibility of private, often female, individuals.

¹⁰⁷ See, eg, Gheaus (n 46) 10, 15; McCrystal and Smith (n 105) 295; Sara Charlesworth and Alexandra Heron (n 105) 170–4.

¹⁰⁸ See, eg, McCrystal and Smith (n 105) 290; Sara Charlesworth and Iain Campbell, ‘Right to Request Regulation: Two New Australian Models’ (2008) 21 *Australian Journal of Labour Law* 116, 118; Chapman (n 51) 360; Anna Chapman, ‘Is the Right to Request Flexibility under the Fair Work Act Enforceable?’ (2013) 26 *Australian Journal of Labour Law* 118, 126.

¹⁰⁹ Dominique Allen and Alysia Blackham, ‘Under Wraps: Secrecy, Confidentiality and the Enforcement of Equality Law in Australia and the United Kingdom’ (2019) 43 *Melbourne University Law Review* 385, 412; Margaret Thornton, *The Liberal Promise: Anti-Discrimination Legislation in Australia* (Oxford University Press, 1990) 37–8.

2.2.2.3 Substantiveness

The substantiveness of work-care supports is also often called into question in terms of meeting diverse needs.¹¹⁰ To comply with the principles of recognition and redistribution, the supports must be substantive enough to accommodate the ongoing, diverse, and challenging nature of carer responsibilities.

Regarding redistribution, where work-care supports are insufficient to support the real needs of working carers, such supports fail to provide the material resources to enable gender equal participation in the realms of work and care. For example, where parental leave is offered without pay, parents may not be able to afford to access this entitlement. Ensuring such supports can be used flexibly and easily by worker-carers is also central to ensuring their practical utility and making redistribution possible. For example, childcare arrangements that can only be used within certain hours or at certain locations limit parents' choices and can make the offering practically useless where it does not coincide with a worker-carer's preferences and needs. The same goes for supports that impose a burden or require a sacrifice on the part of the worker-carer to use the support. Where the consequences of using a particular support outweigh the benefits, the support's practical use is nullified.

The substantiveness of work-care supports is also relevant to meeting the principle of recognition. Ensuring that work-care supports are sufficiently substantive to be of practical use is key to publicly recognising the value of carers and the validity of meeting their needs. Ensuring that such supports can be used flexibly and easily is also central to recognising the diverse and continuous nature of carer needs. It recognises that the use of work-care supports is a natural and expected aspect of employment, as would be the case in an employment landscape that positioned the worker-carer as the norm.

2.2.2.4 Gender-Neutrality

Finally, work-care supports have been criticised for their failure to accommodate a gender-neutral approach to caregiving, often focussing instead on helping women balance their roles as worker-carers with no corresponding expectation for a shift in the behaviour of men.¹¹¹ Instead, as per the principles of recognition and redistribution, work-care supports must be

¹¹⁰ See, eg, Barbara Pocock and Sara Charlesworth, 'Multilevel Work-Family Interventions: Creating Good-Quality Employment Over the Life Course' (2017) 44 *Work and Occupations* 23, 24-5; Shelley J Correll et al, 'Redesigning, Redefining Work' (2014) 41 *Work and Occupations* 3, 5; Fraser (n 41) 612.

¹¹¹ Pocock, et al (n 3) 608.

designed with an awareness of the potential economic and social costs of subverting gender norms such that the language and operation of work-care supports do not entrench gendered, heteronormative or androcentric assumptions of caregiving and overcome existing incentives default to gender norms.¹¹² Work-care supports, therefore, must be designed with explicit awareness of the gendered reality in which they operate.

In the context of redistribution, supports must provide the necessary material resources to overcome the present economic barriers to gender-neutrality and incentivise gender-neutral patterns of work and care.¹¹³ For example, where PPL is only offered to women, men are subject to additional financial barriers should they wish to participate as peers in caregiving.

Work-care supports must also ensure that gender-neutral patterns of work and care are recognised and celebrated.¹¹⁴ For example, where parental leave is called maternity leave or only offered to female employees, this fails to recognise a gender-neutral approach to caregiving by assuming that parenting will be done predominantly by female workers. This creates social and cultural barriers for those who wish to subvert these expectations.

In short, work-care supports must be universally available, enforceable, substantive, and gender-neutral to reflect the principles of redistribution and recognition and achieve a universal caregiving society in which the worker-carer is the norm. These criteria form the basis of this study's doctrinal, quantitative, and qualitative analyses of Australia's work-care supports.

These methods are used to understand legislated work-care supports, work-care supports in the market, and the factors that drive or inhibit the provision of these supports. In doing so, the limitations of current approaches to work-care supports are identified to inform recommendations for creating a gender just employment framework. While it is recognised that practical, political, and financial barriers may limit an absolute achievement of a gender just society, evaluating the current regulatory framework against a clear gender justice benchmark allows for areas of improvement to be easily highlighted, providing a roadmap to shift Australia *towards* a gender just future.

¹¹² Gheaus (n 46) 1.

¹¹³ Ibid.

¹¹⁴ See, eg, Dreyfus (n 48) 109; Anna Chapman, 'Challenging the Constitution of the (White and Straight) Family in Work and Family Scholarship' in Jill Murray (ed), *Work, Family and the Law* (Federation Press, 2005) 65, 69.

2.3 Methodology

2.3.1 Overview

The central research question is: *To what extent does Australia's regulatory framework facilitate the provision of gender just work-care supports that enable the realisation of a universal caregiving society?*

The regulatory framework is defined as including legislated work-care supports and mechanisms to encourage the market provision of additional supports beyond this minimum.¹¹⁵

To answer the central research question, a socio-legal approach is adopted, which situates the relevant regulatory framework within the broader social context in which it operates.¹¹⁶ In Australia, the market is a 'critical domain' for the provision of work-care supports and so must be considered in this study's analysis.¹¹⁷ Accordingly, the research question is deconstructed into six subsidiary research questions (SRQ) as follows:

- SRQ1: Which aspects of Australia's regulatory framework are relevant to the provision of work-care supports?
- SRQ2: What work-care supports are mandated under the law?
- SRQ3: How do the work-care supports mandated under the law measure up against the gender justice criteria?
- SRQ4: What work-care supports are offered in the market beyond those mandated by the law, and what drives their provision?
- SRQ5: How do these market offerings measure up against the gender justice criteria?
- SRQ6: How might regulatory reform address any identified deficiencies in the regulatory framework to promote work-care supports that move society towards a more gender just future, and what would these reforms look like?

¹¹⁵ Pocock and Charlesworth (n 110) 32–4; Sara Charlesworth, 'Law's Response to the Reconciliation of Work and Care: The Australian Case' in Nicole Busby and Grace James (eds), *Families, Care-giving and Paid Work* (Edward Elgar Publishing, 2011) 86, 118; Rhonda Sharp, Ray Broomhill and Jude Elton, "*Modern*" *Labor and the Fair Work Act 2009: Challenging the Male Breadwinner Gender Order* (Australian Workplace Innovation and Social Research Centre, 2012) 3.

¹¹⁶ D R Harris, 'The Development of Socio-Legal Studies in the United Kingdom' (1983) 3 *Legal Studies* 315; Lawrence M Friedman, 'The Law and Society Movement' (1986) 38 *Stanford Law Review* 763, 763, 772.

¹¹⁷ Pocock and Charlesworth (n 110) 32–4.

These questions are answered through a mixed methods approach that brings together doctrinal analysis, an analysis of the quantitative data collected by the WGEA, and new qualitative data from semi-structured interviews with human resource professionals. A mixed methods approach allows for a more comprehensive view of a particular subject than could be achieved through a single approach.¹¹⁸ The approach also enables broader exploration of issues than one method can address on its own.¹¹⁹ Where multiple methods yield complementary findings on a similar issue, these findings can offer a more nuanced and comprehensive overall picture.¹²⁰ A mixed methods approach may also reveal ‘multiple stories’ within an issue.¹²¹

A mixed methods approach also ensures that the research questions drive the choice of method rather than the choice of method driving the questions. Table 2.1 sets out which methods are employed to answer each sub-question and how this analysis is organised across the six chapters that follow. Further detail about each method is provided in the sections that follow.

¹¹⁸ Martyn Denscombe, *The Good Research Guide* (Open University Press, 4th ed, 2010) 141.

¹¹⁹ R Burke Johnson, Anthony J Onwuegbuzie and Lisa A Turner, ‘Toward a Definition of Mixed Methods Research’ (2007) 1(2) *Journal of Mixed Methods Research* 112, 123.

¹²⁰ Ibid.

¹²¹ Louise H Kidder and Michelle Fine, ‘Qualitative and Quantitative Methods: When Stories Converge’ (1987) 1987 *New Directions for Program Evaluation* 57, 75.

Table 2.1 How the organisation of the chapters relates to the SRQs and research methods

	Doctrinal Analysis	Quantitative Analysis	Qualitative Analysis
Chapters Three & Four			
Q1: Which aspects of Australia’s regulatory framework are relevant to the provision of work-care supports?	x		
Q2: What work-care supports are mandated under the law?	x		
Q3: How do the work-care supports mandated under the law measure up against the gender justice criteria?	x		
Chapters Five, Six & Seven			
Q4: What work-care supports are offered in the market beyond those mandated by the law, and what drives their provision?		x	x
Q5: How do these market offerings measure up against the gender justice criteria?		x	x
Chapter Eight			
Q6: How might regulatory reform address any identified deficiencies in the regulatory framework to promote work-care supports that move society towards a more gender just future, and what would this reform look like?	x	x	x

2.3.2 Doctrinal Method

Australia’s regulatory framework of work-care supports is diverse and varied. This thesis uses doctrinal analysis to understand this framework and analyse its capacity to provide work-care supports that meet the criteria of universal availability, enforceability, substantiveness, and gender-neutrality. The doctrinal method involves ‘rigorous analysis and creative synthesis, the making of connections between seemingly disparate doctrinal strands, and the challenge of extracting general principles from an inchoate mass of primary material’.¹²² It requires interpreting authoritative texts but also understanding relevant social context.¹²³ This study’s analysis draws upon legislative texts, extra-legislative materials, judicial decisions, government reports, and secondary literature. The thesis’s doctrinal analysis: (i) identified the scope of Australia’s regulatory framework for work-care supports, (ii) assessed this framework against the gender justice criteria, and (iii) identified opportunities for reform.

¹²² Council of Australian Law Deans, *CALD Statement on the Nature of Research* (May and October 2005) 3.

¹²³ Terry C M Hutchinson, *Researching and Writing in Law* (Lawbook Co, 3rd ed, 2010) 37.

Chapter 3 employs this method as it relates to legislated work-care supports. This includes parental leave payments, childcare subsidies, and minimum standards relating to work and care under the NES of the *Fair Work Act* ('*FW Act*') and the modern award system. The chapter employs the doctrinal method to analyse each support against the gender justice criteria, drawing on literature that has examined and criticised the efficacy of these supports while considering the broader social context in which these mechanisms were introduced.

Chapter 4 employs these same methods to analyse broader regulatory mechanisms that may encourage workplaces to provide their own work-care supports. This includes safeguards in the enterprise bargaining process, fringe benefits tax exemptions for certain childcare offerings, gender equality reporting requirements, and anti-discrimination and general protections for carers. Each mechanism is analysed to identify its incentivising power to encourage workplaces to provide supports that meet the criteria of universal availability, enforceability, substantiveness, and gender-neutrality.

2.3.3 Quantitative Method

2.3.2.1 Data

Under the *Workplace Gender Equality Act 2012* (Cth) ('*WGE Act*'), private and higher education organisations with over 100 employees are required to report each year on various gender equality indicators, with other organisations having the option of voluntarily reporting to the WGEA.¹²⁴ The relevant gender equality indicators include the gender composition of the workforce; the gender composition of the relevant employer's governing bodies; equal remuneration between men and women; the availability and utility of employment terms, conditions, and practices relating to flexible working arrangements for employees and support for employees with family or caring responsibilities; consultation practices with employees on issues concerning gender equality; and their prevention processes on sex-based harassment and discrimination.¹²⁵ WGEA compiles these reports, which are then made publicly available.¹²⁶ This study draws on data submitted by 4841 organisations for the 2018–19 reporting year. This

¹²⁴ *Workplace Gender Equality Act 2012* (Cth) s 3, 13 ('*WGE Act*').

¹²⁵ Workplace Gender Equality (Matters in Relation to Gender Equality Indicators) Instrument 2013 (No 1) (Cth) sch 1.

¹²⁶ Data.Gov.Au, 'WGEA Dataset', *Data.Gov.Au* (Web Page) <<https://data.gov.au/data/dataset/wgea-dataset>>.

reporting year was selected to avoid any conflation in the results with the effects of COVID-19, especially regarding flexible work.¹²⁷

For this analysis, new variables were created: organisation size, industry type, and gender dominance. In terms of organisation size, the categories mirrored that of the Agency's dataset for consistency — (i) under 250 employees; (ii) 250–499 employees; (iii) 500–999 employees (iv) 1000–4999 employees; (iv) 5000+ employees.¹²⁸ For industry type, organisations assigned themselves to an industry based on the Australian and New Zealand Standard Industrial Classification (ANZIC) list of industries in the dataset.¹²⁹ These classifications were collapsed into three overarching categories — non-service-based industries, general services industries, and specialised services.¹³⁰ Gender dominance consisted of three categories: female-dominated, male-dominated, and neutral. Female-dominated organisations were defined as organisations with more than 60% women in the workforce; male-dominated organisations were organisations with more than 60% men in the organisation; mixed organisations were organisations with a 40% to 60% split of men and women. This method of categorisation mirrors the WGEA's approach to classifying gender domination and so has been used here for consistency.¹³¹

¹²⁷ The dataset of each year captures results up to 31 March of the later year. Australian state and territory governments began recommending that workplaces introduce virtual work arrangements from the end of February 2020 to the end of March 2020 with firm directives to close non-essential businesses beginning around the end of March 2020. It was therefore a possibility that the 2019–20 dataset or later may have cases of flexible work arrangements introduced purely because of COVID-19 restrictions or recommendations: Workplace Gender Equality Agency, 'Reporting' (Web Page) <<https://www.wgea.gov.au/what-we-do/reporting>>; See, eg, NSW Health, 'Community Urged to Help Prevent Coronavirus' (Media Release, 27 February 2020); ACT Chief Minister, 'Statement: ACT Chief Minister' (Statement, 23 March 2020).

¹²⁸ For the models in Chapters 6 and 7, the category of 5000+ was collapsed into a new category of 1000+ due to insufficient cell counts resulting in large standard errors.

¹²⁹ These classifications include: agriculture, forestry and fishing; mining; manufacturing; electricity, gas, water and waste services; construction; wholesale trade; retail trade; accommodation and food services; transport, postal and warehousing; information, media and telecommunications; financial and insurance services; rental, hiring and real estate services; professional, science and tech services; admin and support services; public administration and safety; education and training; health care and social assistance; arts and recreation services; and other services.

¹³⁰ 1. Non-service-based industries — agriculture, forestry and fishing; mining; manufacturing; and construction; wholesale trade; retail trade; transport, postal and warehousing 2. General services — electricity, gas, water and waste services; accommodation and food services; information, media and telecommunications; rental, hiring and real estate services; administrative and support services; public administration and safety services; arts and recreation services; and other services; 3. Specialised services — financial and insurance services; professional, scientific and technological services; education and training services; and health care and social assistance services.

¹³¹ Workplace Gender Equality Agency, 'Gender Segregation in Australia's Workforce' (Factsheet Series, April 2019) 12.

The dataset does not represent a complete list of Australian workplaces, given its focus on larger, private institutions and higher education providers. In 2019, 98% of businesses in Australia had fewer than 20 employees and employed 44% of Australia's workforce.¹³² Therefore, the workplaces of at least 44% of Australia's employees are not captured by this dataset. The results in the report are also self-reported by each organisation, so the accuracy of an organisation's reports cannot necessarily be verified, although there are penalties for false submissions.¹³³ There are also certain deficiencies in what may be gleaned from the data because of how questions are presented in the dataset. For example, the dataset often asks whether entitlements are offered to 'only men', 'only women', or 'both men and women', imposing a strict gender binary. When reporting on findings, care is taken to highlight potential gaps in the data because of how the questions are phrased. The 2018–19 dataset also at times failed to address key features of work-care supports, although later datasets have become more thorough in their questions.¹³⁴ In spite of these limitations, the Agency's 2018–19 dataset is the most comprehensive, publicly available data source of its type to track the provision of work-care supports before COVID-19. The annualised nature of the dataset also enables findings to be tracked over time for further research.

The Agency itself publishes semi-regular fact sheets and gender equality scorecards based on dataset results, but their analyses are often confined to rudimentary, descriptive statistics.¹³⁵ Hence, the present study provides the most comprehensive analysis of WGEA data on work-care supports to date.¹³⁶

¹³² Australian Small Business and Family Enterprise Ombudsman, *Small Business Counts: Small Business in the Australian Economy* (Commonwealth of Australia, 2019) 5.

¹³³ *WGE Act* (Cth) (n 124) s 19B.

¹³⁴ See, eg, Workplace Gender Equality Agency, 'Australia's Gender Equality Scorecard: Key Results from the Workplace Gender Equality Agency's Employer Census 2021–22' (Report, December 2022) 42, 43, 47 <<https://www.wgea.gov.au/sites/default/files/documents/WGEA-Gender-Equality-Scorecard-2022.pdf>>.

¹³⁵ See, eg, Workplace Gender Equality Agency, 'Australia's Gender Equality Scorecard' (Web Page, December 2022) <<https://www.wgea.gov.au/sites/default/files/documents/WGEA-Gender-Equality-Scorecard-2022.pdf>>; Workplace Gender Equality Agency, 'It's Luck of the Draw for Parental Leave' (Web Page, 19 November 2019) <<https://www.wgea.gov.au/newsroom/its-the-luck-of-the-draw-for-parental-leave>>; Workplace Gender Equality Agency, 'Employers Need to Care More about Carers' (Web Page, 22 November 2018) <<https://www.wgea.gov.au/newsroom/employers-need-to-care-more-about-carers>>.

¹³⁶ For examples of other quantitative analyses of work-care supports in Australia to date — see, eg, Rebecca Mitchell and John Mandryk, *The 1995 Australian Workplace and Industrial Relations Survey (AWIRS 95): An OHS Perspective* (Commonwealth of Australia, 1998); Pay Equity Unit, *First Findings Report: Consolidated Content from Online Publication* (Commonwealth of Australia, 2015); Muhammad Ali, Isabel Metz and Carol T Kulik, 'Impact of Work-Family Programs on the Relationship between Gender Diversity and Performance' (2015) 54 *Human Resource Management* 553; Kohinur Akter, Muhammad Ali and Artemis Chang, 'Work-Life Programs and Performance in Australian Organisations: The Role of Organisation Size and Industry Type' (2021) 59 *Asia Pacific Journal of Human Resources* 227; Marian Baird, Myra Hamilton and Andreea

2.3.2.2 Hypothesis

As set out in Table 2.1, this quantitative analysis of WGEA data is directed at providing an answer to SRQ4 ‘What work-care supports are offered in the market beyond those mandated by the law, and what drives their provision?’ and SRQ5 ‘How do these market offerings measure up against the gender justice criteria?’ The existing literature suggests that three features of an organisation may play a key role in driving the provision of work-care supports beyond regulated minimum requirements: size, industry type, and gender balance.

Large companies have been said to be better at addressing employee needs ‘through a large number of work-life programs’ as they have the necessary ‘resources to incur the associated costs’ of implementing work-care supports and invest in attractive HR practices to retain talent.¹³⁷ It has also been suggested that the increased visibility of larger companies increases the pressure to offer generous work-care supports, ‘an important discretionary domain of corporate social responsibility’, as a means of preserving social legitimacy.¹³⁸

As for industry type, past research on the prevalence of work-care support offerings within workplaces has found that these offerings are often unevenly spread ‘depending on industry and sector location, with minimal penetration into several male-dominated areas’.¹³⁹ Research has found that the provision of effective work-care supports is incentivised in service firms where employee/client interaction and the need to satisfy and retain quality employees are high.¹⁴⁰ In contrast, primary industries that are less reliant on employee–customer interactions have been said to be more likely to invest in tangible resources such as technology to retain their competitive advantage.¹⁴¹ Research has also found that ‘service firms that employ knowledge workers and women are more concerned about the effective implementation of

Constantin, ‘Gender Equality and Paid Parental Leave in Australia: A Decade of Giant Leaps or Baby Steps?’ (2021) 63 *Journal of Industrial Relations* 546.

¹³⁷ Akter et al (n 136) 231. See also Dana E Friedman, ‘Employer Supports for Parents with Young Children’ (2001) 11 *The Future of Children* 62, 66; Colin Gray and Christopher Mabey, ‘Management Development: Key Differences between Small and Large Businesses in Europe’ (2005) 23 *International Small Business Journal* 467, 479–81; Hal Morgan and Frances J Miliken, ‘Keys to Action: Understanding Differences in Organizations’ Responsiveness to Work-and-Family Issues’ (1992) 31 *Human Resource Management* 227, 242.

¹³⁸ Jerry D Goodstein, ‘Institutional Pressures and Strategic Responsiveness: Employer Involvement in Family Issues’ (1994) 37 *Academy of Management Journal* 350, 376.

¹³⁹ Gillian Whitehouse, ‘Industrial Agreements and Work/Family Provisions: Trends and Prospects under “Enterprise Bargaining”’ (2001) 12 *Labour & Industry* 109, 113, 123.

¹⁴⁰ Akter et al (n 137) 232; Morgan and Miliken (n 137) 240; Paul Osterman, ‘Work Family Programs and the Employment Relationship’ (1995) 40 *Administrative Science Quarterly* 681, 698.

¹⁴¹ Akter et al (n 136) 232.

work-life programs’,¹⁴² and that ‘the presence of women in a workplace and heightened demand for child-care services and workplace flexibility are important forces motivating employer involvement in work-family issues’.¹⁴³

It is for these same reasons that gender dominance at the organisational level may influence the provision of work-care supports because it has been suggested that ‘generous work-family policies... [crowd women] into feminized enclaves’ as women choose workplaces with more family-friendly work conditions or, conversely, the more workplaces adopt more family-friendly policies the more dependent they become on female labour.¹⁴⁴

On this basis, it is hypothesised that the likelihood of offering parental leave (Chapter 5), flexible work (Chapter 6), or childcare subsidies or onsite childcare, breastfeeding facilities, return-to-work bonuses, and one or more information, support or training mechanism (Chapter 7) will vary based on organisation size, industry type, and gender dominance. Specifically, it is expected that larger organisations, female-dominated organisations, and specialised services organisations will be associated with a higher likelihood of offering work-care supports beyond the mandatory minimum. This hypothesis is tested using a series of regression models,¹⁴⁵ as discussed below.

2.3.2.3 Analytical Strategy

The results of the quantitative analyses using WGEA data are reported in Chapters 5, 6, and 7. Chapter 5, which examines the provision of employer-funded parental leave, first presents descriptive statistics detailing the availability, duration, and payment of this leave, as captured by the WGEA dataset. To test the hypotheses that larger organisations, female-dominated organisations, and specialised services organisations will be associated with a higher likelihood of offering work-care supports beyond the mandatory minimum, a binary logistic regression model was fitted predicting the availability of some form of primary and/or secondary carer’s

¹⁴² Ibid; Sue Williamson, ‘Bargaining for Gender Equality in the Australian Public Service’ (2009) 20 *Labour & Industry* 159, 162.

¹⁴³ Goodstein (n 138) 376–7.

¹⁴⁴ Jing Wang and Anil Verma, ‘Explaining Organizational Responsiveness to Work-Life Balance Issues: The Role of Business Strategy and High-Performance Work Systems’ (2012) 51 *Human Resource Management* 407, 408; Goodstein (n 138) 376–7; Ariane Hegewisch and Janet C Gornick, ‘The Impact of Work-Family Policies on Women’s Employment: A Review of Research from OECD Countries’ (2011) 14 *Community, Work and Family* 119, 131; Workplace Gender Equality Agency (n 131) 12.

¹⁴⁵ In simple terms, regression models help isolate what effect a particular variable (eg organisation size) has on increasing or decreasing the likelihood of a particular outcome (eg offering parental leave) and the extent to which these findings can or cannot be ascribable to chance.

leave based on size, industry type, and gender dominance, as well as the interaction term ‘gender dominance*organisation size’ (Model 5A). Interaction terms allow the exploration of two or more variables together.¹⁴⁶ As will be seen below, interaction terms have been included in each model where there were sufficient entries in each category. It was found that including the interaction term improved model fit.¹⁴⁷ Two multinomial logistic regression models were also run to predict the length of primary and secondary carer leave offerings, respectively, based on size, industry type, gender dominance, and the interaction term ‘gender dominance*organisation size’ (Models 5B and 5C).

Chapter 6, which examines flexible work, first presents descriptive statistics detailing the formality and availability of the six types of flexible work in the dataset and the prevalence of mechanisms intended to support a flexible work culture. Again, to test the effect of the variables on the provision of flexible work, six binary logistic models were fitted to predict the offer of:

- some form of compressed weeks based on gender dominance, organisation size, industry type, and the interaction terms ‘gender dominance*organisation size’, ‘organisation size*industry type’, and ‘industry type*gender dominance’ (Model 6A)
- some form of telecommuting based on gender dominance, organisation size, industry type, and the interaction terms ‘gender dominance*organisation size’, ‘organisation size*industry type’, ‘industry type*gender dominance’ (Model 6B)

¹⁴⁶ Adding organisation size and gender dominance to a model as separate fixed effects tells us what role different organisation sizes have on our outcome variable and what role different forms of gender dominance have on our outcome variable, respectively. However, it does not tell us how gender dominance interacts with organisation size. For example, it may be that female domination has a different impact on an outcome when the organisation’s size exceeds 5000 employees, as compared to male domination.

¹⁴⁷ Each model was run with and without the interaction term, and the interaction term was only included where it improved the model fit. It was not possible to do a three-way interaction of ‘gender dominance*organisation size*industry type’ nor the interaction terms of ‘industry type*organisation size’ or ‘industry type*gender dominance’ as there were insufficient results in each category, leading to zero cell counts. When exploring the interaction between gender dominance and organisation size, there was a risk that organisation size would differ according to gender dominance (that female-dominated organisations with 500–999 employees were, on average, closer to 500 employees, as compared to male-dominated organisations, which had an average closer to 999. If male-dominated organisations of 500–999 employees were shown to be more likely to offer parental leave than female-dominated organisations of the same size, it would not be clear whether this finding was attributable to organisation size, or if organisation size was acting as a proxy for resource richness. Hence, it was important to ensure that like was being compared with like by confirming that the average size of organisations in each organisation size category was roughly equal for female, male, and neutral organisations. In general, the mean size of organisations across the variables of gender dominance and the various size groupings was similar when looking at organisations with fewer than 10,000 employees. However, once an organisation’s size exceeded 10,000 employees, neutral organisations exhibited larger average employee numbers. As a result, it is not possible to exclude the fact that any differences seen in neutral organisations sized 5000+ may be attributable to their having a greater number of resources because they have, on average, a much larger organisation size.

- some offering of flexible hours based on gender dominance, organisation size, industry type and the interaction term ‘gender dominance*organisation size’ (Model 6C)
- some offering time-off-in-lieu (‘TOIL’) based on gender dominance, organisation size, industry type and the interaction terms ‘gender dominance*organisation size’, ‘organisation size*industry type’, and ‘industry type*gender dominance’ (Model 6D)
- some offering of part-time work based on gender dominance, organisation size, industry type and the interaction term ‘industry type*gender dominance’ (Model 6E)
- some offering of job sharing based on gender dominance, organisation size, industry type and the interaction terms ‘gender dominance*organisation size’, ‘organisation size*industry type’, and ‘industry type*gender dominance’ (Model 6F).

Chapter 7, which examines other supports for working carers (including return-to-work initiatives after parental leave, childcare assistance, breastfeeding accommodations, information and support services, and training or coaching mechanisms), first reports descriptive statistics on the availability of childcare supports (including employer-subsidised childcare, on-site childcare, childcare referral services, and support in securing school holiday care), breastfeeding facilities, return-to-work bonuses, and various information and support mechanisms (including support networks, information packs, referral services, and targeted communication for parents and carers), and training mechanisms (including coaching for employees after returning from parental leave and parenting workshops for mothers and fathers respectively).

It then presents the findings of four binary logistical regression models, fitted to predict:

- some offering of either on-site childcare or childcare subsidies based on organisation size, industry type, and gender dominance and the interaction terms ‘gender dominance*organisation size’, ‘organisations size*industry type’, and ‘industry type*gender dominance’ (Model 7A)
- the availability of breastfeeding facilities based on organisation size, industry type, and gender dominance and the interaction terms ‘gender dominance*organisation size’, ‘organisations size*industry type’, and ‘industry type*gender dominance’ (Model 7B)
- the availability of return-to-work bonuses based on organisation size, industry type, and gender dominance (Model 7C)

- the availability of one or more information, support or training mechanisms based on organisation size, industry type, and gender dominance and the interaction terms ‘gender dominance*organisation size’, ‘organisations size*industry type’, and ‘industry type*gender dominance’ (Model 7D).

In Chapters 5, 6, and 7, the model output is presented in table format with most predicted probabilities simulated from the models presented graphically too. Reporting on both the model output and the predicted probabilities serves two purposes. Concerning the model output, the relationship between predictor variables (eg organisation size) and the output variable (eg parental leave offering) is discussed with reference to statistical significance. For example, where the model suggests that certain groups in our predictor variable (like organisations with 5000 or more employees) are associated with a higher likelihood of being offered parental leave, the statistical significance of that finding indicates how confident we can be that this difference is caused by the variable in question (eg the organisation having 5000 or more employees) and is not simply a matter of chance.

However, a finding with a high level of statistical significance (a high likelihood that the finding is not the result of chance) does not necessarily equate to strong practical significance. For example, the model may identify organisations with 5000 or more employees as being more likely to offer parental leave than organisations with 500–999 employees at a statistically significant level. In this case, the statistical significance of this finding reassures us that this finding is not a matter of chance, and that organisation size is having a real effect on the likelihood of offering parental leave.

However, how *much* the likelihood of being offered parental leave increases in organisations with 5000 or more employees as compared to organisations of 500–999 employees is still unknown. It may be that there is only a 2% increased likelihood of offering parental leave between these categories. So while the statistical significance of the finding means that we can be confident that this 2% difference is a real effect, this difference in the likelihood of offering parental leave is small and may not be of practical significance, although this will of course turn on the circumstances. Reporting the predicted probabilities of output variables permits a discussion of the practical significance of any identified differences.

2.3.4 Qualitative Methods

To enable a full answer to SRQs 4 and 5 and supplement the quantitative results in Chapters 5, 6, and 7, semi-structured interviews were conducted with 22 participants. This enabled the

capture of further nuance regarding the factors driving the provision of work-care supports and the nature of their provision. The interviews were intended to illuminate aspects of workplace policies and practices surrounding work-care supports that could not only explain and contextualise the quantitative findings but also offer insight beyond that of the quantitative data. For this reason, the qualitative data do not strictly mirror the analysis of the quantitative data, but they do give greater depth to the quantitative data.

2.3.3.1 Participant Recruitment and Selection

Participants were sourced via purposive sampling and selected for their experience implementing (or deciding not to implement) work-care supports within organisations in Australia and their knowledge of the substance of these supports and how they operate. Most participants were selected via LinkedIn searches focussing on profiles that matched search terms such as ‘diversity and inclusion’, ‘people and culture’, or ‘human resources officer’. In addition, specific LinkedIn searches were made for representatives from organisations known for their work-care supports such as Employer of Choice Citation winners. A small number of interviewees were recruited via snowball sampling following recommendations from interviewees and colleagues. None of the participants was personally known to the researcher before recruitment.

Prospective participants were invited to participate in an interview via email (where an address was publicly available on their profile or workplace website) or LinkedIn message. Where a participant indicated interest in participating, they were provided with a detailed participant information sheet and consent form. These documents made clear how the data would be handled and stored, provided assurance regarding the anonymity of their responses, and provided general information regarding the study’s research questions and aims. All interviewees gave their permission for their interview to be recorded (via Zoom’s recording feature). Interviews were transcribed through a real-time transcription software, Live Transcribe. Output from the transcription software was reviewed for accuracy before starting the analysis. Interviews were generally 60 minutes long. There were, however, some variations in interview length depending on participant availability. The longest interview, for example, lasted approximately 120 minutes, and the shortest lasted 45 minutes.

2.3.3.2 Data Collection

All interviews (n = 22) were conducted by the researcher online via Zoom’s virtual meeting software to accommodate Victoria’s lockdown restrictions in force at various points throughout

the recruitment and data collection period (August to November 2021). Zoom is well-regarded as a medium for interviews, comparing favourably with face-to-face and telephone interviews and other videoconferencing tools.¹⁴⁸

Interview questions were designed to address gaps in the knowledge base that could not be answered with the available quantitative data, as well as to explore possible explanations for patterns seen in the quantitative findings. A topic guide was produced to scaffold the semi-structured interviews. This consisted of 13 main questions with pre-determined prompts to explore further lines of investigation, which were refined or added to over time. The semi-structured nature of the interviews provided sufficient flexibility to ‘probe and expand the interviewee’s responses’ and ‘follow new leads as they arise’.¹⁴⁹ Participants were encouraged to elaborate on any issues they felt were of particular importance throughout the interview and were given a final opportunity to do so before the interview ended. Ethics approval for this qualitative data collection was granted by the Monash University Ethics Committee in February 2021.

2.3.3.3 Sample

From 205 invitees, 22 participants agreed to be interviewed and were included in the study. While care was taken to ensure a balance of participants from organisations of different sizes and covering different industries, the final sample included a greater number of representatives from organisations with a more developed program of work-care supports or of larger size. This may be a consequence of self-selection bias, as well as the fact that inactive organisations are perhaps less likely to have designated ‘people and culture’, ‘diversity and inclusion’ staff, or ‘human resources officers’. In practice, this imbalance was unproblematic. As the goal of the interviews was to provide a more nuanced understanding of work-care support offerings, recruitment prioritised representatives of organisations who were more likely to be offering work-care supports in the first place. Moreover, interviewees often spoke beyond the specific context of their organisation, drawing on their general knowledge of the landscape of work-care supports in Australia, previous employment, or personal experiences. The data collected

¹⁴⁸ See, eg, Bojana Lobe, David L Morgan and Kim A Hoffman, ‘Qualitative Data Collection in an Era of Social Distancing’ (2020) *International Journal of Qualitative Methods* 19; Mandy M Archibald et al, ‘Using Zoom Videoconferencing for Qualitative Data Collection: Perceptions and Experiences of Researchers and Participants’ (2019) 18 *International Journal of Qualitative Methods* 1.

¹⁴⁹ G Partington, ‘Qualitative Research Interviews: Identifying Problems in Technique’ (2001) 11(2) *Issues in Educational Research* 32, 33. See also H Russell Bernard, *Research Methods in Anthropology: Qualitative and Quantitative Approaches* (AltaMira Press, 4th ed, 2006) 210.

were regularly reviewed, and data collection ceased when it was decided that sufficient material of sufficient quality had been gathered to answer the study’s research questions.¹⁵⁰ Table 2.2 provides further information on the size and industry represented by each interviewee.¹⁵¹

Table 2.2 Overview of interview participants

Interviewee	Job Position	Organisation Type
1	Culture and Development Specialist	Manufacturing organisation with 1000–4999 employees
2	Equity and Diversity Advisor	Education and training organisation with over 5000 employees
3	Diversity and Inclusion Senior Advisor	Government department with 1000–4999 employees
4	Wellbeing, Diversity, and Inclusion Lead	Administrative and support services organisation with 500–999 employees
5	Inclusion and Diversity Manager and Consultant	Government departments and education and training organisations, ranging in size from 250–499 to over 5000 employees
6	Inclusion and Diversity Lead	Manufacturing organisation with 1000–4999 employees
7	Inclusion and Diversity Manager	Electricity, gas, water, and waste services organisation (public) with 1000–4999 employees
8	Human Resources Consultant	From a range of organisations
9	Head of Diversity and Inclusion	Professional, science and tech services organisation with 1000–4999 employees
10	People and Culture Manager	Professional, science and tech services organisation with fewer than 100 employees
11	Diversity and Inclusion Manager	Education and training organisation with over 5,000 employees
12	Diversity, Inclusion and Development Lead	Electricity, gas, water, and waste services organisation (public) with 1000–4999 employees
13	Diversity and Inclusion Manager	Professional, science and tech services organisation with 1000–4999 employees

¹⁵⁰ Virginia Braun and Victoria Clarke, ‘To Saturate or Not to Saturate? Questioning Data Saturation as a Useful Concept for Thematic Analysis and Sample-Size Rationale’ (2021) 13 *Qualitative Research in Sport, Exercise and Health* 201, 211.

¹⁵¹ Broad ANZIC classifications and company size ranges as per the quantitative analysis have been used to characterise the interviewee’s workplace to protect interviewees’ anonymity.

14	Gender Equality Adviser	Public administration and safety organisation (public) with over 5000 employees
15	Diversity and Inclusion Manager	Transport, postal and warehousing organisation with over 5000 employees
16	Diversity and Inclusion Consultant	A range of organisations
17	Human Resources Consultant	A range of organisations (specialising in smaller organisations)
18	Human Resources Consultant	A range of organisations
19	Head of Diversity, Inclusion and Talent	Transport, postal and warehousing organisation with 1000–4999 employees
20	Human Resources Manager	Professional, science and tech services organisation with over 5000 employees
21	Human Resources Manager	Professional, science and tech services organisation with 500–999 employees
22	People and Culture Executive	Electricity, gas, water, and waste services organisation with fewer than 100 employees

2.3.3.4 Analytical Strategy

Reflexive thematic analysis was chosen to analyse the data, given its flexibility and ability to summarise features across a large dataset and highlight similarities and differences while generating potentially unexpected insight.¹⁵² This approach has also been described as useful for analyses intended to inform policy development.¹⁵³ In particular, reflexive thematic analysis was chosen as it not only acknowledges the inevitability of researcher subjectivity but encourages it, recognising subjectivity, reflexivity, and creativity as assets in the analytical process.¹⁵⁴

The analytical process involved an initial period of familiarisation with the data, reviewing the transcripts and making cursory notes on first impressions.¹⁵⁵ It was at this stage that data were coded deductively into (i) what work-care supports are offered in the market and (ii) what factors influence the provision of work-care supports. The data were then analysed using an

¹⁵² Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3 *Qualitative Research in Psychology* 77, 97.

¹⁵³ Ibid.

¹⁵⁴ David Byrne, 'A Worked Example of Braun and Clarke's Approach to Reflexive Thematic Analysis' (2021) *Quality & Quantity* 1, 3–4; Virginia Braun and Victoria Clarke, 'Reflecting on Reflexive Thematic Analysis' (2019) 11 *Qualitative Research in Sport, Exercise and Health* 589.

¹⁵⁵ Braun and Clarke (n 152); Braun and Clarke (n 154).

inductive approach, whereby new child codes were produced based on emerging topics within the data itself. Having categorised the data by topic, the data in each topic were then examined to construct and build themes — that is, broader patterns of meaning that share a central concept or idea.¹⁵⁶ Here personal and academic interests and pre-existing theories and findings were drawn on to inform the analytical process.¹⁵⁷ Themes were then reviewed to ensure that each was sufficiently convincing and relevant to the research question.¹⁵⁸ The scope of each theme was then refined and named to reflect the ‘story’ constructed from the data before writing up the results.¹⁵⁹ Although these steps have been described linearly, the process was more recursive and organic in practice.¹⁶⁰ The coding process sometimes required refinement and repetition, allowing the codes and themes to evolve.

The coding process paid particular attention to the idea that themes in the context of reflexive thematic analysis do not passively emerge from the data but are instead constructed and developed from the researcher’s analytic skills, theoretical beliefs, and assumptions.¹⁶¹ Some findings were necessarily descriptive to achieve the research aim of understanding the nature of work-care supports in Australian workplaces and the barriers and drivers that influence organisational behaviour.

However, beyond descriptive findings, analytical observations were also made by drawing relationships between the interview data and the quantitative and doctrinal findings. Care was taken to ensure that all relevant quotations were presented in their context and that divergent experiences were included, where relevant, to provide a rich picture of relevant themes. It must be acknowledged that while every effort was made to build rich and interesting themes for each support discussed, the rarity of certain work-care support offerings and limited experiences of interviewees with certain work-care supports meant that some findings lacked the detail of others, although the lack of interviewee experience with certain supports was itself a useful finding. Data were manually coded and organised using the software NVivo.

¹⁵⁶ Braun and Clarke (n 152) 95.

¹⁵⁷ Byrne (n 154) 3.

¹⁵⁸ Braun and Clarke (n 152) 95.

¹⁵⁹ Lorelli S Nowell, ‘Thematic Analysis: Striving to Meet the Trustworthiness Criteria’ (2017) 16 *International Journal of Qualitative Methods* 1, 4; Victoria Clarke and Virginia Braun, ‘Thematic Analysis’ (2017) 12 *The Journal of Positive Psychology* 297.

¹⁶⁰ Virginia Braun and Victoria Clarke, ‘One Size Fits All? What Counts as Quality Practice in (Reflexive) Thematic Analysis?’ (2020) 18 *Qualitative Research in Psychology* 328, 331.

¹⁶¹ Braun and Clarke (n 154) 594.

2.4 Summary

From Fraser's gender justice theory, four criteria for work-care supports were identified as necessary to embody the principles of redistribution and recognition — universal availability, enforceability, substantiveness, and gender-neutrality. These criteria are used to evaluate the extent to which legislated work-care supports and those provided by the market align with the principles of a universal caregiving society. These criteria are applied to evaluate the work-care supports:

- mandated by law as elucidated through doctrinal analysis in Chapter 3
- provided in the marketplace, as elucidated through the quantitative analysis of WGEA data and the qualitative analysis of collected interview data in Chapters 5, 6 and 7.

The results of this analysis and evaluation are used to identify the specific limitations of current approaches to work-care supports to inform reform proposals for creating a gender just employment framework. This analysis begins in the following chapter, which discusses legislated work-care supports and the extent to which they meet the gender justice criteria.

CHAPTER THREE: AUSTRALIA'S LEGISLATED WORK-CARE SUPPORTS

3.1 Introduction

This chapter assesses Australia's legislated work-care supports against the gender justice criteria set out in Chapter 2 — universal availability, enforceability, substantiveness, and gender-neutrality. Work-care supports are defined here to include any support that may help workers balance their work and care responsibilities. They include Australia's national PPL scheme, childcare subsidies, minimum standards relating to work-care balance under the NES and the modern awards system. These are each considered, beginning with Australia's federal legislation offering parental leave payments.

3.2 Paid Parental Leave Scheme

The *Paid Parental Leave Act 2010* (Cth) ('*PPL Act*'), enacted in June 2010, offered government-funded minimum wage payments to eligible 'primary' carers for 18 weeks and eligible 'secondary' carers for two weeks.¹⁶² Under the *PPL Act*, a person was defined as a primary carer of a child when the child was in the person's care and that person met the child's needs more than anyone else.¹⁶³ Secondary carer payments or 'dad and partner pay' were reserved for biological fathers, partners of 'birth mothers', or adoptive parents, with additional rules applying to the partners of these parents or in surrogacy cases.¹⁶⁴ The *PPL Act* provides the right to payments while on parental leave and not parental leave itself — although, as discussed further below, most employees are entitled to 12 months of unpaid parental leave under the NES.¹⁶⁵

The *PPL Act* marked the first legislated provision of parental leave payments at the federal level, recognising the importance of PPL in Australia.¹⁶⁶ Over the years, members of parliament have put forth reform proposals to the *PPL Act*,¹⁶⁷ however, apart from minor

¹⁶² *Paid Parental Leave Act 2010* (Cth) ss 4, 47, 115DD, as at 25 March 2023 ('*PPL Act*').

¹⁶³ *Ibid* s 47, as at 25 March 2023.

¹⁶⁴ *Ibid* s 115DD, as at 25 March 2023; *Paid Parental Leave Rules 2021* (Cth).

¹⁶⁵ See section 3.4.4.

¹⁶⁶ Baird et al (n 136) 546; McCrystal and Smith (n 105) 294.

¹⁶⁷ See, eg, Wendy Tuohy, 'Paying Dads to Take Six Months' Leave "Could Help Close the Gender Pay Gap"', *The Sydney Morning Herald* (online, 14 February) <<https://www.smh.com.au/national/paying-dads-to-take-six-months-leave-could-help-close-the-gender-pay-gap-20210212-p5724g.html>>; Jane Norman, 'Tony Abbott Reframes Paid Parental Leave Scheme As "Holistic Families Package" Following "Community Concern"', *ABC*

amendments, such as enabling six weeks of primary carer payments to be used more flexibly,¹⁶⁸ the *PPL Act* remained essentially the same.¹⁶⁹ This was until the passing of the Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Bill 2022 (Cth), which introduced several key changes to apply to children arriving on or after 1 July 2023.¹⁷⁰ These recent changes are analysed below against the gender justice criteria.¹⁷¹ However, to contextualise these findings, key features of the *PPL Act* before 1 July 2023 and their alignment to the gender justice criteria are discussed first.

3.2.1 The *PPL Act* before 1 July 2023

The original *PPL Act* was based on recommendations from a Productivity Commission inquiry tasked with exploring ‘ways to make it as easy as possible for working *mums* to balance their employment with the important job of raising a new generation of Australians’.¹⁷² The inquiry, therefore, focussed primarily on *women’s* ability to raise children and remain in the labour market.¹⁷³ The government of the day responded to the Productivity Commission’s findings on Mother’s Day 2009 when it announced the introduction of nearly all the Productivity Commission’s recommendations.¹⁷⁴ Despite the overt maternalistic rhetoric surrounding the scheme, the objectives of the *PPL Act* stated that the payments were to signal that ‘time out of the paid workforce to care for a child is usual ... for *both parents*’ and ‘to promote equality between men and women and balance between work and family life’.¹⁷⁵

As mentioned above, eligible primary carers could access up to 18 weeks of parental leave payments at the national minimum wage under the *PPL Act*.¹⁷⁶ Effective from July 2020, the 18-week payment period was amended from a non-flexible, consecutive 18-week block to a 12-week consecutive period of payments followed by six weeks that could be used flexibly at

News (online, 8 December 2014) <<https://www.abc.net.au/news/2014-12-08/paid-parental-leave-scheme-tony-abbott-acknowledges-concern/5950302?nw=0&r=HtmlFragment>>.

¹⁶⁸ *Paid Parental Leave Amendment (Flexibility Measures) Act 2020* (Cth).

¹⁶⁹ Marian Baird, ‘The Use of Data in the Making and Monitoring of Parental Leave in Australia’ (2021) 37 *Law in Context* 62, 70.

¹⁷⁰ *Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Act 2022* (Cth).

¹⁷¹ See section 3.2.2 below.

¹⁷² Gillard et al (n 37) (emphasis added).

¹⁷³ Marian Baird and Margaret O’Brien, ‘Dynamics of Parental Leave in Anglophone Countries: The Paradox of State Expansion in Liberal Welfare Regimes’ (2015) 18 *Community, Work & Family* 198, 208.

¹⁷⁴ Julia Gillard, ‘BUDGET 2009–10: Rudd Government Delivers Paid Parental Leave’ (Media Release, Department of Education, Skills and Employment, 12 May 2009).

¹⁷⁵ *PPL Act* (n 162) s 3A(1B), as at 25 March 2023 (emphasis added).

¹⁷⁶ *Ibid* s 4, as at 25 March 2023; *Annual Wage Review* [2023] FWCFB 3500: The national minimum wage from 1 July 2023 is \$882.80 per week and is indexed annually.

any time within two years of having the child.¹⁷⁷ Eligible secondary carers were allowed secondary carer payments or ‘dad and partner pay’, which offered up to two weeks of pay at the national minimum wage to be taken within a year of the child’s arrival.¹⁷⁸ However, key features of this version of the *PPL Act* failed to satisfy elements of the gender justice criteria.

First, eligible carers under the *PPL Act* had to pass an income, work, and residency test.¹⁷⁹ The income test excluded individuals with an adjusted taxable income over a specified limit indexed on 1 July of each year (\$156,647 for the 2021–22 financial year).¹⁸⁰ The work test required that recipients had engaged in ‘paid work’ on a relatively consistent basis for 10 of the 13 months preceding the child’s arrival and for a minimum of approximately a day a week, with exceptions for pregnancy-related illnesses or complications.¹⁸¹ The residency test required recipients to live in Australia with legitimate visas (with some exceptions for temporary absences of up to six weeks).¹⁸² These conditions demonstrate how the scheme designated ‘deserving’ recipients.¹⁸³ Parents such as those who had recently joined the workforce worked outside the traditional norms of paid employment, and high-income individuals were all precluded from the scheme, falling short of **universal availability**.

Employers with eligible employees who expect to be entitled to at least eight weeks of payments must register with Services Australia to receive the required funds from the government and administer the payments to their employees.¹⁸⁴ Where an employer fails to do so, they may be investigated by the Fair Work Ombudsman (‘FWO’) and face a pecuniary penalty of up to 60 penalty units.¹⁸⁵ The indexed penalty unit rate is \$313 per penalty unit for offences committed on or after 1 July 2023 and is indexed annually.¹⁸⁶ Alternatively, the

¹⁷⁷ Ibid ss 4, 11D, as at 25 March 2023; *Paid Parental Leave (Flexibility Measures Act) 2020* (Cth).

¹⁷⁸ *PPL Act* (n 162) s 115AA, as at 25 March 2023.

¹⁷⁹ Ibid ss 32–46, as at 25 March 2023; Graham et al (n 48) 152.

¹⁸⁰ *PPL Act* (n 162) ss 37(1), 41, 42, as at 25 March 2023; Australian Government, ‘Paid Parental Leave Guide’, *Guide to Social Policy Law* (Guide, 8 May 2023) <<https://guides.dss.gov.au/paid-parental-leave-guide/1/1/p/190>>.

¹⁸¹ Paid work was defined to exclude unpaid leave, volunteer work or financially aided study: *PPL Act* (n 162) ss 33–5.

¹⁸² Ibid ss 45–6. Permanent visa holders must wait two years before they are eligible for the payments: Ibid s 31A.

¹⁸³ Graham et al (n 48) 152.

¹⁸⁴ *PPL Act* (n 162) ss 71A, 72.

¹⁸⁵ Ibid ss 141–6.

¹⁸⁶ Crimes (Amount of Penalty Unit) Instrument 2023 (Cth) s 5.

payments will be administered by the government directly, including when an employer is investigated for failing to make the necessary payments themselves.¹⁸⁷

Employees must lodge their claims online using a Centrelink account where parents provide the required proof, track their claim, and receive notice of the outcome of their application.¹⁸⁸ Where an employee does not agree with or understand the government's decision regarding their eligibility, they may request an explanation or apply for a formal review.¹⁸⁹ When an employee requests an explanation, 'an experienced staff member' contacts the applicant to explain the decision.¹⁹⁰ This may lead to a change in the decision without the need for a formal review.¹⁹¹ The process is free and the government 'aim[s] to contact you and explain [its] decision within 14 days'.¹⁹² If a formal review is requested, an independent Authorised Review Officer reviews the decision with reference to the facts, law, and policy involved.¹⁹³ The government aims to finish the formal review process within 49 days.¹⁹⁴

Employees who disagree with a formal review outcome may appeal to the Australian Administrative Tribunal ('AAT'), an independent tribunal that can change decisions according to law.¹⁹⁵ If an employee disagrees with a first review at the AAT, an applicant may apply for a second review.¹⁹⁶ AAT decisions are binding.¹⁹⁷ A recipient may appeal to the courts to

¹⁸⁷ *PPL Act* (n 162) ss 84–9.

¹⁸⁸ Services Australia, 'How to Claim' (Web Page, 3 April 2023) <<https://www.servicesaustralia.gov.au/how-to-claim-parental-leave-pay-for-child-born-or-adopted-before-1-july-2023?context=64475#:~:text=Sign%20in%20to%20myGov.,prompts%20to%20complete%20your%20claim>>.

¹⁸⁹ Services Australia, 'Reviews and Appeals of a Centrelink Decision' (Web Page, 23 May 2023) <<https://www.servicesaustralia.gov.au/reviews-and-appeals-centrelink-decision?context=64107>>.

¹⁹⁰ *Ibid.*

¹⁹¹ *Ibid.*

¹⁹² *Ibid.*

¹⁹³ *Ibid.*; *PPL Act* (n 162) s 206.

¹⁹⁴ Services Australia, 'Reviews and Appeals of a Centrelink Decision' (n 189).

¹⁹⁵ *Ibid.*; *PPL Act* (n 162) ss 215–6. See, eg, *Chen and Secretary, Dept of Social Services* (Social Services Second Review), *Re* (2023) 179 ALD 109; *Kaler v Secretary, Dept of Social Services* (Social Services Second Review), *Re* [2021] AATA 1920; *Reilly and Secretary, Dept of Social Services* (Social Services Second Review), *Re* [2020] AATA 3747; *Goh and Secretary, Dept of Social Services* (Social Services Second Review), *Re* (2019) 168 ALD 533; *XKYN and Secretary, Dept of Social Services* (Social Services Second Review), *Re* [2019] AATA 5605; *CSRN and Secretary, Dept of Social Services* (Social Services Second Review), *Re* [2018] AATA 301; *Krause and Secretary, Dept of Social Services, Re* [2015] AATA 854; *Miraschi and Secretary, Dept of Social Services, Re* (2014) 144 ALD 171; *Lim and Secretary, Dept of Social Services, Re* [2013] AATA 817.

¹⁹⁶ *PPL Act* (n 162) ss 215–6, 237.

¹⁹⁷ *Administrative Appeal Tribunal Act 1975* (Cth) s 43.

review a second AAT decision but only where the appeal is on a question of law.¹⁹⁸ There is, therefore, a quite robust **enforcement** process for receiving these payments.

The substantiveness of the original scheme, however, was limited in accommodating diverse worker-carer needs. By dividing the payments between ‘primary’ and ‘secondary’ carers for different durations, the original *PPL Act* perpetuated the assumption that, in two-parent households, caregiving responsibilities would not be shared equally.¹⁹⁹ These periods of primary and secondary carer payments were not fixed, as primary carers could share their payments with a partner. However, parents could only access a maximum of two weeks contemporaneously while the other parent was accessing secondary carer pay.²⁰⁰

Most payments were also to be taken in a consecutive block,²⁰¹ although this lack of flexibility was alleviated somewhat by an amendment in 2020 that required only the first 12 weeks of primary carer payments to be taken consecutively and immediately after the child’s arrival while the remaining six weeks could be used flexibly within the first two years of the child’s arrival.²⁰² Parents were also precluded from working for more than 10 days while accessing the government’s payments.²⁰³ Parents were expected to designate relatively fixed periods of caregiving and work without the option to alternate between these periods and mostly to the exclusion of a co-parent, limiting the scheme’s ability to accommodate diverse and evolving parenting needs.

Moreover, set at the minimum wage, the scheme failed to position parental leave as a natural part of employees’ lives deserving of an employee’s regular salary. The *PPL Act* deprived parents who earned above the minimum wage of their usual salary in their first days as a parent. These restrictions limited the **substantiveness** of the scheme in meeting diverse worker-carer needs.

A few of the *PPL Act*’s features also compromised the **gender-neutrality** of the scheme. First, the *PPL Act* promoted gendered assumptions as to who primary and secondary carers should

¹⁹⁸ Ibid s 44. There appear to be no cases of this having happened at the time of writing.

¹⁹⁹ Dreyfus (n 48) 116.

²⁰⁰ Services Australia, ‘Transferring Your Payment’ (Web Page, 13 October 2020) <<https://www.servicesaustralia.gov.au/individuals/services/centrelink/parental-leave-pay/who-can-get-it/transferring-your-payment>>.

²⁰¹ *PPL Act* (n 162) s 31AB(2), as at 25 March 2023.

²⁰² *Paid Parental Leave Amendment (Flexibility Measures) Act 2020* ss 12, 42.

²⁰³ *PPL Act* (n 162) ss 49–50, as at 25 March 2023.

be.²⁰⁴ For example, secondary carer payments were referred to as ‘dad and partner pay’, a payment that ‘birth mothers’ were prohibited from accessing.²⁰⁵ Second, the introduction of ‘dad and partner pay’ was deferred when the scheme was first announced in 2010 to reduce costs and was only instated in January 2013 — further demonstrating the scheme’s relative lack of concern for accommodating shared caregiving.²⁰⁶

Third, ‘birth mothers’ were automatically assigned the role of primary carer unless exceptional circumstances applied,²⁰⁷ such as where they were deemed to be ‘incapable of caring for a child’ or it was considered unreasonable for the ‘birth mother’ to care for the child.²⁰⁸ The Productivity Commission’s objectives in devising the scheme explained this disproportionate focus on birth parents.²⁰⁹

The Productivity Commission was of the view that the benefits for women’s workforce participation in offering more gender equal parental leave payments ‘should not be overstated’.²¹⁰ The Commission acknowledged submissions that argued that parental leave payments should challenge gendered norms of caring but concluded that there was nothing wrong with ‘freely chosen gender roles’,²¹¹ invoking the post-feminist argument that gender roles are merely the result of parental choice. Therefore, the Productivity Commission chose to focus predominantly on the scheme’s ability to enhance ‘maternal and child health and development’.²¹² The Commission’s report concluded that the scheme should focus on

²⁰⁴ Deborah A Widiss, ‘The Hidden Gender of Gender-Neutral Paid Parental Leave Examining Recently-Enacted Law in the United States and Australia’ (2021) 41 *Comparative Labor Law and Policy Journal* 723, 751; Whitehouse and Brady (n 106) 265.

²⁰⁵ *PPL Act* (n 162) s 115DD, as at 25 March 2023.

²⁰⁶ *Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measures) Act 2012* (Cth); Graham et al (n 48) 152–3.

²⁰⁷ *PPL Act* (n 162) s 54, as at 25 March 2023.

²⁰⁸ Paid Parental Leave Rules 2020 (Cth) r 26.

²⁰⁹ Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children* (2009, Commonwealth of Australia) 6.11–6.12, 11 <<https://www.pc.gov.au/inquiries/completed/parental-support/report/parental-support.pdf>>.

²¹⁰ *Ibid* 6.11.

²¹¹ *Ibid*.

²¹² *Ibid* 1.1. This focus would remain evident in a later review of the scheme, which found that the assumed status of the ‘birth mother’ as the primary carer was ‘consistent with the objectives of the scheme relating to enhancing maternal and child health and development and increasing women’s workforce participation’ without any consideration for its implications on gender equity: Department of Social Services, ‘Paid Parental Leave Scheme: Review Report’ (Review Report, 2014) 51 <https://www.dss.gov.au/sites/default/files/documents/06_2014/paid_parental_leave_scheme_review_report.pdf>.

maximising the benefits of breastfeeding and meeting the needs of birth parents to recuperate from childbirth.²¹³

The aftereffects of childbirth and the demands of breastfeeding are valid and important considerations when devising parental leave schemes. Gender just policies must accommodate legitimate biological and sociological differences between men and women — that is, equity over blind equality.²¹⁴ However, gender justice also requires the recognition of ‘false equivalences, ie unequal exchanges defended in the name of gender difference’.²¹⁵ That a parent deserves time to recuperate and adjust to the aftereffects of childbirth does not necessarily mean that the parent should also be assumed to be a child’s primary carer.

Breastfeeding and childbirth recovery are legitimate, unique considerations that have necessary gender implications. However, the Productivity Commission’s report did not explain why these considerations should establish a birth parent as a sole, primary carer. If the government is concerned about supporting breastfeeding, there should be more of a policy focus on breastfeeding leave or lactation policies that normalise breastfeeding in the workplace.²¹⁶ Instead, aside from a negative prohibition against breastfeeding discrimination,²¹⁷ there are no express positive requirements for Australian workplaces to accommodate breastfeeding.²¹⁸

As for childbirth recovery, the Commission found that this took approximately six weeks, on average, with longer recovery periods for caesarean births on top of wellbeing and lifestyle adjustments.²¹⁹ The Commission concluded ‘on health and wellbeing arguments alone’ that leave for ‘new mothers’ should be at least 12 weeks and up to six months.²²⁰ However, once again, this evidence serves only as justification that birth parents should be afforded time to recuperate and heal, not that they should also serve as a child’s sole and primary carer —

²¹³ Productivity Commission (n 209) xxii, xix, 4.12-4.13 <<https://www.pc.gov.au/inquiries/completed/parental-support/report/parental-support.pdf>>.

²¹⁴ Iris Marion Young, *Justice and the Politics of Difference* (Princeton University Press, 1990).

²¹⁵ R W Connell (n 15) 370.

²¹⁶ Christina Malatzky, ‘Don’t Shut Up: Australia’s First Paid Parental Leave Scheme and Beyond’ (2013) 28 *Australian Feminist Studies* 195, 202.

²¹⁷ See, eg, *Sex Discrimination Act 1984* (Cth) s 7AA; *Anti-Discrimination Act 1991* (ACT) s 7(1)(d); *Anti-Discrimination Act 1977* (NSW) s 24(1C); *Anti-Discrimination Act 2011* (NT) s 19(1)(h); *Anti-Discrimination Act 1991* (Qld) s 7(e); *South Australia Equal Opportunity Act 1984* (SA) s 85T(5)(a); *Anti-Discrimination Act 1998* (Tas) s 16(h); *Equal Opportunity Act 2010* (Vic) s 6(b); *Anti-Discrimination Act 1984* (WA) s10A.

²¹⁸ Although as will be discussed further below in section 4.5.1, there is a positive duty under section 47C of the *Sex Discrimination Act 1984* (Cth) to eliminate so far as possible discrimination on protected grounds, including breastfeeding.

²¹⁹ Productivity Commission (n 209) 4.12–4.13.

²²⁰ *Ibid* 4.13.

especially since the Commission found that a father's early involvement in a child's life benefitted the welfare and development of the child, improved the emotional wellbeing of fathers, and served as invaluable support to their partners.²²¹

The Productivity Commission also found that non-birth partners are less likely to access leave that is not specifically designated for them,²²² which is why 'dad and partner pay' was established.²²³ This finding has since been repeatedly supported by international research that has found non-transferrable and distinct periods of leave for non-birth parents essential in facilitating more gender equal utilisation of parental leave.²²⁴ However, the short duration of these payments in Australia has reinforced gendered expectations about the appropriate time for birth versus non-birth parents to spend with their children.

There is a difference between a 'maternalist floor', which acknowledges the unique biological needs of pregnancy, breastfeeding, and childbirth recovery, and maternalistic policies that reinforce caregiving as solely a woman's responsibility.²²⁵ By entwining primary carer's leave with the biological implications of childbirth and dubbing secondary carer payments 'dad and partner' pay, the original *PPL Act* established gendered assumptions about caregiving, creating a heteronormative, non-egalitarian policy that reinforced 'a maternalist care regime'.²²⁶ A gender-neutral parental leave scheme would afford *all* parents significant time to care for their children and recognise the unique challenges of breastfeeding and pregnancy as distinct from caregiving.²²⁷ However, heteronormative and gendered assumptions underpinned the conception of the *PPL Act* and caused the labels of primary and secondary carers to be used essentially as pseudonyms for mothers and fathers.

²²¹ Ibid 4.49–4.50.

²²² Ibid xxiii.

²²³ Ibid 2.34.

²²⁴ See further Marc Grau Grau and Hannah Riley Bowles, 'Launching a Cross-Disciplinary and Cross-National Conversation on Engaged Fatherhood' in *Engaged Fatherhood for Men, Families and Gender Equality* (Springer, 2022) 1, 7; Molly Mayer and Céline Le Bourdais, 'Sharing Parental Leave among Dual-Earner Couples in Canada: Does Reserved Paternity Leave Make a Difference?' (2019) 38 *Population Research and Policy Review* 215, 236; Ann-Zofie Duvander and Mats Johansson, 'What Are the Effects of Reforms Promoting Fathers' Parental Leave Use?' (2012) 22 *Journal of European Social Policy* 310, 324–5; Linda Haas and Tine Rostgaard, 'Fathers' Rights to Paid Parental Leave in the Nordic Countries: Consequences for the Gendered Division of Leave' (2011) 14 *Community, Work and Family* 177, 188; Ankita Patnaik, 'Reserving Time for Daddy: The Consequences of Fathers' Quotas' (2019) 37 *Journal of Labour Economics* 1009, 1053.

²²⁵ Merike Blofield and Juliana Martínez Franzoni, 'Maternalism, Co-Responsibility, and Social Equity: A Typology of Work–Family Policies' (2015) 22 *Social Politics* 38, 47.

²²⁶ Whitehouse and Brady (n 106) 257, 265–6.

²²⁷ Ibid.

The scheme was also inadequate in ensuring that gender-neutral take-up was the least costly option. In coupled relationships, where one parent earns over the income limit, there would be an economic disincentive for that parent to be the primary carer as they would not be entitled to the payments, and the family unit would forego an additional source of income.

Also, with payments set at the minimum wage, the more a parent earned above the minimum wage, the more pay they must sacrifice to use the scheme. This would not necessarily be a gendered issue if Australia did not have a gender wage gap.²²⁸ Statistically speaking, in heterosexual relationships, it would likely be more financially beneficial for the woman to take-up more parental leave, assuming both parents were only entitled to the government's payments.²²⁹ Comparative and international research has also found high levels of wage replacement to be particularly important in encouraging greater male take-up of parental leave, given their additional pressures to adhere to the breadwinner role.²³⁰ Therefore, offering parental leave payments at the minimum wage is inadequate to ensure gender-neutral caregiving is the least costly option. These features of the scheme necessarily compromised the ability of the original *PPL Act* to meet the criterion of **gender-neutrality**. This has since been reflected in the gendered use of the payments. In 2017, mothers took around 95% of primary carer payments, and fathers took approximately 95% of secondary carer payments.²³¹

3.2.2 The *PPL Act* after 1 July 2023

However, as of 1 July 2023, the *PPL Act* features several key changes.²³² The most central change is that the previously distinct primary and secondary carer payments have been consolidated into a single 20-week payment (100 days) for each family.²³³ Also, any parent, regardless of their role as the birthing parent, may now claim the payments first.²³⁴ However,

²²⁸ The Workplace Gender Equality Agency found that as of May 2023, the full-time gender pay gap was approximately 13% (\$252.30 a week): Workplace Gender Equality Agency, 'The ABS Data Gender Pay Gap' (Article) <<https://www.wgea.gov.au/data-statistics/ABS-gender-pay-gap-data#:~:text=Australia's%20national%20gender%20pay%20gap,less%20than%20men%20each%20week>>.

²²⁹ Dreyfus (n 48) 116.

²³⁰ See, eg, Hegeswich and Gornick (n 144) 123; Workplace Gender Equality Agency (n 28) 3 <<https://www.wgea.gov.au/sites/default/files/documents/Parental-leave-and-gender-equality.pdf>>; Linda Haas and Tine Rostgaard, 'Fathers' Right to Paid Parental Leave in the Nordic Countries: Consequences for the Gendered Division of Leave' (2011) 38 *Community, Work & Family* 177, 182; Alison Koslowski and Margaret O'Brien, 'Fathers and Family Leave Policies: What Public Policy Can Do to Support Families' in *Engaged Fatherhood for Men, Families and Gender Equality* (Springer, 2022) 141, 143.

²³¹ Australian Bureau of Statistics, 'One in 20 Dads Take Primary Parental Leave' (Media Release, 4125.0, Australian Bureau of Statistics, 19 September 2017).

²³² *Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Act 2022* (Cth).

²³³ *PPL Act* (n 162) ss 4, 54.

²³⁴ *Ibid.*

in two-parent households, one parent can only use a maximum of 90 days of payments, and there is a maximum of 10 days where the payments can be accessed concurrently.²³⁵ The income test has also been expanded to introduce a family income test of \$350,000, replacing the previous individual income test.²³⁶ Further, parents can take their pay in blocks as small as a day at a time, with periods of work in between during the first two years of the child's arrival.²³⁷ The NES entitlement of unpaid parental leave has been amended to mirror this flexibility so the payments can be accessed alongside equally flexible leave entitlements by most employees, as discussed further below.²³⁸ The government has also committed to introducing additional legislation before July 2024 to increase the duration of the scheme incrementally to 26 weeks by 2026.²³⁹

The changes have several implications for how the *PPL Act* measures up against the gender justice criteria today. In terms of **universal availability**, the expanded family income test increases the number of individuals eligible for the payments. However, the work and residency tests discussed above still apply. In terms of **substantiveness**, the increased duration of payments over time would allow parents more paid parental leave with their children. The improved flexibility also grants parents more freedom to structure their leave in the manner that best suits their unique circumstances, with periods of work in between. However, in two-parent households, parents are still limited to accessing a maximum of 10 days of payments concurrently.

The removal of primary and secondary carer labels and their gendered connotations signals a positive step in supporting **gender-neutral** patterns of caregiving. This was clearly the government's intention. To quote their announcement:

[g]ender equality under the scheme will be improved by removing the current requirement that the primary claimants of parental leave will be the birth parent. Families will be able to decide who will claim PPL first. A move to gender

²³⁵ Ibid s 31AB.

²³⁶ Ibid s 41(2).

²³⁷ Ibid s 11D.

²³⁸ *FW Act* (n 20) pt 2-2, div 5, ss 71(3), 72A, amended by *Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023* (Cth). See section 3.4.4.

²³⁹ Amanda Rishworth, 'Parents to Benefit from Paid Parental Leave Changes to Support Gender Equality' (Media Release, 6 March 2023) <<https://ministers.dss.gov.au/media-releases/10531#:~:text=The%20Senate%20today%20passed%20the,to%20be%20with%20their%20children>>.

neutrality in the scheme recognises the diversity of Australian families and removes assumptions about who provides care.²⁴⁰

However, the changes appear to confuse gender-neutrality with gender blindness. Gender blindness refers to an unawareness of, or failure to account for, the significance of gender influences.²⁴¹ Gender blind policy assumes that men and women will react similarly or be similarly affected by phenomena.²⁴² The original *PPL Act* problematically entwined the biological needs of birth parents to their status as primary carers, reinforcing a maternalistic care regime. However, the amendments appear to ignore the biological needs of birth parents entirely and make no genuine attempt to address the longstanding social, cultural, biological, and financial barriers and incentives that have been known to influence the gender equal utilisation of parental leave.

This was exemplified by a hypothetical scenario included in the government's announcement of the amendments. The example featured a two-parent household with a birth and non-birth parent. The birth parent accessed the payments and parental leave first to 'recover from the birth and breastfeed', and then both parents shared their payments while working part-time to take a total of 11 weeks of payments and parental leave each (the example assumes that at this time the scheme had been expanded to 22 weeks).²⁴³ In this scenario, the birth parent takes less time off than the 12 weeks that the Productivity Commission found to be a minimum leave period for birth parents to recover from childbirth and adjust to new biological and breastfeeding needs. Instead, in this example, the birth parent takes 11 weeks total and has some of that leave interspersed with going back to work.

The scheme is expected to increase in duration to a total of 26 weeks, theoretically allowing parents to share their entitlement equally while allowing birth parents 13 weeks of payments. However, this still problematically links the time for birth parents to adjust after childbirth to the time that they should also primarily and solely care for their new child. In any arrangement where parents are expected to share an overall parental leave entitlement, biological considerations will almost always lead to birth parents accessing more leave than non-birth

²⁴⁰ Commonwealth of Australia, 'Budget October 2022–23: Expanding Paid Parental Leave', *Budget Australia* (Web Page) <https://archive.budget.gov.au/2022-23-october/factsheets/download/factsheet_parental_leave.pdf>.

²⁴¹ Aliza Forman-Rabinovici and Hadas Mandel, 'The Prevalence and Implications of Gender Blindness in Quantitative Political Science Research' (2023) 19 *Politics & Gender* 482, 482.

²⁴² *Ibid.*

²⁴³ *Ibid.*

parents. By expecting parents to share payments equally between them, the amendments ignore the legitimate biological reasons for birth parents to access longer periods of leave, the longstanding cultural and societal expectations for birth parents to be the primary carer and the financial disincentive for higher earning parents, often fathers, to take longer periods of parental leave, given the potentially low levels of income replacement under the scheme.

As discussed above, distinct parental leave entitlements between parents are crucial for increasing utilisation among non-birth parents. The *PPL Act* does require that in two-parent households, at least 10 days of leave must be used by another parent. In this way, there is still effectively a two-week distinct entitlement between parents. However, this is the same two-week period allocated for ‘dad and partner’ pay under the previous version of the *PPL Act*. Therefore, there is still an assumption that one parent will care for a child for a much shorter period. While the explicitly gendered language around who that parent should be is now removed, the likelihood that this will translate into more gender equal sharing of parental leave seems questionable.

In summary, the *PPL Act* before 1 July 2023 justified perpetuating gendered assumptions of caregiving due to biological needs. The recent amendments to the *PPL Act* have removed explicitly gendered language and improved certain aspects of the scheme against the gender justice criteria. However, the policy is very similar. The *PPL Act* continues to offer low levels of wage replacement for parents on parental leave, with only a two-week distinct leave entitlement between parents in coupled households. In this way, the amendments continue to overlook key features of a parental leave scheme that would properly reflect the gender justice criteria. These features include, for example, parental leave payments that are universally available with flexible use conditions, high levels of income replacement, and distinct, substantial leave entitlements for each parent.

3.3 Childcare Subsidies

Another federally funded work-care support is the provision of childcare subsidies. Childcare subsidies were introduced in 2016 as part of Australia’s Jobs for Families Child Care Package, replacing previously complex subsidies and rebates.²⁴⁴ To quote the announcement of these subsidies:

²⁴⁴ Danica Beutler and Marianne French, ‘An Analysis of the Australian Government’s Jobs for Families Child Care Package: The Utility of Bacchi’s WPR Methodology to Identify Potential Influences on Parents’ Childcare Choices’ (2018) 43 *Australasian Journal of Early Childhood* 16, 16.

[h]aving two parents in paid employment has become a necessity for most families because of changes that have taken place in our society and economy over many years. All *mothers* work hard, and many are also in paid employment. Changing the way we make child care more accessible and affordable is necessary to help families adjust to these changes and set them up for the future.²⁴⁵

These sentiments were repeated in the Explanatory Memorandum, which highlighted that the subsidies could alleviate family pressures ‘some of which have a negative disproportionate impact on women’.²⁴⁶ In 2022, the Labor government introduced a Bill to expand these subsidies in the hope this would ‘support parents and carers, particularly women, in their choice to enter the workforce and increase their workforce participation’.²⁴⁷ This Bill was passed, with most changes effective from 1 July 2023, increasing the income threshold for eligibility and subsidy rates.²⁴⁸ Despite these changes, the scheme still has several deficiencies against the gender justice criteria, as discussed below.

Regarding **universal availability**, childcare subsidies are only available to individuals with children under 13 years of age who are not attending school, who use an approved childcare service, and whose family meets certain income and residency requirements.²⁴⁹ The subsidies are available to families earning up to \$530,000 a year.²⁵⁰ The Additional Child Care Subsidy (‘ACCS’) is also offered in certain circumstances, such as where vulnerable children may either be at risk of serious abuse or neglect²⁵¹ or families may be experiencing temporary financial hardship.²⁵² How much parents are entitled to receive from the ACCS depends on the family’s income, the hourly rate cap based on their childcare service, the child’s age, and parents’ hours of ‘activity’.²⁵³ In two-parent households, the activity test is based on the parent with fewer

²⁴⁵ Abbott and Morrison (n 37) 1 (emphasis added).

²⁴⁶ Explanatory Memorandum, Family Assistance Legislation Amendment (Jobs for Families and Child Care Package) Bill 2016 (Cth) 10.
<https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5696_ems_c766f19f-8199-479c-b840-a818e3db13d6/upload_pdf/489987.pdf;fileType=application%2Fpdf>.

²⁴⁷ Explanatory Memorandum, Family Assistance Legislation Amendment (Cheaper Child Care) Bill 2022 (Cth) 2.

²⁴⁸ *Family Assistance Legislation Amendment (Cheaper Child Care) Act 2022* (Cth) s 2.

²⁴⁹ *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017* (Cth) pt 4A; Explanatory Memorandum, Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2016 (Cth) 6.

²⁵⁰ *Family Assistance Legislation Amendment (Cheaper Child Care) Act 2022* (Cth) s 14.

²⁵¹ Explanatory Memorandum, Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2016 (Cth) 6.

²⁵² *Ibid.*

²⁵³ *A New Tax System (Family Assistance) Act 1999* (Cth) sch 2, part 1–2.

hours of recognised activity, including paid employment and approved study.²⁵⁴ Hence, the support is conditional, and the activity test repeats a bias towards more stable forms of employment, disadvantaging families in insecure work arrangements and falling short of universal availability.

As another government-administered payment, the available enforcement processes are like those discussed above with the *PPL Act*.²⁵⁵ Claimants have the right to request an explanation about the government's decisions regarding their eligibility, the right to an internal formal review, and the right to appeal the outcome of a formal review with the AAT.²⁵⁶ Hence, **enforceability** of the subsidy is relatively robust.

However, the **substantiveness** of the scheme in accommodating diverse worker-carer needs is questionable. First, the subsidies only apply to childcare services supplied by an approved provider. This limits worker-carer choices and fails to support diverse childcare arrangements, such as those that currently rely on the uncompensated generosity of extended family or friends. The tapering subsidy caps based on household income have also been found to discourage work.²⁵⁷ Additional working days increase the use of childcare, decrease the subsidy a family is entitled to, and increase their tax liabilities as their income bracket increases, leading to higher marginal childcare costs.²⁵⁸ As of 10 July 2023, the tapering rates were amended such that families earning less than \$80,000 are now entitled to a 90% subsidy.²⁵⁹ Every additional \$5000 in income will result in a 1% decrease in the available subsidy (a family making \$85,000 would be entitled to an 89% subsidy rate, and so on).²⁶⁰ This restructuring replaces previously

²⁵⁴ The activity test is divided into four tiers and aligns with the number of hours of approved activity. At the highest tier, over 48 hours of activity a fortnight entitles an individual to 100 subsidised hours of childcare. This tapers down to the lowest tier of 24 hours of subsidised childcare a fortnight where someone works for fewer than eight hours a fortnight and earns below \$69,390. Otherwise, individuals earning above that amount and working fewer than eight hours will not be entitled to any subsidised childcare. Recognised activity includes paid work, training to improve an individual's employment prospects, approved education or study: *A New Tax System (Family Assistance) Act 1999* (Cth) sch 2, ss 11–13.

²⁵⁵ See section 3.2.1.

²⁵⁶ See, eg, *He and Secretary, Dept of Education, Skills and Employment (Social Services Second Round Review)*, Re [2021] AATA 4307; *Furqan and Secretary, Dept of Education, Skills and Employment (Social Services Second Round Review)*, Re [2021] AATA 2916.

²⁵⁷ *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017* (Cth) s 41; Danielle Wood, Kate Griffiths and Owain Emsile, 'Cheaper Childcare: A Practical Plan to Boost Female Workforce Participation' (Research Report, Grattan Institute, August 2020) 74 <<https://grattan.edu.au/wp-content/uploads/2020/08/Cheaper-Childcare-Grattan-Institute-Report.pdf>>.

²⁵⁸ *Ibid.*

²⁵⁹ *Family Assistance Legislation Amendment (Cheaper Child Care) Bill 2022* (Cth); *A New Tax System (Family Assistance) Act 1999* (Cth) sch 2, sub-cl 3(2).

²⁶⁰ *Ibid.*

steeper reductions in subsidies as family income increased. While the amendments reduce the financial disincentive for both parents in many two-parent households to embrace a worker-carer role,²⁶¹ there are still significant out-of-pocket childcare costs for many households.²⁶²

The percentage-based nature of the subsidies fails to address the rising net costs of childcare in Australia. Childcare costs have risen approximately 145% since 2002.²⁶³ A 2019 study found that some families pay as much for childcare as they would to send their children to a private primary school.²⁶⁴ The subsidies also fail to support workers-carers in securing childcare in the first place, which persists as a challenge for many parents, particularly those in regional or remote areas or those who work outside non-standard business hours.²⁶⁵

There is an ongoing inquiry by the Australian Competition and Consumer Commission to improve childcare affordability.²⁶⁶ The government has also committed to launching a Productivity Commission inquiry into the matter and is working with state governments on a long-term plan for early childhood education.²⁶⁷ However, at the time of writing, there have been no explicit outcomes from either commitment.

Finally, because the subsidies have failed to overcome the disincentives for many families to have a dual worker-carer household, this necessarily compromises the criterion of **gender-neutrality**. Where this workforce disincentive exists, ‘families tend to assess [childcare] costs against the wages of the family member who is most likely to “flex” their hours — generally the mother’.²⁶⁸ As mentioned above, even under the expanded subsidies, research has found that ‘workforce disincentives remain high’ and ‘some working mothers will continue to lose

²⁶¹ Owain Emslie, ‘Explainer: Everything You Need to Know about the Major Parties’ New Childcare Policies’ (Explainer, Grattan Institute, 4 April 2022) <<https://grattan.edu.au/news/explainer-everything-you-need-to-know-about-the-major-parties-new-childcare-policies/>>.

²⁶² Ibid.

²⁶³ Roger Wilkins et al, ‘The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 17’ (Research Report, Melbourne Institute: Applied Economic & Social Research, 2019) 19 <https://melbourneinstitute.unimelb.edu.au/__data/assets/pdf_file/0011/3127664/HILDA-Statistical-Report-2019.pdf>.

²⁶⁴ Peter Hurley, Kate Noble and Jen Jackson, ‘Australian Investment in Education: Early Childhood Education and Care’ (Research Report, Victoria University, 2020) 13 <<https://www.vu.edu.au/sites/default/files/australian-investment-in-education-ecec-report-mitchell-institute.pdf>>.

²⁶⁵ Wood et al (n 257) 34.

²⁶⁶ Australian Competition and Consumer Commission, ‘Childcare Inquiry’ (Web Page) <<https://www.accc.gov.au/focus-areas/inquiries-ongoing/childcare-inquiry>>.

²⁶⁷ Commonwealth of Australia, ‘Budget October 2022–23: Cheaper Child Care’, *Budget Australia* (Web Page) <https://budget.gov.au/2022-23-october/content/factsheets/download/factsheet_child_care.pdf>.

²⁶⁸ Wood et al (n 257) 22.

much more than the top marginal tax rate of 45% when they work an extra day’.²⁶⁹ This is because the subsidies fail to address the significant loss in take-home pay for middle to high income earners when assessed against increased childcare costs, tax liabilities and decreased benefits and subsidies. In this way, the subsidies fail to address the financial disincentive that persists within many families in Australia for women to participate equally in paid labour.

3.4 National Employment Standards

3.4.1 Introduction: Relevant Work-Care Standards

Work-care supports can also be found in Australia’s NES outlined in the *Fair Work Act 2009* (Cth) (*FW Act*). The objectives of the *FW Act* include providing ‘a guaranteed safety net of fair, relevant and enforceable minimum standards and conditions through the [NES]’ and assisting employees ‘to balance their work and family responsibilities by providing for flexible working arrangements’.²⁷⁰ The relevant supports relating to balancing work and caregiving, assessed against the gender justice criteria in the sections that follow, are:

- maximum weekly hours;
- requests for flexible working arrangements;
- unpaid parental leave; and
- other forms of leave.²⁷¹

The NES applies to all ‘national system employees’,²⁷² which includes most employees with limited exceptions.²⁷³ Hence, these supports all share this aspect of **universal availability**. In addition, where an employer fails to comply with the NES, an employee or an inspector of the FWO may apply to the courts for a civil remedy of up to 600 penalty units for serious

²⁶⁹ Emslie (n 261).

²⁷⁰ *FW Act* (n 20) s 3(b), (d).

²⁷¹ *Ibid* s 61(2).

²⁷² *Ibid* s 13.

²⁷³ *Ibid* s 13–4: National system employees include individuals employed by constitutional corporations, the Commonwealth, a Commonwealth authority, a person in connection with constitutional trade or commerce, a body incorporated in a Territory, or a person who carries on an activity in an Australian Territory so long as the person employs or usually employs an individual in connection with said activity. Employees employed by the following, however, are not national system employees — a body established for a public purpose under or by law, a governor, administrator, or minister; a body established for a local-government purpose under or by a law or said body’s wholly-owned subsidiaries; or an employer declared to not be a national system employer by or under law or through a Ministerial endorsement.

contraventions or 60 penalty units in other cases.²⁷⁴ There are, therefore, robust **enforcement** measures for these supports. However, as discussed below, each support has unique limitations when assessed against the gender justice criteria.

3.4.2 Maximum Weekly Hours

Under the NES, an employer cannot request full-time employees to work more than 38 hours a week or non-full-time employees to work more than the lesser of 38 hours or their ordinary weekly hours unless it is ‘reasonable’ to do so.²⁷⁵ A maximum number of weekly hours across all professions guarantees worker-carers time outside work for their carer responsibilities. This protection against unreasonable working hours applies to all employees to whom the *FW Act* applies, meaning that it has **universal availability**.

However, the provision does not provide an absolute right to the maximum number of working hours. There is no limit on ‘voluntary additional hours’, and it has been found that ‘no amount of unreasonable or excessively long “voluntary” hours will infringe the standard under the FW Act’.²⁷⁶ By allowing ‘voluntary’ hours, the scheme falls short of an explicit **enforceable** cap on the maximum number of working hours. Employees often face pressures such as employer expectations and their own financial needs, which may compromise their ability to genuinely exercise ‘voluntary’ choices around their work hours.²⁷⁷ The provision has, therefore, been described as ‘oxymoronic’ to the spirit of industrial regulation by effectively allowing parties to disregard minimum work prescriptions.²⁷⁸

That employees can also be asked to exceed their maximum weekly hours where it is ‘reasonable’ also calls into question the provision’s ability to support worker-carers in a

²⁷⁴ Ibid ss 44(1), 539(2); \$313 per penalty unit for offences committed on or after 1 July 2023 and is indexed annually: *Crimes (Amount of Penalty Unit) Instrument 2023 (Cth)* s 5.

²⁷⁵ Ibid s 62.

²⁷⁶ Anna Chapman, ‘Industrial Law, Working Hours, and Work, Care and Family’ (2010) 36 *Monash University Law Review* 190, 207, citing *Fairview Orchards* [2010] FWA 2139 (16 March 2010).

²⁷⁷ Ibid 6.

²⁷⁸ Craig Cameron, ‘Oxymoronic or Employer Logic? Preferred Hours under the Fair Work Act’ (2012) 25 *Australian Journal of Labour Law* 43, 43. It should be noted that another attempt to weaken absolute rights to maximum weekly hours was proposed in the Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) Bill 2020 (Cth), although ultimately unsuccessful. This Bill proposed introducing ‘simplified additional hours agreements’. If implemented, certain part-time workers under modern awards would be able to ‘agree to work additional hours at ordinary rather than overtime rates of pay’. The intention was to promote flexibility and efficiency for businesses, but if passed it could have further weakened the right to maximum work hours in Australia: Andrew Stewart et al, ‘The (Omni)bus that Broke Down: Changes to Casual Employment and the Remnants of the Coalition’s Industrial Relations Agenda’ (2021) 34 *Australian Journal of Labour Law* 132, 156–7; Explanatory Memorandum, Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) Bill 2020 ii, xxix–xxxix.

substantive way.²⁷⁹ Prescribed factors in determining whether additional hours are reasonable include ‘the employee’s personal circumstances, including family responsibilities’ and ‘any risk to employee health and safety’ but also ‘the needs of the workplace’, ‘the usual patterns of work in the industry’, and the employee’s remuneration.²⁸⁰ The Explanatory Memorandum and case law have made clear that determining reasonableness will require balancing these factors.²⁸¹ However, the first court decision to weigh care responsibilities against employer concerns in determining the reasonableness of additional hours proved that family responsibilities are unlikely to factor heavily in a court’s finding that additional hours are unreasonable.²⁸²

In *Macpherson v Coal & Allied Mining Service*,²⁸³ an electrical fitter in a coal mine had his hours increased from 40 to 44 hours a week and his five eight-hour shifts a week changed to three 12-hour and one eight-hour shift.²⁸⁴ The employer introduced evidence of how the new arrangement would lead to significant improvements in efficiency due to recent increased investments.²⁸⁵ The employee argued that the new roster would prevent him from dropping his children off at sports training, coaching their soccer team, and having family dinners at 6 pm.²⁸⁶ He also argued that the shifts would compromise his ability to communicate with his wife and children.²⁸⁷ However, the court found that there was insufficient evidence to suggest that the new arrangement would compromise his health or safety and that dinner could be moved to 7 pm ‘or a time nearest that at which Mr MacPherson arrives home’ given the age of the children (13 and 15).²⁸⁸ Of course, such a suggestion assumes that dinner would already be

²⁷⁹ *FW Act* (n 20) s 62(1).

²⁸⁰ *Ibid* s 62(3).

²⁸¹ See, eg, Explanatory Memorandum, Fair Work Amendment Bill 2013 (Cth); *MacPherson v Coal & Allied Mining Services Pty Ltd (No 2)* (2009) 189 IR 50 [61] (not challenged on appeal in *Coal & Allied Mining Services Pty Ltd v MacPherson* (2010) 185 FCR 383); *Australian Workers’ Union v Australian Trainers’ Association* [2009] FWA 418 [9]; *Williams v Macmahon Mining Services Pty Ltd (No 2)* (2009) 187 IR 426 [28]–[29]; *Working Hours Case July 2002* (2002) 114 IR 390 [247]. See also Chapman (n 108) 134.

²⁸² *Macpherson v Coal & Allied Mining Service* (2009) 189 IR 50, not challenged on appeal in *Coal & Allied Mining Services Pty Ltd v MacPherson* (2010) 185 FCR 383. See also *Burleigh Marr Distributions Pty Ltd (t/a Bidfood Gold Coast) v Carroll* [2020] FWC 6762 — this was the only case found citing Macpherson where family responsibilities were considered in an assessment of unreasonable working hours.

²⁸³ (2009) 189 IR 50 (not challenged on appeal in *Coal & Allied Mining Services Pty Ltd v MacPherson* (2010) 185 FCR 383).

²⁸⁴ *Ibid* [1]–[2].

²⁸⁵ *Ibid* [41].

²⁸⁶ *Ibid* [31].

²⁸⁷ *Ibid* [47].

²⁸⁸ *Ibid* [46]–[47].

prepared at this time despite the court knowing that Mr MacPherson's wife also worked and having no evidence to suggest that it was not, in fact, Mr MacPherson who prepared dinner.²⁸⁹

However, such decisions are to be expected when courts rely on reasonableness tests that enshrine the status quo. For example, the fact that 12-hour shifts were common in mining was found to be a persuasive factor in the case.²⁹⁰ A similar conclusion was reached in the only other case that has weighed family responsibilities as a factor in determining the reasonableness of additional hours.²⁹¹ In this Fair Work Commission ('FWC') case, the Commissioner did not accept a delivery driver's submission 'that weekends is for family time and being requested to work up to five hours, eight weeks per annum will interfere with his family time', instead the Commissioner found:

It appears to me that Mr Carroll has, sadly, had little regard for some of his colleagues whom I understand might be rostered to work Saturday overtime hours far more often than Mr Carroll [in refusing these overtime requests]. It appears to me that Mr Carroll considers his own family time to be of greater importance than that of his colleagues. It should be noted, however, that some of Mr Carroll's colleagues might be keen to periodically work Saturday overtime to increase the earnings as the work is paid for at overtime rates. Mr Carroll is free to attend to the family activities that he described across five out of six Saturdays. It is not unreasonable to require him to work eight Saturdays per annum.²⁹²

These decisions reflect how the 'reasonableness' test may limit a worker-carer's right to a consistent and generous amount of time outside work. It also demonstrates a general tendency to prioritise commercial interests and legitimise the practice of overtime, particularly in workplaces where this is the norm. However, as the Commissioner noted above, this may be because some workers may prefer to work overtime for additional income, presumably because they do not have as many family responsibilities. Therefore, tests of 'reasonableness' limit the scheme's ability to support worker-carers properly by requiring decision-makers to consider and hence perpetuate industry norms that fail to accommodate the worker-carer. The

²⁸⁹ Ibid [47].

²⁹⁰ Other factors included that Mr MacPherson's coaching commitments had been adjusted, no health and safety concerns were found, and Mr MacPherson was to receive an additional allowance: Ibid [38], [52], [57]; Chapman, (n 276) 190, 209–10.

²⁹¹ *Burleigh Marr Distributions Pty Ltd (t/a Bidfood Gold Coast) v Carroll* [2020] FWC 6762.

²⁹² Ibid [109]–[110].

reasonableness test, in entrenching cultural and gender norms, also fails to ensure **gender-neutral** caregiving. As seen in these cases, masculinised industries such as mining and transportation will be unlikely to change when the reasonableness test continues to enshrine problematic, masculinised industry patterns of work that are not conducive to accommodating caregiving responsibilities.²⁹³

3.4.3 Right to Request Flexible Work

Another relevant provision under the NES is the right for certain employees to request flexible work arrangements.²⁹⁴ This provision has also been recently amended, with changes taking effect from 6 June 2023.²⁹⁵ The changes and their implications for the scheme's alignment with the gender justice criteria are discussed below.²⁹⁶

Eligible employees for this right must be one of the following: parents of a school-aged child or younger; disabled; over the age of 55; experiencing violence from a member of the victim's family, or providing care to members of their immediate family or household who are experiencing domestic violence; or providing personal care, support and assistance to individuals with a disability, medical condition, or mental illness, or are frail and aged.²⁹⁷ As of 6 June 2023, eligible employees also include pregnant employees and victims of 'family and domestic violence' or employees who are caring for those victims.²⁹⁸ The term 'family and domestic violence' has been defined in a more expansive way than under previous legislation as it 'includes behaviours that are abusive or threatening, as well as violent'.²⁹⁹

The caring relationships in this section are relatively expansive. However, they still do not account for all possible caring responsibilities. The eligible caring relationships tend to privilege the norms of the heteronormative, nuclear family. For example, one would not be able to request a flexible work arrangement to help a young child who was not a blood-relation or part of your household. The provision is also only available to full-time and part-time

²⁹³ Chapman (n 276) 209–10.

²⁹⁴ *FW Act* (n 20) s 65(1)–(1A), (2).

²⁹⁵ *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) pt 11.

²⁹⁶ The right to request flexible work also existed as a model term in modern awards. See section 3.5.4.

²⁹⁷ *FW Act* (n 20) s 65; *Carer Recognition Act 2010* (Cth) s 5.

²⁹⁸ *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) pt 11, divs 1, 5.

²⁹⁹ *Explanatory Memorandum, Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) 108; *FW Act* (n 20) s 106B(2) defines 'family and domestic violence' to include violent, threatening or other abusive behaviour by a close relative including immediate family or relatives through Indigenous kinship rules, household members or current intimate partner that seeks to coerce or control the employee and causes them to be harmed or fearful.

employees or ‘long-term casual employees with a reasonable expectation of continuing employment by the employer on a regular and systematic basis’ who have completed ‘at least 12 months of continuous service with the employer immediately before making the request’.³⁰⁰ In this way, deservedness for the support is once again attached to workforce participation and set eligibility criteria, failing to be **universally available**.

The **enforceability** of the entitlement has also been criticised for offering merely the right to *request* a flexible arrangement as opposed to a right to flexible work itself.³⁰¹ Employers may refuse requests on ‘reasonable business grounds’, enshrining that a workplace’s commercial interests may take precedence over their employees’ caring needs.³⁰² Reasonable business grounds include where it would be ‘too costly for the employer’, ‘impractical’, ‘likely to result in a significant loss in efficiency or productivity’ or ‘likely to have a significant negative impact on customer service’.³⁰³ These grounds promisingly suggest a relatively high bar for requests to be legitimately refused.

Under the original version of the scheme, employers were required to provide a written response within 21 days with detailed reasons why a request was refused.³⁰⁴ Failure to do so was a breach of the NES, which could result in the civil remedies outlined above as well as pecuniary penalties.³⁰⁵ This meant that the requirement for employers to respond promptly to each request and provide reasons was enforceable.³⁰⁶ However, there were no avenues to challenge the outcome of the requests unless such a right was supplemented in an employee’s workplace policies or a relevant modern award.³⁰⁷

This led to organisations often responding informally to requests and rarely providing legitimate responses as to why a flexible work request could not be accommodated.³⁰⁸ The right

³⁰⁰ *FW Act* (n 20) s 65(1)–(1A), (2).

³⁰¹ See, eg, Dominique Allen and Adriana Orifici, ‘Home Truths: What Did COVID-19 Reveal about Workplace Flexibility?’ (2021) 34 *Australian Journal of Labour Law* 77, 86; McCrystal and Smith (n 105); Charlesworth and Campbell (n 108) 118; Chapman (n 51) 360.

³⁰² *FW Act* (n 20) s 65(5). See Chapman (n 51) 360.

³⁰³ *FW Act* (n 20) s 65(5A) inserted by the *Fair Work Amendment Act 2013* (Cth) (emphasis added).

³⁰⁴ *FW Act* (n 20) ss 65(4), 65(6); Chapman (n 108) 126.

³⁰⁵ See section 3.4.1.

³⁰⁶ *FW Act* (n 20) ss 44(1), 539, 546: On application, a court may also order pecuniary penalties up to the maximum number of penalty units for individuals or up to 5 times the maximum number of penalty units for corporations. See also, Chapman (n 304) 127.

³⁰⁷ *FW Act* s (n 20) ss 739(2)(a), 740(2)(a).

³⁰⁸ Rae Cooper and Marian Baird, ‘Bringing the “Right to Request” Flexible Working Arrangements to Life: From Policies to Practice’ (2015) 37 *Employee Relations* 568, 576.

to request was, therefore, described as a light-handed approach that was ‘little more than a best-practice policy entirely dependent on employer discretion’ or in essence a ‘right to ask’.³⁰⁹ Employees were found to have varying access to flexible work, with outcomes often being highly dependent on managers’ comfort levels with flexible working and their personal biases about ideal workers³¹⁰ — although more recent empirical research from 2021 suggests that refusals of formal flexible work requests were generally rare and most interviewees in the study reported having their requests ‘agreed by employers or agreed following negotiations’.³¹¹ Interviewees also reported that employers ‘approach[ed] requests with appropriate thoroughness in order to comply with the Fair Work Act’.³¹²

As of 6 June 2023, new provisions came into effect imposing further requirements on employers about they must respond to a request for flexible work. A new section 65A states that written responses from employers must either approve or refuse the request.³¹³ Where an employer wishes to propose an alternative flexible work arrangement, this must first be discussed with the employee and the agreed change must be stated in the written response.³¹⁴ An employer may only refuse a request where the employer has discussed it with the employee.³¹⁵

The employer must also have genuinely tried to reach an agreement, had regard to the consequences of the request, and considered the request to be contrary to the same ‘reasonable business grounds’.³¹⁶ These grounds include it being impractical to change other employees’ work arrangements or to recruit new employees to accommodate the request or that accommodating the request would probably cause a significant loss in efficiency or productivity, having regard to the employer’s specific circumstances.³¹⁷ In cases of refusal, the

³⁰⁹ See, eg, Alexandra Heron and Sara Charlesworth, ‘Working Time and Managing Care under Labor: Whose Flexibility?’ (2012) 38 *Australian Bulletin of Labour* 214, 218–9; Pocock et al (n 3) 594, 601; Erin L Kelly and Alexandra Kaley, ‘Managing Flexible Work Arrangements in US Organizations: Formalized Discretion or “A Right to Ask”’ (2006) 4 *Socio-Economic Review* 379; Cooper and Baird (n 308) 569.

³¹⁰ Cooper and Baird (n 308) 576.

³¹¹ Murray Furlong, *General Manager’s Report into the Operation of the Provisions of the National Employment Standards Relating to Requests for Flexible Working Arrangements and Extensions of Unpaid Parental Leave under s 653 of the Fair Work Act 2009* (Commonwealth of Australia, 2021) 20.

³¹² Ibid.

³¹³ *FW Act* (n 20) s 65A, amended by *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) pt 11, div 3.

³¹⁴ Ibid.

³¹⁵ Ibid.

³¹⁶ Ibid.

³¹⁷ Ibid.

written response must set out the employer’s ‘particular business grounds for refusing the request’, ‘explain how those grounds apply to the request’, and either set out changes that would accommodate the employee’s circumstances or state that no accommodations are possible.³¹⁸

The response must also inform employees of the new right to approach the FWC to resolve disputes if resolution has failed at the workplace level.³¹⁹ This is perhaps the most notable change. Where there was previously no right to challenge an employer’s decision in response to a request for a flexible work arrangement under the NES, from 6 June 2023, the FWC may resolve disputes where an employer refuses an employee’s request or does not respond within the prescribed 21 days.³²⁰

The FWC will generally use mediation and conciliation to resolve disputes but will be empowered to use arbitration as a last resort.³²¹ The FWC may assume that a lack of response amounts to a refusal and, where an employer has refused a request, it may issue orders about whether the refusal was based on reasonable business grounds.³²² Where the FWC is satisfied that the employer has not adequately responded, it may make orders for further steps.³²³ If the FWC is, however, satisfied that there is ‘no reasonable prospect of the dispute being resolved’, it can also make orders that the employer grant a request or make specified changes to accommodate the employee’s circumstances.³²⁴ Contravening these orders will leave employers liable for up to 60 penalty units.³²⁵ The FWC prides itself on being a quasi-judicial body, offering employees an opportunity to resolve matters with their employers in a more timely, affordable, and accessible fashion than the traditional court system.³²⁶ This additional avenue of potential sanction and enforcement provides a marked improvement in terms of enforceability by imposing greater obligations on employers to consider requests seriously and respond adequately.

³¹⁸ Ibid.

³¹⁹ Ibid s 65A–C.

³²⁰ Ibid s 65B.

³²¹ Ibid.

³²² Ibid s 65C.

³²³ Ibid.

³²⁴ Ibid.

³²⁵ Ibid.

³²⁶ Fair Work Commission, *Annual Report: Access to Justice* (Report, 2022) 30.

Although these provisions are new, the FWC is not new to handling disputes relating to the right to request flexible work. As discussed further below, a similar model term on the right to request flexible work was published in September 2018 and was included in most modern awards, empowering the FWC to handle disputes regarding this right as per the award's dispute settlement procedures.³²⁷ Some enterprise agreements ('EAs') also provide for the FWC to handle disputes on this matter.³²⁸ For reference, there were 113 applications to the FWC from 1 July 2018 to 30 June 2021 to resolve disputes relating to the right to request flexible work as set out in EAs.³²⁹

In terms of **substantiveness**, however, the right to request flexible work is still limited in its ability to provide flexible work accommodations that meet the needs of worker-carers. While the obligations for employers to consider employee requests seriously have been greatly strengthened, not all employees may be comfortable making these requests in the first place due to power imbalances or fear of negative professional consequences.³³⁰ Where requests are granted, research has found that workloads are not necessarily adjusted accordingly, leading flexible workers to shoulder workloads that 'resulted in increasing tensions and potential to be reprimanded for not performing adequately'.³³¹

As for **gender-neutrality**, gender equal patterns of flexible work were not a concern when first introducing this right. The Explanatory Memorandum of the Fair Work Bill estimated the impact of the right to request flexible work as being able to help '96,000 eligible *mothers*' with no corresponding estimates for fathers.³³² This expectation of disproportionate take-up by women has since been reflected in the operation of the scheme. Studies in 2009, 2012, and 2014 repeatedly found that requests for flexibility were highly gendered with women being more likely to request a flexible work arrangement than men.³³³ Flexible work has also been

³²⁷ See sections 3.5.1 and 3.5.4.

³²⁸ *FW Act* (n 20) s 739. See, eg, *Ambulance Victoria v Fyfe* [2023] FWCFB 104; *Treston v Civil Aviation Safety Authority* (an Australian Government Public Service Agency) T/A CASA [2022] FWC 248; *Police Federation of Australia (Victoria Police Branch) (t/a Police Association of Victoria) v Victoria Police/Chief Commissioner of Police* [2021] FWC 5983.

³²⁹ Furlong (n 311) 10.

³³⁰ Charlesworth and Campbell (n 108) 128.

³³¹ Cooper and Baird (n 308) 579.

³³² Explanatory Memorandum, Fair Work Bill 2008 (Cth) r 45 (emphasis added).

³³³ Natalie Skinner and Barbara Pocock, 'Flexibility and Work-Life Interference in Australia' (2011) 53 *Journal of Industrial Relations* 65, 72; Natalie Skinner, Abby Cathcart and Barbara Pocock, 'To Ask or Not to Ask? Investigating Workers' Flexibility Requests and the Phenomenon of Discontented Non-Requesters' (2016) 26 *Labour & Industry* 103, 108; Natalie Skinner and Barbara Pocock, *The Persistent Challenge: Living Working*

found to be more commonly requested in feminised sectors and occupations than in male-dominated sectors such as mining, manufacturing, and construction.³³⁴

Men have also been shown to be subject to disadvantages and biases when accessing flexible work. An Australian study found part-time working men were less enthusiastic about their workplace than female part-time employees, who were more likely to regard their employer highly, suggesting that men were facing ‘stigmas and biases that women experienced more severely in the early days of their use of flexible working’.³³⁵ These findings would explain why men are more likely to use flexitime or informal flexible work arrangements, which are less likely to lead to negative career outcomes than permanent flexible work arrangements such as part-time work.³³⁶ In general, research has shown that flexible work continues to be viewed through a gendered lens, with men expected to use flexible work (if at all) for productivity purposes while women are assumed to work flexibly to accommodate family responsibilities, resulting in corresponding biases and expectations.³³⁷ These findings demonstrate how a mere right to request flexible work is inadequate to override the sustained and well-established pressures employees feel to conform to ideal worker norms, a pressure closely linked to masculine identities.³³⁸

3.4.4 Unpaid Parental Leave

As mentioned above, the NES guarantees 12 months of *unpaid* parental leave.³³⁹ This entitlement is similarly limited to full-time or part-time employees who ‘have completed at least 12 months of continuous service with the employer immediately before’ their leave. It

and Caring in Australia in 2014: The Australian Work and Life Index (Centre for Work + Life, 2014) 4, 41, 44, 45 <<https://apo.org.au/sites/default/files/resource-files/2014-09/apo-nid61996.pdf>>.

³³⁴ See, eg, Skinner and Pocock (n 333) 73; Heejung Chung, “‘Women’s Work Penalty’ in the Access to Flexible Work Working Arrangements Across Europe” (2018) 25 *European Journal of Industrial Relations* 23, 35.

³³⁵ Melanie Sanders et al, ‘The Power of Flexibility: A Key Enabler to Boost Gender Parity and Employee Engagement’ (Report, Bain and Company, 2016) 13.

³³⁶ Heejung Chung and Tanja van der Lippe, ‘Flexible Working, Work-Life Balance, and Gender Equality: Introduction’ (2020) 151 *Social Indicators Research* 365, 374.

³³⁷ Ibid 366, citing Yvonne Lott and Heejung Chung, ‘Gender Discrepancies in the Outcomes of Schedule Control on Overtime Hours and Income in Germany’ (2016) 32 *European Sociological Review* 752, 762–3; Margo Hilbrecht, “‘I’m Home for the Kids’”: Contradictory Implications for Work-Life Balance of Teleworking Mothers’ (2008) 15 *Gender, Work and Organization* 454.

³³⁸ Pocock et al (n 3) 602; Borgkvist et al (n 86) 705; Bernadette O’Neill, *General Manager’s Report into the Operation of the Provisions of the National Employment Standards Relating to Requests for Flexible Working Arrangements and Extensions of Unpaid Parental Leave under s. 653 of the Fair Work Act 2009* (Commonwealth of Australia, 2018) 14 <<https://www.fwc.gov.au/documents/sites/admingmreporting/gm-nes-2018.pdf>>; Skinner and Pocock (n 333) 76.

³³⁹ *FW Act* (n 20) s 70.

also applies to casual employees who have been employed on a regular basis for at least 12 months and who, but for the arrival of the child, ‘would have a reasonable expectation of continuing employment by the employer on a regular and systematic basis’.³⁴⁰ This once again falls short of **universal availability** and positions the entitlement as something to be earned through proven workplace attachment.

As for **enforceability**, as an entitlement under the NES, a refusal to grant the first 12 months of unpaid parental leave may give rise to the penalties discussed above.³⁴¹ However, the NES also provides that employees may request a further 12 months of unpaid leave.³⁴² This right to request operates similarly to the framework for the right to request flexible work. From 6 June 2023, employers also have the same new obligations when responding to these requests, as was discussed above in relation to requests for flexible work arrangements.³⁴³ Therefore, the discussion above about how these new obligations strengthen the enforceability of this right similarly applies.³⁴⁴

There are also provisions to protect employees’ employment status while on parental leave. For example, employers must ‘take all reasonable steps’ to inform employees and discuss decisions ‘that will have a significant effect on the status, pay or location of the employee’s pre-parental leave provision’ while an employee is on non-flexible unpaid parental leave.³⁴⁵ This offers employees some protection against having their position compromised without notice should they access this entitlement.

However, this consultation requirement has its limitations.³⁴⁶ For example, there is no obligation on employers to consult with affected employees before reaching a decision.³⁴⁷ There is also no obligation for employers to keep employees informed of further relevant changes once this initial consultation obligation is discharged. In one case, an employer informed an applicant that her position was being made redundant.³⁴⁸ Four weeks later, a

³⁴⁰ Ibid s 67.

³⁴¹ See section 3.4.1.

³⁴² *FW Act* (n 20) s 76.

³⁴³ *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) pt 25B div 1.

³⁴⁴ Ibid div 2; see section 3.4.3.

³⁴⁵ *FW Act* (n 20) s 83.

³⁴⁶ See, eg, *Saad v Ada Evans Chambers Pty Ltd* (2018) 279 IR 72; *Stanley v Service Youth Council Inc* (2014) 225 FCR 317; *Poppy v Service to Youth Council Inc* (2014) 318 ALR 195.

³⁴⁷ *Stanley v Service Youth Council Inc* (2014) 225 FCR 317 [193]–[196]; *Saad v Ada Evans Chambers Pty Ltd* (2018) 279 IR 72 [141].

³⁴⁸ *Poppy v Service to Youth Council Inc* (2014) 318 ALR 195.

position was made available within the employer’s organisation and not offered to the recently terminated employee, but this was not found to breach the consultation obligation.³⁴⁹

Employees are also entitled to return to their pre-parental leave position or the nearest available position in status and pay if the position no longer exists.³⁵⁰ However, the Federal Circuit Court has found that an employer is not obligated to make a position available to an employee.³⁵¹ These gaps in protection for employees who access parental leave compromise the **enforceability** criterion as employees cannot rely on receiving these entitlements without serious adverse consequences for their jobs.³⁵²

There were also several limitations in the scheme’s ability to **substantively** support diverse carer needs by limiting the flexibility with which parents could access unpaid parental leave. However, for children arriving on or after 1 July 2023, several key amendments were introduced to improve the flexibility of unpaid parental leave.³⁵³ These changes included allowing employees to access their parental leave entitlements at any time within two years of the child’s arrival,³⁵⁴ increasing the number of days of flexible unpaid parental leave from 30 to 100 days,³⁵⁵ and allowing flexible unpaid parental leave days to be taken before a continuous period of leave,³⁵⁶ to better align the unpaid parental leave entitlement to corresponding recent changes to the flexibility of parental leave payments under the *PPL Act*, as discussed above.³⁵⁷ This consequently improved the substantiveness of the scheme by allowing for more diverse parenting arrangements.

In terms of **gender-neutrality**, several of the recent amendments to these provisions were also intended to ‘promote opportunities to share caring responsibilities between parents’³⁵⁸ —

³⁴⁹ Ibid 196.

³⁵⁰ *FW Act* (n 20) s 84.

³⁵¹ Adriana Orifici and Dominique Allen, ‘Expecting More: Rethinking the Rights and Protections Available to Pregnant Workers under the Fair Work Act 2009 (Cth)’ (2022) 50 *Federal Law Review* 504, 512, citing *Turnbull v Symantec (Australia) Pty Ltd* (2013) 280 FLR 196 [50]–[64].

³⁵² Although employees may be able to bring discrimination or general protection claims where their pregnancy or use of parental leave contributed to negative employment consequences, these enforcement process can be onerous: see section 4.5.

³⁵³ Explanatory Memorandum, Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023 [9], [12].

³⁵⁴ *FW Act* (n 20) s 71(3).

³⁵⁵ Ibid s 72A(1).

³⁵⁶ *Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023* (Cth) item 32.

³⁵⁷ Explanatory Memorandum, Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023 [13]–[14]. See section 3.4.4.

³⁵⁸ Ibid [16]–[17].

allowing flexible unpaid parental leave to be taken by pregnant employees in the six weeks before the birth,³⁵⁹ removing limitations on the concurrent use of unpaid parental leave by two parents,³⁶⁰ and allowing parents to extend their period of continuous unpaid parental leave regardless of the amount of leave the other parent may have taken.³⁶¹ The amendments have also removed gendered language, such as references to ‘maternity leave’ or the use of she/her pronouns in relation to pregnant/birth parents.³⁶²

These are important improvements to the gender-neutrality of the scheme. However, the fact that this leave is unpaid raises the same issues of gender-neutrality discussed above surrounding the *PPL Act*’s payments at the minimum wage.³⁶³ Most families remain reliant ‘on generally higher/full-time male earnings’.³⁶⁴ That the NES’s parental leave provisions are unpaid fails to overcome present disincentives to gender-neutral utilisation by not providing high levels of income replacement, a central factor in encouraging greater male take-up of parental leave.³⁶⁵

3.4.5 Other Forms of Leave

The NES also guarantees paid personal leave and carer’s leave ‘to provide care or support to a member of the employee’s immediate family’ because of illness or an emergency.³⁶⁶ An employee is entitled to 10 days of personal and carer’s leave a year, which accrues throughout the year.³⁶⁷ An additional two days of unpaid carer’s leave is also afforded to employees where an immediate family member or member of the household requires care or support due to illness, injury or an emergency.³⁶⁸ An additional two days of compassionate leave at the base rate for the employee’s ordinary hours is also offered in relation to the injury or death of a family member.³⁶⁹ These leave entitlements and their alignment with the gender justice criteria are discussed below.

³⁵⁹ *FW Act* (n 20) s 72A(2A)–(2C).

³⁶⁰ *Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023* (Cth) item 32.

³⁶¹ *FW Act* (n 20) ss 75–6.

³⁶² See, eg, *Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023* (Cth) items 80–95, 97–105, 108.

³⁶³ See section 3.2.1.

³⁶⁴ Sharp et al (n 115) 6.

³⁶⁵ See section 3.2.1. See also Hegeswich and Gornick (n 144) 119, 123; Workplace Gender Equality Agency (n 28) 3 <<https://www.wgea.gov.au/sites/default/files/documents/Parental-leave-and-gender-equality.pdf>>; Haas and Rostgaard (n 230) 182; Koslowski and O’Brien (n 230) 143.

³⁶⁶ *FW Act* (n 20) s 97.

³⁶⁷ *Ibid* s 96.

³⁶⁸ *Ibid* s 102.

³⁶⁹ *Ibid* 104; Jennifer Waterhouse and Linda Colley, ‘The Work-life Provisions of the Fair Work Act: A Compromise of Stakeholder Preference’ (2010) 36 *Australian Bulletin of Labour* 154, 165.

In terms of **universal availability**, personal and carer's leave are not available to casual employees.³⁷⁰ Compassionate leave is also only offered as unpaid leave to casual employees.³⁷¹ There are no exceptions for long-term casuals, who have been entitled to some of the other provisions under the NES discussed so far. Research suggests that in 2016, 81.2% of casuals (approximately 2 million workers) without annual, sick, and personal and carer's leave entitlements under the *FW Act* expected to be working for the same employer the following year.³⁷² This differential treatment of casual workers, even those who have been working for their employer for an extended period, demonstrates a preference for the ideal worker — someone engaged in permanent, traditional employment.

The same **enforceability** mechanisms are in place for this entitlement as for any NES right.³⁷³ In terms of **substantiveness**, carer's leave is limited to immediate family or those in the employee's household.³⁷⁴ Immediate family includes 'a spouse, de facto partner, child, parent, grandparent, grandchild or sibling' of the employee or the employee's spouse or de facto partner.³⁷⁵ This definition of immediate family members and focus on residential closeness again centralises heteronormative assumptions of legitimate caring relationships with the potential to deny alternative caring relations that exist outside these norms, such as within Indigenous communities.³⁷⁶

3.5 Modern Award System

3.5.1 Introduction

Australian employees may also have access to legislated work-care supports through a relevant modern award. Legally subordinate to the NES,³⁷⁷ modern awards were intended to provide more flexible minimum standards (including work-care supports), customised to specific

³⁷⁰ *FW Act* (n 20) s 95.

³⁷¹ *Ibid* s 106.

³⁷² David Peetz, 'What Do the Data on Casuals Really Mean?' (Report, Centre for Work, Organisation and Wellbeing, Griffith University, 27 November 2020) 13.

³⁷³ See section 3.4.1.

³⁷⁴ *FW Act* (n 20) s 97.

³⁷⁵ *Ibid* s 12.

³⁷⁶ Sarah Moore, 'Measuring the Success of Employment Law in Addressing the Problem of Long Working Hours in Australia' (Student Working Paper No 12, Centre for Employment and Labour Relations Law, University of Melbourne, June 2012) 14; Anna Chapman, 'Employment Entitlements to Carer's Leave: Domesticating Diverse Subjectivities' (2009) 18 *Griffith Law Review* 453, 465; Chapman (n 114) 65.

³⁷⁷ Andrew Stewart and Mark Bray, 'Modern Awards under the Fair Work Act' (2020) 33 *Australian Journal of Labour Law* 52, 53.

occupations and industries, that could be modified over time.³⁷⁸ There are currently 122 distinct modern awards, all of which include flexibility and consultation terms³⁷⁹ and which, for a time, included a stronger right to request flexible work than in the NES.³⁸⁰ These terms are the focus of this section's analysis, given their relevance to balancing work and caregiving and their commonality across all awards.

The following considerations of universal availability, enforceability, and gender-neutrality apply across these three terms. First, not all employees are covered by a modern award. Managerial and professional employees, for example, represent the largest proportion of employees outside the modern award system.³⁸¹ This has implications for the **universal availability** of these terms. Contravening a modern award term attracts the same enforcement procedures as breaches of the NES.³⁸² Modern awards are also required to include terms that 'provide a procedure for settling disputes about any matters arising under the award' and those relating to the NES.³⁸³ These dispute processes vary across each award, but all terms include the following general features: requiring employees to first discuss grievances with direct supervisors, the right to escalate disputes when this has failed to senior management, and referring matters to the FWC when all internal dispute resolution attempts have failed.³⁸⁴ Generally speaking, the FWC will use conciliation and mediation powers at this stage and will not be empowered to arbitrate a dispute unless the parties have agreed to it.³⁸⁵ These dispute resolution terms offer some degree of **enforceability** to modern award terms.

As most professional and managerial positions are excluded from modern award coverage, and these positions are dominated by men, more men than women are precluded from accessing

³⁷⁸ *FW Act* (n 20) s 134(1)(d); Andrew Stewart, 'Fair Work Australia: The Commission Reborn?' (2011) 53 *Journal of Industrial Relations* 563, 574.

³⁷⁹ Fair Work Commission, 'Modern Awards' (Web Page, 18 September 2020) <<https://www.fwc.gov.au/awards-and-agreements/awards/modern-awards>>.

³⁸⁰ *FW Act* (n 20) ss 144, 145A; *Re 4 Yearly Review of Modern Awards — Family Friendly Working Arrangements* [2018] FWCFB 5753.

³⁸¹ *FW Act* (n 20) s 143(7) excludes those 'who, because of the nature or seniority of their role, have traditionally not been covered by awards' or 'who perform work that is not of a similar nature to work that has traditionally been regulated by such awards' from coverage under a modern award. See also *Miscellaneous Award 2020* cl 4.2, which excludes 'managerial employees and professional employees such as accountants and finance, marketing, legal, human resources, public relations and information technology specialists'. See also Andrew Stewart and Mark Bray, 'Modern Awards under the Fair Work Act' (2020) 33 *Australian Journal of Labour Law* 52, 60.

³⁸² *FW Act* (n 20) ss 45, 539, 546. See section 3.4.1.

³⁸³ *FW Act* (n 20) s 146.

³⁸⁴ Fair Work Ombudsman, 'Effective Dispute Resolution' (Web Page) <<https://www.fairwork.gov.au/tools-and-resources/best-practice-guides/effective-dispute-resolution#dispute-resolution>>.

³⁸⁵ *Ibid*.

the entitlements under modern awards.³⁸⁶ This has necessary implications for the ability of these terms to meet the criterion of **gender-neutrality**. In addition to the above common limitations of these modern award terms when measured against the gender justice criteria, each term has further specific limitations against the gender justice criteria, as discussed below.

3.5.2 Flexibility Terms

As per section 144 of the *FW Act*, modern awards must include a term allowing employees to agree on an individual flexibility arrangement ('IFA') with their employer 'to meet the genuine needs of the employee and employer'.³⁸⁷ The Australian Government introduced IFAs to help employees balance their work and care responsibilities.³⁸⁸ However, IFAs also became a mechanism through which employees and employers could trade important workplace entitlements for limited flexibility. Research from 2021 found that one of the most common reasons for initiating an IFA was to allow 'part-time employees to take extra shifts at their own request, without the employer having to pay them overtime'.³⁸⁹ The research also found examples where IFAs were used to avoid paying penalty rates for certain shift arrangements.³⁹⁰ This lack of sufficient protection for flexible workers (many of whom are worker-carers) to be appropriately compensated compromises the term's ability to meet the gender justice criteria.³⁹¹

In terms of **enforceability**, IFAs are not subject to external monitoring.³⁹² Oversight is only brought into play when a dispute is adjudicated under a workplace's relevant dispute resolution procedures or when an employee claims that an IFA was not properly made, which constitutes a breach of an award.³⁹³ IFAs are subject to certain requirements, including that the employee and employer must come to a genuine agreement and that the employee must be 'better off overall' than they would otherwise have been.³⁹⁴ However, without external oversight as to

³⁸⁶ Results from the Workplace Gender Equality Agency's 2018–19 dataset show that women held only 31.5% of key management personnel positions: Workplace Gender Equality Agency, 'Gender Workplace Statistics at a Glance 2020' (Web Page, 13 August 2020) <<https://www.wgea.gov.au/data/fact-sheets/gender-workplace-statistics-at-a-glance-2020>>.

³⁸⁷ *FW Act* (n 20) s 144(1).

³⁸⁸ Explanatory Memorandum, Fair Work Bill 2009 (Cth) [570]; Heron and Charlesworth (n 309) 214, 223.

³⁸⁹ Murray Furlong, *General Manager's Report into Individual Flexibility Arrangements under Section 653 of the Fair Work Act 2009* (Commonwealth of Australia, 2021) 13.

³⁹⁰ *Ibid*.

³⁹¹ Heron and Charlesworth (n 309) 224.

³⁹² *Ibid* 223.

³⁹³ *FW Act* (n 20) ss 45, 144(2)(b), 145(3).

³⁹⁴ *Ibid* s 144(4).

whether this is the case, it is generally up to employers to decide if employees are ‘better off’ until and unless an employee challenges it.³⁹⁵ This compromises the enforceability of the provision as it places the onus on employees to enforce the provision, despite potentially challenging power and resource imbalances. Further, even when an employee achieves a genuinely acceptable IFA, each party is entitled to unilaterally terminate an IFA with at least 28 days’ notice.³⁹⁶ This necessarily compromises the enforceability of the IFA as the arrangement may ultimately be revoked.

That flexible work conditions are often offered in exchange for other valuable work rights also brings into question the **substantiveness** of IFAs in adequately supporting worker-carers. Concerns that employees make disproportionate sacrifices under the scheme have been an enduring criticism of IFAs.³⁹⁷ A mechanism by which workers trade workplace entitlements for flexibility fails to support the legitimacy of flexible work. Instead, flexibility is positioned as a privilege that employees should only receive at the expense of otherwise important entitlements. In this way, the scheme fails to support worker-carers meaningfully but rather necessitates difficult sacrifices to support their work-care responsibilities.

The likelihood that important workplace entitlements will be traded for flexibility in IFAs and may be used for different reasons across genders also fails to ensure a **gender-neutral** worker-carer lifestyle is the least costly option. Research from 2021 found that female employees typically sought IFAs ‘for care reasons or to accommodate disability’.³⁹⁸ Where these IFAs result in the loss of penalty rates and additional compensation, (female) carers are expected to bear a financial penalty for working around their caregiving responsibilities.

This encapsulates how employer-oriented flexibility, in the absence of deliberate protections for carers’ needs, could undercut minimum standards in modern awards. It may particularly affect female-dominated industries where standards are already comparatively low under the guise of supporting working carers without there being corresponding changes in male-

³⁹⁵ Ibid s 144(4)(c); Heron and Charlesworth (n 309) 222.

³⁹⁶ *FW Act* (n 20) s 145(4)(a).

³⁹⁷ See, eg, Heron and Charlesworth (n 309) 224; Waterhouse and Colley (n 369) 168–9; Cameron (n 278) 59.

³⁹⁸ Furlong (n 389) 15.

dominated sectors.³⁹⁹ In short, the provision facilitates the trading of additional income for flexibility, creating an economic disincentive to embrace the worker-carer role.

3.5.3 Consultation Terms

Modern awards also require employers to consult with employees about significant changes to their employment, including to their regular working hours.⁴⁰⁰ However, this term also has deficiencies against the gender justice criteria.

In terms of **enforceability**, the obligation to consult under the term requires employers to provide employees with information about changes, invite employees to share the impacts of the change, ‘including any impact in relation to their family or caring responsibilities’, and to consider said impacts.⁴⁰¹ This right to consultation has been confirmed as including an implicit obligation to ‘provide a genuine opportunity for the affected party to attempt to persuade the decision maker to adopt a different course of action’.⁴⁰² In *ALAEA v Qantas*, for example, the consultation term was found to be breached when a letter proved that the decision to make 30 employees redundant was a ‘foregone conclusion’ before the consultation took place.⁴⁰³ The case demonstrates the need for a ‘genuine’ consultation between employee and employer in keeping with the government’s professed intention that this would be a ‘family-friendly measure’ to protect carers from unilateral decisions that may affect their responsibilities.⁴⁰⁴

However, the ‘right to be consulted, though a valuable right, is not a right of veto’.⁴⁰⁵ The strength of the consultation requirement often relies on employees’ ability to counteract power imbalances and prevalent industry and gender norms that favour the ideal worker. While employers are required to consider the impacts of proposed changes on employees’ carer

³⁹⁹ Ibid; See also Charlesworth and Heron (n 105) 164; Iain Campbell and Jenny Chalmers, ‘Job Quality and Part-Time Work in the Retail Industry: An Australian Case Study’ (2008) 19 *International Journal of Human Resource Management* 487.

⁴⁰⁰ *FW Act* (n 20) s 145A.

⁴⁰¹ *FW Act* (n 20) s 145A(2).

⁴⁰² *Consultation Clause in Modern Awards* [2013] FWCFB 10165 [35]
<<https://www.fwc.gov.au/documents/decisionssigned/html/2013fwcfb10165.htm>>.

⁴⁰³ *Australian Licenced Aircraft Engineers Association v Qantas Airways Limited* (2013) 234 IR 418 [89] (*‘ALAEA v Qantas’*). This point was reaffirmed in the sentencing decision: *Australian Licenced Aircraft Engineers Association v Qantas Airways Limited* [2013] FCCA 1696 [7].

⁴⁰⁴ *Consultation Clause in Modern Awards* [2013] FWCFB 10165 [38]
<<https://www.fwc.gov.au/documents/decisionssigned/html/2013fwcfb10165.htm>>, citing Explanatory Memorandum, Fair Work Amendment Bill 2013 (Cth) sch 1.

⁴⁰⁵ *Consultation Clause in Modern Awards* [2013] FWCFB 10165 [31], quoting *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v QR Limited* [2010] FCA 591 [44]–[45].

responsibilities, the lack of a positive obligation to accommodate those responsibilities limits the provision's **substantiveness**. Also, in male-dominated sectors, the impact of proposed changes on caregiving needs may be perceived as relatively minimal, compromising the ability of the consultation process to influence employer decisions meaningfully. This affects the **gender-neutrality** of the term.

3.5.4 Right to Request Flexible Work

Finally, in September 2018, the FWC added a term across modern awards to allow workers to challenge the process of managing a request for flexible work under section 65 of the NES, as discussed above.⁴⁰⁶ The model term required that employers:

genuinely try to reach an agreement on a change in working arrangements that will reasonably accommodate the employee's circumstances having regard to the needs of the employee arising from their circumstances; the consequences for the employee if changes in working arrangements are not made; and any reasonable business grounds for refusing the request.⁴⁰⁷

The term also included additional conditions for employers when providing their written response to refused requests and confirmed that disputes regarding the employer's compliance with these new procedures may be handled by an award's consultation and dispute resolution terms.⁴⁰⁸

The new changes implemented to the NES's right to request flexible work mirrored much of the substance of this model term, improving the enforceability and substantiveness of the right to request flexible work.⁴⁰⁹ Given the similarities between this model term and the new right to request flexible work under the NES, the model term has since been replaced with a reference to the new relevant flexible work request provisions under the NES.⁴¹⁰ The implications for how the model term on the right to request flexibility in modern awards now aligns with the criteria of **enforceability**, **substantiveness**, and **gender-neutrality** are, therefore, like those discussed above with the right to request flexible work under the NES.⁴¹¹

⁴⁰⁶ *Family-Friendly Working Arrangements* [2018] FWCFB 5753 [64], [87]–[88]. It was proposed in this decision that the model term would be reviewed in June 2021.

⁴⁰⁷ *Ibid* [64].

⁴⁰⁸ *Ibid*.

⁴⁰⁹ See section 3.4.3.

⁴¹⁰ *Variation on the Commission's Own Motion — Flexible Work Amendments and Unpaid Parental Leave* [2023] FWCFB 107. The operative date of this change was 1 August 2023.

⁴¹¹ See section 3.4.3.

3.6 Conclusion

This chapter has revealed that legislated work-care supports generally fail to meet the gender justice criteria. Each support is often conditional and subject to eligibility requirements. These requirements tend to limit the types of eligible carers that may access these supports by rewarding traditional work attachments, which fails the requirement of **universal availability**. Rights such as those under the NES and modern awards come with strong penalties and public enforcement mechanisms where such entitlements are not provided, importing a degree of **enforceability**. Government-administered entitlements such as the parental leave payments and childcare subsidies, also have robust enforcement processes. Provisions such as the right to request flexible work or the right to extend a person's unpaid parental leave beyond 12 months only preserves the right for such requests to be made. However, recent changes have strengthened employer obligations in responding to such requests — although employees must still contend with potentially intimidating power imbalances in making these requests and escalating any disputes.

The work-care supports discussed in this chapter are often limited in their ability to **substantively** meet diverse worker-carer needs. For example, the government's parental leave payments impose restrictions on how many days of payments may be accessed concurrently in two-parent households, limiting their flexibility — although, again, recent amendments have greatly improved the flexibility of the parental leave payments and the NES's unpaid parental leave entitlements from its previous versions. The childcare subsidies similarly fail to meet carers' needs substantively by not addressing the rising net costs of childcare and the lack of available and suitable childcare options, especially for remote families or those working non-traditional hours. IFAs, while intended to improve employee flexibility, often require employees to sacrifice other valuable work rights such as higher rates of pay, compromising their substantiveness too.

Supports also often fail to address the present social and economic incentives to default to gender norms, compromising their **gender-neutrality**. For example, the *PPL Act* offers payments at the minimum wage and parental leave under the NES is unpaid. This does not address the financial disincentive in many heterosexual couples for men not to take parental leave to retain their (statistically) higher incomes. The original *PPL Act* also explicitly encoded gendered expectations, with primary carers defined as 'birth mothers' in the first instance and secondary carer payments referred to as 'dad and partner pay'. These labels have since been removed. However, practically speaking, birth parents will probably continue to access the

payments and by extension parental leave first and for longer periods to meet the biological needs of childbirth. Also, as the non-transferrable portion of the payments in two-parent households remains at two weeks, non-birth parents continue to be deprived of an equal and distinct parental leave entitlement despite its established value in promoting the equal use of parental leave among non-birth parents.

The inadequacy of the childcare subsidies also creates a workforce disincentive for secondary earners in two-income households, often pressuring women to reduce their work hours. In addition, several of the supports fail to address masculine worker norms and industry patterns. For example, the right to request flexible work fails to address the biases and stigma that men face when requesting flexible work and working flexibly. The right to maximum weekly hours is limited to 'reasonable' hours, which will be determined with reference to existing industry norms and leaves open the possibility for male-dominated industry norms (which are less accommodating of worker-carer lifestyles) to persist. Similarly with consultation terms in modern awards, employers are required to consider employees' views, but accommodating caregiving needs may be seen as less important in male-dominated industries and, therefore, any employee consultation would be unlikely to result in greater work-care supports and effect change.

This chapter has revealed that despite recent amendments that have resulted in some improvements, legislated work-care supports have several key deficiencies when measured against the gender justice criteria. However, these supports were intended to serve as a mere safety net in Australia's regulatory framework, with employees bargaining for 'a wider range of entitlements'.⁴¹² In this way, Australia's regulatory framework of work-care supports anticipated that employees would receive greater supports than legislated minimums through voluntary workplace entitlements. A universal caregiving society would have robust mechanisms to ensure employers lived up to this responsibility and provided gender just work-care supports. The next chapter explores the mechanisms in Australia's regulatory framework that may influence the provision of additional voluntary work-care supports in workplaces to that end.

⁴¹² Sharp et al (n 115) 3.

CHAPTER FOUR: MECHANISMS THAT INFLUENCE WORKPLACE OFFERINGS OF WORK-CARE SUPPORTS

4.1 Introduction

As discussed in the previous chapter, the work-care supports provided by legislation have limitations when assessed against the gender justice criteria. However, the legislation was never intended to provide sufficient supports. In the *FW Act*, one of the stated objectives is to provide ‘a guaranteed *safety net* of fair, relevant and enforceable *minimum* terms and conditions through the National Employment Standards [and] modern awards’.⁴¹³ Minimum standards, outlined in modern awards, were specifically designed not to be ‘so supportive that they take the pressure off workers to bargain in the workplace’.⁴¹⁴ Meanwhile, the *PPL Act* objectives state that ‘[t]he financial support provided by this Act is intended to *complement* and *supplement* existing entitlements to paid or unpaid leave in connection with the birth or adoption of a child’.⁴¹⁵

Therefore, many of the supports discussed in Chapter 3 are underpinned by the expectation that workplaces will supplement these entitlements with their own work-care supports. To that end, in addition to the legislated entitlements set out in Chapter 3, Australia’s regulatory framework also includes mechanisms that could influence the provision of work-care supports in workplaces. These include safeguards in the enterprise bargaining process, fringe benefits tax exemptions for certain childcare offerings, gender equality reporting requirements, and Australia’s anti-discrimination and general protections frameworks. This chapter introduces each measure in turn and discusses the potential efficacy of these measures in influencing workplaces to provide work-care supports that meet the gender justice criteria of universal availability, enforceability, supportiveness, and gender-neutrality.

4.2 Enterprise Bargaining

In line with a market-based approach, enterprise bargaining was introduced into the Australian industrial relations system in 1993 to allow employees and employers to negotiate additional entitlements personalised to each company’s circumstances. As stated in the Explanatory

⁴¹³ *FW Act* (n 20) s 3(b) (emphasis added).

⁴¹⁴ Sharp et al (n 115) 7.

⁴¹⁵ *PPL Act* (n 162) s 3A(3) (emphasis added).

Memorandum of the *FW Act*, enterprise bargaining was intended to ‘ensure that increases in pay and entitlements are linked to productivity increases at the enterprise’.⁴¹⁶ As discussed further below, the enterprise bargaining process is subject to a series of procedural requirements, and resulting EAs must be approved and registered with the FWC.⁴¹⁷ These agreements set out employment terms and conditions for national system employees at the enterprise level.⁴¹⁸ However, this process, in which entitlements are designed to suit the circumstances of individual workplaces, necessarily complicates the ability of enterprise bargaining to achieve a *universal* caregiving society that complies with the gender justice criteria.

At the end of the first quarter of 2019, ‘there were 10,571 current enterprise agreements, the lowest since 1998’.⁴¹⁹ Despite a downward trend in collective bargaining in recent years,⁴²⁰ EAs still account for the employment conditions of a large proportion of Australian workers — ‘[a]most 40% of employees ... or around 4 million people’, predominantly in larger companies with the necessary resources to facilitate what can be a quite labour-intensive bargaining process.⁴²¹ The legal framework for enterprise bargaining has been recently amended to simplify and expedite the bargaining process to ‘promote the right to just and favourable conditions of work and collective bargaining’.⁴²² The enterprise bargaining process could, therefore, serve as a valuable means of influencing the provision of work-care supports for nearly half of Australia’s workers, provided that the process itself is designed to facilitate the inclusion of work-care supports. This will turn on the safeguards within the enterprise bargaining process and the substance of the entitlements that are likely to be produced through this process.

⁴¹⁶ Explanatory Memorandum, Fair Work Bill 2008 (Cth) r 187.

⁴¹⁷ See section 4.2.1.

⁴¹⁸ Fair Work Ombudsman, ‘Enterprise Bargaining’ (Web Page) <<https://www.fairwork.gov.au/tools-and-resources/fact-sheets/rights-and-obligations/enterprise-bargaining>>.

⁴¹⁹ Johanna Macneil, Mark Bray and Leslee Spiess, ‘Unions and Collective Bargaining in Australia in 2019’ (2020) 62 *Journal of Industrial Relations* 380, 384.

⁴²⁰ See, eg, Peter Gahan and Andreas Pekarek, ‘Unions and Collective Bargaining in Australia in 2017’ (2018) 60 *Journal of Industrial Relations* 337, 345; Mark Bray, Johanna Macneil and Leslee Spiess, ‘Unions and Collective Bargaining in Australia in 2018’ (2019) 61 *Journal of Industrial Relations* 357, 361; Business Council of Australia, ‘The State of Enterprise Bargaining in Australia’ (Research Paper, August 2019) 5.

⁴²¹ Business Council of Australia (n 420) 2.

⁴²² Explanatory Memorandum, Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 [38], [76], [90]–[112].

4.2.1 Procedural Safeguards in Enterprise Bargaining

EAs are governed by certain requirements that are intended to protect employee interests, such as the provision of robust work-care supports. For example, like modern awards, EAs must include dispute settlement, flexibility, and consultation terms. Dispute resolution terms in EAs must provide a procedure that will require or allow the FWC or another independent party to settle disputes about any matter in the agreement or the NES and that allows employees covered by the agreement to be represented in these procedures, importing a degree of enforceability for the terms of enterprise agreements.⁴²³

The flexibility term in an enterprise agreement must enable employees and employers to agree to IFAs that will genuinely meet their needs, an employee has genuinely agreed to, and that will leave the employee ‘better off overall’.⁴²⁴ However, as with IFAs under modern awards, an IFA under an enterprise agreement can be terminated with written notice by either party.⁴²⁵ The utility of the ‘better off overall’ test in securing work-care supports that align with the gender justice criteria is discussed further below.

Consultation terms in EAs require employers to consult with employees on major workplace changes that are likely to have a significant impact or change regular rosters or ordinary hours of work. The requirements for flexibility and consultation terms in EAs are similar in substance to the corresponding terms in all modern awards, discussed in Chapter 3.⁴²⁶

In addition to these required terms, other requirements govern the processes and outcomes of bargaining — for example, procedures to ensure that employees can compel an employer to bargain even when the employer refuses to do so.⁴²⁷ Several changes also took effect from

⁴²³ *FW Act* (n 20) s 186(6).

⁴²⁴ *Ibid* ss 202–3. See section 4.2.3.1.

⁴²⁵ *FW Act* (n 20) s 204.

⁴²⁶ See section 3.5.2–3.5.3.

⁴²⁷ Employee bargaining representatives may make a written request to initiate bargaining for an agreement that would replace an agreement that has expired fewer than five years previously. If the employer refuses, the FWC can issue a bargaining order to compel the employer to bargain in good faith. This mechanism, however, does not apply to multi-enterprise or greenfield agreements or if the new agreement would not substantially cover the same group of employees. *FW Act* (n 20) ss 173(2A), 230(2)(aa). See also Andrew Stewart, *Supplement for Stewart’s Guide to Employment Law — Seventh Edition* (Supplement, July 2023) 14–5. These provisions are the result of recent amendments that took effect on 6 June 2023. Before this, employees could only compel unwilling employers to bargain if they obtained a majority support determination, which is still required to initiate bargaining in other circumstances (eg to negotiate a new enterprise agreement for the first time): *FW Act* (n 20), as at 5 June 2023, ss 236–7. The amendments, therefore, greatly increase employees’ access to collective bargaining. In the case of multi-employer bargaining agreements, however, employees will have to demonstrate majority support to compel an unwilling employer to bargain, with the processes varying depending on the type of multi-enterprise agreement: *FW Act* (n 20) div 7, pt 2–4, subdvs AB, AD.

6 June 2023 to improve multi-employer bargaining.⁴²⁸ These changes include replacing what was a previously unused ‘low-paid bargaining’ stream with ‘supported bargaining agreements’.⁴²⁹ The new stream of bargaining seeks to support ‘employees and employers who may have difficulty bargaining at the single-enterprise level’.⁴³⁰ The low-paid and female-dominated sectors of aged care, disability care, and early childhood education and care were specifically mentioned in the Explanatory Memorandum as sectors that could potentially benefit from these changes.⁴³¹ Where the FWC grants a supported bargaining authorisation, it will be empowered to assist in the enterprise bargaining process and to ensure that the parties bargain in ‘good faith’.⁴³²

Good faith bargaining requirements include attending and participating in meetings, disclosing relevant information, responding to proposals promptly, genuinely considering proposals and giving reasons for responses, refraining from capricious or unfair conduct that would undermine employees’ rights to freedom of association or collective bargaining, and recognising and bargaining with the other side.⁴³³ Failing to bargain in good faith is not a contravention of the *FW Act*, but where an employer fails to comply with the relevant good faith bargaining requirements, representatives may seek a bargaining order from the FWC to issue a direction about the conduct of the bargaining process. If an employer does not comply with such a direction, it may face penalties.⁴³⁴ Bargaining orders may include orders to attend specific meetings, exclude or appoint representatives, reinstate or prevent the termination of an

⁴²⁸ *Fair Work Legislation Amendment (Secure Jobs Better Pay Act) 2009* (Cth) sch 1, pts 20–1, 23 cover the provisions relating to supported bargaining agreements, single-interest employer agreements, and cooperative workplace agreements — mechanisms for facilitating enterprise bargaining across multiple workplaces. Note that the building and construction industry is generally excluded from these multi-enterprise bargaining rights: *FW Act* (n 20) ss 243A(4), 249A, 244(5), 251A, 186(2B), 216BA(3)(a), 216CB(2), 216DC(4).

⁴²⁹ *FW Act* (n 20) div 9, pt 2–4.

⁴³⁰ Explanatory Memorandum, *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022* [37].

⁴³¹ *Ibid.*

⁴³² Applications for supported bargaining authorisation may be brought by an affected employer, union or other bargaining representative. The FWC must be persuaded that it is appropriate for the relevant employers and employees under the proposed agreement to bargain together: *FW Act* (n 20) ss 242, 243. Where authorisation is granted, the FWC’s powers will include issuing bargaining orders to require bargaining in good faith, powers to facilitate bargaining such as requiring attendance of relevant parties, and arbitrating disputes where there is no reasonable prospect of success: *FW Act* (n 20) ss 228, 229(2), 246, 235.

⁴³³ *Ibid* ss 228.

⁴³⁴ *Ibid* ss 228–33. Penalties may amount to up to 60 penalty units: *FW Act* (n 20) ss 539, 546. Alternatively, injunctions may be ordered to enforce a bargaining order following a civil remedy proceeding: Anthony Forsyth et al, *Navigating the Fair Work Laws* (Thomson Reuters, 2010) 128.

employee, or delay a ballot.⁴³⁵ This does, however, place the onus on employees to apply for bargaining orders and enforce failures to comply with good faith bargaining requirements.⁴³⁶ At the request of the parties, the FWC is also empowered to intervene through mediation, conciliation, or arbitration to facilitate the bargaining process when the parties are unable to resolve the dispute.⁴³⁷

4.2.2 Feminist Critiques of Enterprise Bargaining

The provisions highlighted above could be seen as important safeguards to ensure that work-care supports, as an often-neglected issue, are given proper attention through diverse and meaningful representation in the bargaining process and that gender just work-care supports are provided in EAs. However, the enterprise bargaining process has long been criticised for being incompatible with championing diverse and female-oriented issues. In fact, '[e]xamining the ideologies underpinning bargaining, some academics have concluded that workplace bargaining is not conducive to achieving gender equality'.⁴³⁸ The notion of the unencumbered male breadwinner as the ideal worker has influenced the subject matter of bargaining, which has tended to focus on economic issues. These issues have been separated from matters that have been considered to concern the state, such as work-care supports.⁴³⁹ This is because work-care supports are often 'not seen as central bargaining items' and are neglected in the enterprise bargaining process.⁴⁴⁰

Research has shown that women's participation in the enterprise bargaining process can lead to the issue of work-care supports being brought to the bargaining table.⁴⁴¹ However, women

⁴³⁵ *FW Act* (n 20) s 231(2); Productivity Commission, *Workplace Relations Framework: Productivity Commission Inquiry Report Volume 2* (Commonwealth of Australia, 2015) 654; Mark Rinaldi, Victoria Lambropoulos and Rohan Millar, *Fair Work Legislation 2014* (Thomson Reuters, 2014).

⁴³⁶ *FW Act* (n 20) s 229.

⁴³⁷ *Ibid* s 240.

⁴³⁸ Williamson (n 142), citing Kirsten S Wever, 'Negotiating Equality? Women, Work, and Organized Labor in the European Union' in Thomas A Kochan and David B Lipsky (eds), *Negotiations and Change* (Cornell University Press, 2018) 244, 245; Linda Hantrais and Peter Ackers, 'Women's Choices in Europe: Striking the Work-Life Balance' (2005) 11 *European Journal of Industrial Relations* 197, 197, 211; Adelle Blackett and Colleen Sheppard, 'Collective Bargaining and Equality: Making Connections' (2003) 142 *International Labour Review* 419, 432.

⁴³⁹ Sue Williamson, 'A Literature Review on Bargaining for Family Friendly Working Arrangements' (University of New South Wales, 2007) 7.

⁴⁴⁰ Williamson (n 142) 159, 161.

⁴⁴¹ *Ibid* 162; Linda Dickens, *Equal Opportunities and Collective Bargaining in Europe: Illuminating the Process* (European Foundation for the Improvement of Living and Working Conditions, 1998) 33–4; Leonard Karakowsky and Diane L Miller, 'Negotiator Style and Influence in Multi-Party Negotiations: Exploring the Role of Gender' (2006) 27 *Leadership and Organization Development Journal* 50, 57.

often lack the ‘industrial strength’ to influence the bargaining process.⁴⁴² Statistically speaking, women have lower unionisation rates, are disproportionately involved in part-time or casual work, and are concentrated ‘in lower paid, lower status’ and award-only sectors.⁴⁴³ While the unionisation of female workers has increased over time, union officials continue to be predominantly men, with female union officials often feeling solely responsible for championing marginalised ‘women’s issues’.⁴⁴⁴ This combination of factors results in women often coming ‘to the enterprise bargaining table with a lower level of bargaining power and influence than men’, if at all.⁴⁴⁵ EAs also tend to be concentrated in male-dominated industries. In 2020, most EAs were from the male-dominated sectors of construction, transport, postal, warehousing, and mining.⁴⁴⁶ As a result, the enterprise bargaining process has been criticised as one in which ‘white men are de facto setting the workplace bargaining agenda, largely to the exclusion of equalities because there is little to no meaningful input into the agenda from outside the mainstream’.⁴⁴⁷

Further, while part-time, casual and sessional workers may participate in the enterprise bargaining process if they are covered by the agreement and ‘employed at the time’ of the vote,⁴⁴⁸ ill-timed meeting times and voting sessions can disenfranchise part-time and casual workers, where women are often disproportionately represented.⁴⁴⁹ For example, in the case of *National Tertiary Education Industry Union v Swinburne University of Technology*,⁴⁵⁰ a cohort of casual and sessional staff who had been engaged in the 2013 academic year and were likely to be engaged again in 2014 were excluded from participating as they had not yet been hired,

⁴⁴² Sara Charlesworth, ‘Stretching Flexibility: Enterprise Bargaining, Women Workers and Changes to Working Hours’ (1997, Commonwealth of Australia) 7.

⁴⁴³ Ibid; Gillian Whitehouse and Betty Frino, ‘Women, Wages and Industrial Agreements’ (2003) 6(4) *Australian Journal of Labour Economic* 579, 593. See also Mark Wooden, ‘Enterprise Bargaining and the Gender Earnings Gap’ (1997) 23 *Australian Bulletin of Labour* 214; Brigid van Wanrooy, ‘Women at Work in Australia: Bargaining a Better Position?’ (2009) 35 *Australian Bulletin of Labour* 611.

⁴⁴⁴ Rae Cooper, ‘The Gender Gap in Union Leadership in Australia: A Qualitative Study’ (2012) 54 *Journal of Industrial Relations* 131, 144.

⁴⁴⁵ Julie-Anne Lee, ‘Women and Enterprise Bargaining: The Corset of the 1990s?’ (1994) 53 *Australian Journal of Public Administration* 189, 189.

⁴⁴⁶ Attorney-General’s Department, ‘Trends in Federal Enterprise Bargaining Report: December Quarter 2020’; Workplace Gender Equality Agency (n 113).

⁴⁴⁷ Gill Kirton, ‘Union Framing of Gender Equality and the Elusive Potential of Equality Bargaining in a Difficult Climate’ (2021) 63 *Journal of Industrial Relations* 591, 610.

⁴⁴⁸ *FW Act* (n 20) s 181.

⁴⁴⁹ Charlesworth (n 442) 7; Raymond Markey and Joseph McIvor, ‘Regulating Casual Employment in Australia’ (2018) 60 *Journal of Industrial Relations* 593, 599.

⁴⁵⁰ [2015] FCAFC 98.

even though they would be covered by the agreement and were ‘likely to be engaged’ or ‘usually employed’ by the university in the 2014 academic year.⁴⁵¹

This lack of access for casuals (where women feature disproportionately) to the enterprise bargaining process further contributes to the underlying legacy of the male breadwinner tradition. If enterprise bargaining relies on majority interests and the ideal worker remains the unencumbered male breadwinner, the enterprise bargaining process will have limited utility in furthering the equality agenda.⁴⁵² Given these circumstances, it is perhaps unsurprising that research has found it is often ‘particularly difficult or particularly impractical to reach [an] agreement through collective bargaining’ about issues of importance to women, such as work-care supports.⁴⁵³

The nature of enterprise bargaining as reliant on market trends also necessarily compromises the ability to secure work-care supports, with such entitlements often foregone during times of economic stress.⁴⁵⁴ In such times, unions often find themselves on the defensive in simply attempting to maintain existing entitlements and rarely in a position to advocate for greater supports.⁴⁵⁵ Work-care supports are, instead, often treated as contingent offerings in the enterprise bargaining process as opposed to a fundamental feature of workplace arrangements.

These factors call into question the ability of procedural requirements to ensure that the feminised issue of work-care supports is afforded appropriate weight in the enterprise bargaining process. Research has shown that work-care supports such as leave and flexibility arrangements for work-family support and ‘childcare provisions and referral services for carers’ are rare and unevenly spread ‘depending on industry and sector location, with minimal penetration into several male-dominated areas’.⁴⁵⁶ Therefore, while the procedural requirements above have introduced some safeguards for employees, they do little to address the problem of *who* and *what* is and is not involved in the agreement process, allowing for the

⁴⁵¹ Ibid, cited in *Construction, Forestry, Maritime, Mining and Energy Union v Noorton Pty Ltd T/S Manly Fast Ferry* [2018] FWCFB 7224 [22].

⁴⁵² Blackett and Sheppard (n 438) 420–1, 433; Katherine Swinton, ‘Accommodating Equality in the Unionized Workplace’ (1995) 33 *Osgoode Hall Law Journal* 703, 730; Catherine Albiston, ‘Bargaining in the Shadow of Social Institutions: Competing Discourses and Social Change in Workplace Mobilization of Civil Rights’ (2005) 39 *Law & Society Review* 11, 17.

⁴⁵³ Williamson (n 142) 161, citing Kirsten S Wever (n 438) 245.

⁴⁵⁴ See, eg, Williamson (n 439) 8; Dickens (n 441) 18; Blackett and Sheppard (n 438) 430; Pradeep Kumar and Gregor Murray, ‘Canadian Union Strategies in the Context of Change’ (2002) 26 *Labor Studies Journal* 1, 6–8, 12.

⁴⁵⁵ Kumar and Murray (n 454) 6–8.

⁴⁵⁶ Whitehouse (n 139) 113, 123.

continuation of existing trends that favour the ideal worker, especially in male-dominated industries.

4.2.3 Approval Requirements for Enterprise Agreements

A further safeguard in the enterprise bargaining process exists whereby agreements must be approved by the FWC. The FWC may only approve an agreement if satisfied that relevant content and procedural requirements have been complied with. For example, the agreement must contain the required consultation, flexibility and dispute resolution terms mentioned above; the agreement must be ‘genuinely agreed to’ by employees;⁴⁵⁷ the terms must leave the covered employees generally better off than they would be under a modern award; and the agreement must not contain unlawful terms such as those that are discriminatory or objectionable.⁴⁵⁸ These requirements may safeguard against inappropriate or insufficient terms, including in relation to work-care supports. However, as outlined above, the safeguards to ensure a genuine agreement are probably limited in effect while those involved in bargaining continue to consider the unencumbered (typically male) worker as the ideal. Moreover, further examination of the better off overall test (‘BOOT’) and the requirements regarding unlawful terms reveal serious limitations about their capacity to secure gender just work-care supports in EAs.

4.2.3.1 Better Off Overall Test

To ensure that bargained enterprise agreements result in ‘better’ entitlements, the FWC can only approve an enterprise agreement if employees would be ‘better off overall’ than they would be under a modern award — that is, if the enterprise agreement passes the BOOT test.⁴⁵⁹ This may offer some protection for employees to ensure that the work-care supports in EAs always exceed minimum entitlements in modern awards and the NES.

⁴⁵⁷ *FW Act* (n 20) ss 180, 182, 188; *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) pt 14. Under previous legislation, for a genuine agreement to have taken place, an employer ‘must take all reasonable steps to ensure that’ employees are aware of the details of the vote, the relevant voting method, and the contents, terms and effects of the agreement and ensure that at least 21 days from the last notification date pass before a request to approve is issued. For an agreement to be deemed to have been made in a single enterprise agreement, there must be a majority vote; for multi-enterprise agreements, there must be a majority vote from the employees of at least one of the employers. However, as of 6 June 2023, the FWC will merely have to be satisfied of a broad requirement that the agreement has been genuinely agreed, based on a statement of principles rooted in determining whether the employees who were asked to approve the agreement had a sufficient interest in the terms and were sufficiently represented.

⁴⁵⁸ *Ibid* ss 193, 194.

⁴⁵⁹ *Ibid* s 193.

However, the BOOT has largely been limited to monetary considerations. As stated in a decision of the Full Bench of the FWC:

The primary, and often the only, consideration which arises in the assessment of the BOOT is a comparison between the total remuneration which would be earned by existing and prospective employees under the agreement as compared to the modern award.⁴⁶⁰

For ‘non-monetary, optional or contingent entitlements’, such as ‘support to manage care responsibilities while maintaining employment’, it was found that these supports cannot be assumed to have the same value for all employees and should be assessed against realistic assessments on ‘the likelihood of the benefit crystallising during the period in which the agreement will operate’.⁴⁶¹

The decision in this case was to deny the argument that contingent, non-monetary entitlements outweighed the financial detriment employees would suffer under a proposed reduction in the employees’ loaded rate structure.⁴⁶² In this way, the BOOT was able to protect employees from being short-changed by using work-care supports as a bargaining chip for disproportionately lower wages.⁴⁶³ This approach has since been clarified by legislative amendments, which state that from 6 June 2023, the BOOT is to be applied with reference to the proposed agreement as a whole and that the FWC should only consider patterns of work that are ‘reasonably foreseeable’ while taking into account the views of employee organisations and employers.⁴⁶⁴ The new provisions will also empower the FWC to amend an agreement, where necessary, for it to pass the BOOT and allow an agreement to be reassessed and amended if relevant

⁴⁶⁰ *Loaded Rates Agreement* [2018] FWCFB 3610 [107].

⁴⁶¹ *Ibid* [113]–[115].

⁴⁶² *Ibid* [116].

⁴⁶³ Versions of the BOOT have had a long history in Australia, and the inclusion of non-monetary entitlements in assessments has persisted as a matter of contention, given its inherently subjective nature. For example, in 1992, under the ‘no disadvantage test’, research found that employees were more likely to lose control over non-monetary entitlements than gain them under administrative bodies’ interpretations of this test. The test was therefore replaced by enumerated protected minimum conditions in relation to predominantly monetary benefits that either could not be amended or, if amended, needed to be modified transparently. However, this resulted in many entitlements being lost without compensation. In 2007, a fairness test was introduced so the above-mentioned ‘protected conditions’ that could be modified could be addressed in such a way that employees were fairly compensated overall, which could include monetary or non-monetary entitlements, although this also raised concerns that non-monetary entitlements would be unfairly traded: Carolyn Sutherland, ‘All Stitched Up? The 2007 Amendments to the Safety Net’ (2007) 20 *Australian Journal of Labour Law* 245.

⁴⁶⁴ *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) pt 16.

circumstances were not properly considered during the approval process.⁴⁶⁵ These provisions stand to strengthen the operation of the BOOT as a protective mechanism.

However, in the context of encouraging the provision of work-care supports (typically contingent, non-monetary entitlements), the BOOT's focus on entitlements that would benefit employees in reasonably 'foreseeable circumstances' offers no real incentive for employers to improve their offerings of work-care supports. In male-dominated industries, for example, entitlements such as parental leave may be seen as having limited overall utility to the workers. Therefore, there would be little incentive for employers to prioritise increases to these entitlements during the bargaining process. Without a BOOT that explicitly considers the need to accommodate worker-carer needs as the norm, employers are left to design agreements that may make employees better off financially but do little to improve other non-monetary supports, entrenching the orientation of the bargaining process as a predominantly economic exercise.⁴⁶⁶ This arguably limits the BOOT's capacity to encourage more work-care supports that align with the gender justice criteria.

4.2.3.2 No Unlawful Terms

The FWC is also prohibited from approving enterprise agreements that include an 'unlawful term', which has been defined to include a 'discriminatory term'.⁴⁶⁷ A term is a discriminatory term 'to the extent that it discriminates against an employee covered by the agreement because of, or for reasons' that include the employee's particular protected characteristics or attributes — namely, sex, family or carer responsibilities, pregnancy, and the newly added characteristic of breastfeeding.⁴⁶⁸ In addition, the *Australian Human Rights Commission Act 1986* (Cth) empowers the Sex Discrimination Commissioner to refer discriminatory enterprise agreements and awards to the FWC.⁴⁶⁹ If the FWC considers that an enterprise agreement requires a person to do any act that is unlawful under federal anti-discrimination legislation, including the *Sex Discrimination Act 1984* (Cth), 'the FWC must vary the agreement so that it no longer requires the person to do an act that would be so unlawful'.⁴⁷⁰

⁴⁶⁵ Ibid.

⁴⁶⁶ Jennifer Waterhouse and Linda Colley, 'The Work-Life Provisions of the Fair Work Act: A Compromise of Stakeholder Preference' (2010) 36 *Australian Bulletin of Labour* 154, 171–2.

⁴⁶⁷ *FW Act* (n 20) s 194(a).

⁴⁶⁸ Ibid s 195(1).

⁴⁶⁹ *Australian Human Rights Commission Act 1986* (Cth) s 46.

⁴⁷⁰ *FW Act* (n 20) s 218.

These requirements have the potential to encourage the inclusion of gender just work-care supports in enterprise agreements to avoid employees being discriminated against on account of their carer responsibilities. To date, only four cases involving discriminatory terms in EAs have been decided, all of which related to alleged indirect discrimination.⁴⁷¹ However, a Federal Court decision in 2012 found that the prohibition against unlawful terms did not apply to terms that may result in indirect discrimination.⁴⁷² In that case, the Federal Court concluded that it would have been ‘highly unlikely’ for Parliament to have intended instances of indirect discrimination to be included as a potentially unlawful term.⁴⁷³ This case focussed on a term in a modern award and not an EA. However, the FWC has since found that it must adopt the Federal Court’s view when considering unlawful terms in EAs too.⁴⁷⁴

This exclusion of indirect discrimination is a severe limitation to securing supportive work-care entitlements in EAs. ‘Indirect discrimination is designed to address policies and practices that treat all workers “the same”, but which have a disproportionate negative impact on workers with a protected attribute.’⁴⁷⁵ Therefore, indirect discrimination claims are often the most appropriate basis for a claim by worker-carers who have been disadvantaged by terms and conditions that uphold a preference for the ideal worker.⁴⁷⁶ In *Metropolitan Fire*,⁴⁷⁷ for example, the Minister for Jobs and Industrial Relations and the Victorian Equal Opportunity and Human Rights Commissioner argued that the terms of an EA would prohibit part-time employees from undertaking firefighter duties and holding certain roles. This, in turn, would prevent the promotion of part-time firefighters due to ‘insufficient operational firefighting experience’ and impose additional obligations on employees seeking part-time work.⁴⁷⁸ It was argued that these terms constituted indirect discrimination on the grounds of ‘sex and family and parental responsibilities’, as women and carers were more likely to participate in part-time work.⁴⁷⁹ However, as the legislation did not explicitly include the ability to consider terms that

⁴⁷¹ *University of Melbourne Enterprise Agreement 2013* [2014] FWCA 1133; *Australian Services Union (Qantas Airways Limited) Agreement 9* [2011] FWA 3632; *The Australian Catholic University Staff Enterprise Agreement 2010* [2011] FWA 3693; *Application by Metropolitan Fire and Emergency Services Board* [2019] FWC 106.

⁴⁷² *University of Melbourne Enterprise Agreement 2013* [2014] FWCA 1133 [53], quoting *Shop, Distributive and Allied Employees Association v National Retailers Association and Another* (No 2) (2012) 205 FCR 227.

⁴⁷³ *Ibid.*

⁴⁷⁴ *Ibid* [55]; *Application by Metropolitan Fire and Emergency Services Board* [2019] FWC 106 [118].

⁴⁷⁵ Adams (n 48) 20.

⁴⁷⁶ Smith (n 86) 124.

⁴⁷⁷ *Application by Metropolitan Fire and Emergency Services Board* [2019] FWC 106 (‘Metropolitan Fire’).

⁴⁷⁸ *Ibid* [10], [16], [62–3].

⁴⁷⁹ *Ibid.*

were indirectly discriminatory, it was decided that the terms were not unlawful. This was despite the FWC's view that applying standard principles of statutory construction 'including indirect discrimination [under the purview of the FWC's review of unlawful terms] is to be preferred' and if permitted to do so, the FWC would have concluded otherwise.⁴⁸⁰ In this way, EAs may continue to include terms that champion the ideal worker and effectively penalise worker-carers if the discrimination is indirect.

In addition to the glaring omission of indirect discrimination, the requirement against unlawful terms mirrors the anti-discrimination framework's exception that a term will not be discriminatory 'if the reason for the discrimination is the inherent requirements of the particular position concerned'.⁴⁸¹ This enshrines the possibility that some jobs could be inherently incompatible with a worker-carer lifestyle.⁴⁸² The requirement to not include unlawful terms in EAs is also a negative obligation, as opposed to a positive obligation to support carers in their worker-carer roles. Therefore, complying with the no unlawful term requirement does not necessarily require employers to offer any work-care supports.

In summary, the safeguards in the enterprise bargaining process are important for ensuring employees receive at least the work-care supports that are provided by legislation and modern awards as a safety net of minimum standards. These safeguards may also help achieve certain economic entitlements and improvements in working conditions. However, they do little to ensure that gender just work-care supports are offered. This situation calls into question the validity of claims by supporters of the enterprise bargaining process who suggested that deregulation and decentralised bargaining would 'promote equal employment opportunity and "family-friendly" outcomes'.⁴⁸³ Instead, the enterprise bargaining framework appears to be ill-suited to achieving any improvements to work-care supports, let alone supports that would meet the gender justice criteria.

⁴⁸⁰ Ibid [6], [125–6].

⁴⁸¹ *FW Act* (n 20) s 195(2)(a).

⁴⁸² Carol Andrades, 'Intersections between "General Protections" under the *Fair Work Act 2009* (Cth) and Anti-Discrimination Law: Questions, Quirks and Quandaries' (Working Paper No 47, Centre for Employment and Labour Relations Law, University of Melbourne, December 2009) 10.

⁴⁸³ Glenda Strachan and John Burgess, 'Will Deregulating the Labour Market in Australia Improve the Employment Conditions of Women?' (2001) 7 *Feminist Economics* 53, 54.

4.3 Fringe Benefits Tax Exemptions for Childcare

The regulatory framework also includes fringe benefits tax exemptions for certain childcare offerings. Fringe benefits are employee benefits in forms other than salaries or wages, such as certain rights, privileges or services.⁴⁸⁴ If a fringe benefit is not eligible for an exemption from fringe benefits tax, the employer ‘would incur a tax penalty of 47%’ and the employee would have to include the benefit in their tax return as a source of income.⁴⁸⁵ The government’s decision to exempt certain offerings from fringe benefits tax signals an intention to encourage employers to participate in providing these particular benefits.

Benefits that are otherwise deductible on an employee’s income tax return will be exempt from fringe benefits tax.⁴⁸⁶ A High Court decision in 1972 deemed childcare expenses not to be deductible under an employee’s income tax return, and this has remained so ever since.⁴⁸⁷ A few years later, however, the *Fringe Benefits Tax Assessment Act 1986* (Cth) included a fringe benefits tax exemption for contributions to programs administered by the Families Department to obtain priority access to eligible childcare providers⁴⁸⁸ and for childcare provided on an employer’s ‘business premises’.⁴⁸⁹ This arguably signals the government’s intention to encourage employers to provide childcare supports to their employees.

The scope of this exemption is, however, very limited. First, for the exemption on contributions made to parents to gain priority access to childcare to apply, the relevant ‘payments must be made under a program administered by the relevant government department’.⁴⁹⁰ The exempt payments are further limited to priority access payments as opposed to the childcare fees themselves, which does nothing to address the rising childcare costs discussed in Chapter 3.⁴⁹¹ These payments must also be made to gain priority access to select childcare providers — childcare centres under the *Child Care Act 1972* (Cth), a family day care centre, an outside-

⁴⁸⁴ Australian Taxation Office, ‘Fringe Benefits Tax — A Guide for Employers’ (Web Page, 8 December 2020) <<https://www.ato.gov.au/law/view/document?DocID=SAV%2FFBTGEMP%2F00002>>.

⁴⁸⁵ Standing Committee on Family and Human Services, *Balancing Work and Family: Report on the Inquiry into Balancing Work and Family* (Commonwealth of Australia, 2006) 233 [7.2].

⁴⁸⁶ *Fringe Benefits Tax Assessment Act 1986* (Cth) s 52.

⁴⁸⁷ *Lodge v Federal Commissioner of Taxation* (1972) 128 CLR 171. See Lydia Thiagarajah and Amanda Darshini Selvarajah, ‘COVID-19: Revisiting the Decision in Lodge’ (2021) 50 *Australian Tax Review* 51 for a criticism of this decision.

⁴⁸⁸ *Fringe Benefits Tax Assessment Act 1986* (Cth) s 47(8)(a).

⁴⁸⁹ *Ibid* s 47(2).

⁴⁹⁰ Australian Tax Office, ‘Fringe Benefits Tax — A Guide for Employers’ (Web Page, 1 July 2021) <<https://www.ato.gov.au/law/view/document?docid=SAV/FBTGEMP/00021&PiT=20170711000001>>.

⁴⁹¹ See section 3.3.

school-hours care centre or a school vacations care centre.⁴⁹² As such, this exemption appears to apply to a very narrow and highly specific type of childcare benefit.

The fringe benefits tax exemption for childcare provided on an employer's business premises has also been defined narrowly. While intended to 'encourage employers to participate in solutions to their employees' childcare needs',⁴⁹³ the obligations to qualify for the exemption have proven so onerous that take-up has generally stalled.⁴⁹⁴ The current tax ruling that governs this provision states that whether a childcare facility will be on the business premises of the employer is a question of fact and degree where the employer's control over the premises and 'the consistency of an employer's actions and activities on the premises' as compared to their normal business practices will be 'of particular importance'.⁴⁹⁵ In this way, employers are expected to demonstrate significant involvement in the childcare centre in question to be assured of an exemption.

Perhaps unsurprisingly, research has found that:

[f]ew employers are prepared to take the direct [and exclusive] responsibility for the management of childcare as part of their business operations. Some reasons given for this include regulatory requirements, safety and health issues, level of demand or simply that the employer does not have the commercial expertise.⁴⁹⁶

Cost is another prohibitive factor, with the costs of establishing centres in the city estimated to be over \$2 million.⁴⁹⁷ It is perhaps no wonder then that parliamentary reports since have found 'very few employers offering salary sacrificing for childcare'.⁴⁹⁸ A review in 2000 found only 65 employers providing sponsored childcare, predominantly comprising public agencies, universities, and major banks.⁴⁹⁹

⁴⁹² *Fringe Benefits Tax Assessment Act 1986* (Cth) ss 47(2), (8).

⁴⁹³ Standing Committee on Family and Human Services, *Balancing Work and Family* (n 485).

⁴⁹⁴ See, eg, *ibid*; Productivity Commission, *Childcare and Early Childhood Learning: Productivity Commission Inquiry Report Vol 2 No 73* (Commonwealth of Australia, 2014) 571; Lydia Thiagarajah and Amanda Darshini Selvarajah, 'COVID-19 and the FBT Child Care Exemption: Examining the Restrictive Tax Ruling Defining "Business Premises"' (2022) 37(4) *Australian Tax Forum* 521.

⁴⁹⁵ TR2000/4 [45]–[47]; Thiagarajah and Selvarajah (n 494) 530.

⁴⁹⁶ Helen Hodgson, 'Tax Concessions or Transfer Payments — An Examination of Child Care Reform Proposals' (2007) 22 *Australian Tax Forum* 61, 71.

⁴⁹⁷ Standing Committee on Family and Human Services, *Balancing Work and Family* (n 485) [7.25].

⁴⁹⁸ *Ibid* [7.8].

⁴⁹⁹ Australian Department of Family and Community Services, Department of Employment and Workplace Relations, Work and Family Life Consortium, *OECD Review of Family Friendly Policies: The Reconciliation of Work and Family Life: Australia's Background Report* (Commonwealth of Australia, 2002) 49; Standing Committee on Family and Human Services, (n 497) [7.12].

Ultimately, despite calls to expand the exemption,⁵⁰⁰ this limited definition of what will be considered childcare on an employer's business premises has persisted. The investment and administrative obligations for employers to offer childcare on business premises severely limit the incentivising power of this exemption to encourage employer-sponsored childcare offerings. Even if the exemption incentivised employers to act, employers would only be incentivised to offer childcare on business premises, limiting employees' choices in childcare. Therefore, the exemption is limited in its power to increase gender just childcare supports in the market.

4.4 Gender Equality Reporting

Perhaps the most direct mechanism to encourage the provision of work-care supports in Australia is the *WGE Act*. The *WGE Act* was the 'third major revision' of a series of legislation that required 'large employers to lodge annual reports outlining the organisation's progress against equality objectives'.⁵⁰¹ Among the central components of the revision was the legislation's shift in focus 'from "equal opportunity for women" to "gender equality"'.⁵⁰² This shift was 'rooted in the recognition that without shifts in men's choices and behaviour, particularly around family and domestic responsibilities, women's choices will remain limited'.⁵⁰³

The *WGE Act*'s objectives include promoting and improving gender equality in employment and the workplace, removing barriers to women's workforce participation, and eliminating gender-based discrimination, including in relation to caring responsibilities.⁵⁰⁴ Originally, only private employers with over 100 employees and registered higher education providers (relevant employers) were required to report annually to the WGEA on a list of gender equality

⁵⁰⁰ See, eg, Standing Committee on Family and Human Services (n 497) xi; Human Rights and Equal Opportunity Commission, *It's About Time: Women, Men, Work and Family: Final Paper 2007* (Human Rights and Equal Opportunity Commission 2007) xxii; Thiagarajah and Selvarajah (n 494).

⁵⁰¹ Carolyn Sutherland, 'Reframing the Regulation of Equal Employment Opportunity: *The Workplace Gender Equality Act 2012* (Cth)' (2013) 26 *Australian Journal of Labour Law* 102, 102.

⁵⁰² *Ibid* 102–3.

⁵⁰³ Office for Women in the Department of Families, Housing, Community Services, and Indigenous Affairs, 'Reform of the Equal Opportunity for Women in the Workplace Act 1999' (Regulation Impact Statement, 2011) 63.

⁵⁰⁴ *WGE Act* (n 124) s 2A.

indicators.⁵⁰⁵ Since December 2022, however, this reporting obligation has extended to federal public sector agencies with over 100 employees.⁵⁰⁶ The gender equality indicators are:

- the gender composition of the workforce;
- the gender composition of the employer’s governing body;
- equal remuneration between men and women;
- the availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees;
- support for employees with family or caring responsibilities;
- consultation practices with employees on issues concerning gender equality; and
- prevention processes for sex-based harassment and discrimination.⁵⁰⁷

The *WGE Act* does not impose any positive obligations in relation to these indicators except that employers must report on these indicators annually, and organisations employing over 500 employees must have a formal policy or strategy (a written document approved by human resources or management)⁵⁰⁸ for each of the following gender equality indicators: workforce gender composition, equal remuneration, availability and utility of work-care supports, and sex-based harassment and discrimination.⁵⁰⁹ The actual strength or legitimacy of the strategy is not prescribed save that it ‘must aim to achieve’ the corresponding enumerated outcome of the relevant indicator.⁵¹⁰

Failing to comply with these relatively minimal requirements results in similarly minimal consequences. Employers may be liable under the *WGE Act* for lodging a false or misleading public report or for failing to submit a report at all.⁵¹¹ Possible penalties include being named in a report to the Minister or on the WGEA’s website or being ineligible to tender for

⁵⁰⁵ Ibid s 13.

⁵⁰⁶ Ibid s 4(1)(c), (d).

⁵⁰⁷ Ibid s 3; *Workplace Gender Equality (Matters in Relation to Gender Equality Indicators) Instrument 2013 (No 1)* (Cth) sch 1.

⁵⁰⁸ Workplace Gender Equality Agency, ‘Gender Equality Strategy Guide’ (Guide, October 2019) 4 <https://www.wgea.gov.au/sites/default/files/documents/2019_WGEA_GE_Strategy_Guide.pdf>.

⁵⁰⁹ *WGE Act* (n 124) s 19; *Workplace Gender Equality (Minimum Standards) Instrument 2023* (Cth) s 5. Before 1 April 2023, employers with over 500 employees were only required to have a policy or strategy about one of the relevant gender equality indicators: *Workplace Gender Equality (Minimum Standards) Instrument 2014* (Cth) s 5.

⁵¹⁰ *Workplace Gender Equality (Minimum Standards) Instrument 2023* s 5.

⁵¹¹ *WGE Act* (n 124) s 19B.

government contracts, grants or other financial help.⁵¹² The WGEA is empowered to monitor the compliance of relevant organisations by randomly requesting further information or responding to employee comments.⁵¹³ However, these penalties are discretionary and unlikely to affect those organisations that do not engage with the public sector.

It was expected that publishing a workplace's gender equality indicator data would increase employer accountability.⁵¹⁴ For example, the WGEA website includes a comparator tool that allows individuals to compare company practices to industry and general standards.⁵¹⁵ A list of non-compliant organisations is also available on the WGEA website featuring approximately 100 companies.⁵¹⁶ These measures go some way towards encouraging companies to provide adequate work-care supports to bolster their reputation. However, in general, the *WGE Act* has had 'little appetite for big stick approaches', choosing instead 'a de-centred regulatory framework' with no actual requirements to implement suitable work-care supports.⁵¹⁷

From April 2023, relevant employers are required to provide the executive summary and industry benchmark report that they receive from the WGEA to all members of their governing body, presumably improving the visibility of issues highlighted in the report and potentially prompting governing bodies to address them.⁵¹⁸ Again, however, there is no obligation for governing bodies to act on these findings.

Instead, the *WGE Act* has utilised a more incentives-based approach to influence workplace behaviour by way of the 'Employer of Choice for Gender Equality' citation ('the citation'). Having commenced in 2014, the citation 'is a leading-practice recognition program that aims to encourage, recognise and promote active commitment to achieving gender equality in Australian workplaces'.⁵¹⁹ To receive the citation, employers are required to comply with a series of set benchmarks across *all* the gender equality indicators, including those relating to

⁵¹² Ibid s 19D; Department of the Prime Minister and Cabinet, 'Workplace Gender Equality Procurement Principles and User Guide', *Workplace Gender Equality Agency* (Guide) <<https://www.wgea.gov.au/sites/default/files/documents/PMC-WGE-Procurement-Principles.pdf#page19>>.

⁵¹³ *WGE Act* (n 124) ss 19A, 19D.

⁵¹⁴ Sutherland (n 501) 106; Belinda Smith and Monica Hayes, 'Using Data to Drive Gender Equality in Employment: More Power to the People?' (2015) 28 *Australian Journal of Labour Law* 191, 200.

⁵¹⁵ Workplace Gender Equality Agency, 'WGEA Data Explorer' <<https://data.wgea.gov.au/>>.

⁵¹⁶ Workplace Gender Equality Agency, 'Non-Compliant Organisations List' (Web Page, 22 January 2021) <<https://www.wgea.gov.au/non-compliant-list>>.

⁵¹⁷ Smith and Hayes (n 514) 203.

⁵¹⁸ *Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Act 2023* (Cth) div 3.

⁵¹⁹ Workplace Gender Equality Agency, 'Employer of Choice Citation' (Web Page) <<https://www.wgea.gov.au/what-we-do/employer-of-choice-for-gender-equality>>.

providing work-care supports. The benchmark often requires organisations to offer these supports in a manner that addresses components of the gender justice criteria that legislated entitlements fail to address.

For example, as discussed in Chapter 3, legislated parental leave entitlements impose eligibility work periods, offer low levels of income replacement at the minimum wage, and generally fail to encourage take-up among men.⁵²⁰ The 2023–25 citation requirements for parental leave address some of these deficiencies. For example, workplaces must offer employer-funded parental leave for at least eight weeks, pay superannuation on that paid leave, have no eligibility period to access the leave, and encourage men to access parental leave.⁵²¹ This would make the parental leave entitlements of citation holders more closely aligned to the gender justice criteria of universal availability, substantiveness, and gender-neutrality.

However, the number of citation holders remains low. In 2020, there were only 119 with 14 first-time recipients.⁵²² This represents only 2% of the approximately 4900 organisations that are subject to the *WGE Act*. This is a relatively small number, especially since the *WGE Act* governs large workplaces with over 100 employees that should theoretically be best placed to implement robust work-care policies. It is perhaps to be expected, however, when recipients receive no tangible benefits for achieving the citation beyond recognition of being an ‘Employer of Choice’. The *WGE Act* seeks to encourage workplaces to offer specific work-care supports. However, the minimal incentives for doing so, the lack of a positive duty to do so, and the application of the scheme to only larger organisations limit the likely impact of the citation in encouraging workplaces to offer work-care supports that meet the gender justice criteria.

In 2020, the Victorian government also introduced reporting requirements on gender equality, specifically for *public* organisations and universities with 50 or more employees via the *Gender Equality Act 2020* (Vic).⁵²³ Under this scheme, reporting workplaces are asked to promote

⁵²⁰ See sections 3.2, 3.4.4.

⁵²¹ Workplace Gender Equality Agency, ‘WGEA Employer of Choice for Gender Equality 2023–25’, (Guide) 18–20 <<https://www.wgea.gov.au/sites/default/files/documents/2023-04-20%20-%202023-25%20Guide%20to%20Citation%20v1.0.pdf>>.

⁵²² Workplace Gender Equality Agency, ‘2020 Leaders in Workplace Gender Equality Announced’ (Media Release, 25 February 2020) <<https://www.wgea.gov.au/newsroom/media-releases/2020-leaders-in-workplace-gender-equality-announced>>.

⁵²³ *Gender Equality Act 2020* (Vic) s 5 defines a ‘defined entity’ as a public service body; or a public entity; or a special body; or a Council; or Court Services Victoria; or a university; or the office of Public Prosecutions; or a prescribed entity under the relevant regulations that has 50 or more employees.

gender equality, conduct gender impact assessments, undertake workplace gender audits, create a gender equality action plan, and make reasonable and material progress against the Act's seven prescribed gender equality indicators.⁵²⁴ These indicators are similar to those of the *WGE Act*: gender pay equity, gender composition of the workforce at all levels and government bodies, workplace sexual harassment, recruitment and promotion, gender work segregation, and leave and flexibility.⁵²⁵ As the legislation has only recently been introduced, the Victorian Gender Equality Commissioner has committed to supporting entities in meeting their obligations and will, in the first instance, aim to resolve any identified non-compliance informally.⁵²⁶ Other enforcement options include issuing a compliance notice,⁵²⁷ recommending that the Minister take action against an organisation,⁵²⁸ naming the organisation and their failure to comply on the Commission's website,⁵²⁹ or, as a last resort, applying to the Victorian Civil and Administrative Tribunal for a compliance order.⁵³⁰

Victoria's scheme features promising improvements to that of the *WGE Act* in terms of influencing workplaces to offer gender just work-care supports. First, the Victorian scheme has a greater focus on promoting positive action by requiring organisations to make progress on all the prescribed gender equality indicators. To achieve such progress against these indicators, such as improving leave and flexibility entitlements, organisations would presumably have to introduce a higher level of work-care supports. However, there are still no explicit, positive obligations to that end. Also, as with the *WGE Act*, there are minimal consequences for failing to comply and no clear definitions of what insufficient progress would look like. In fact, it is explicitly stated that the provisions do not give rise to any legal rights or civil causes of action.⁵³¹ This has led to concern that despite the seemingly stronger obligations under this scheme, the requirements will nonetheless be treated as a box-ticking exercise, leading to minimal meaningful change.⁵³² The focus on public institutions in Victoria also necessarily limits the impact this legislation will have on encouraging workplaces governed by Australia's

⁵²⁴ Ibid ss 7, 9, 10, 11, 16.

⁵²⁵ Ibid s 5.

⁵²⁶ Ibid s 22(3).

⁵²⁷ Ibid s 22(1).

⁵²⁸ Ibid s 26(b).

⁵²⁹ Ibid s 26(c).

⁵³⁰ Ibid s 26(d).

⁵³¹ Ibid s 8.

⁵³² Lauren Ryan et al, 'Laying the Foundation for Gender Equality in the Public Sector in Victoria: Final Project Report' (Final Report, University of Melbourne, 2022) 25, 29.

broader employment framework to offer gender just work-care supports.⁵³³ The Victorian reporting requirements, therefore, are unlikely to increase offerings of work-care supports that are universally available, enforceable, substantive, and gender-neutral.

4.5 Anti-Discrimination and General Protections Frameworks

Australia's regulatory framework also features an anti-discrimination framework and a general protections framework to protect those with caring responsibilities from being discriminated against at work. These laws have the potential to influence workplaces to provide gender just work-care supports to ensure their workplaces do not discriminate against workers with caregiving responsibilities. After all, '[i]f family-friendly practices can improve gender equality then it is not altogether surprising that their absence arguably can somehow amount to ... discrimination'.⁵³⁴ However, a few inherent features of these frameworks, discussed below, may limit their efficacy in encouraging workplaces to offer gender just work-care supports.

4.5.1 Anti-Discrimination

Australia's first anti-discrimination legislation was introduced in the 1970s, marking a radical shift in the recognition of discrimination and harassment, raising awareness surrounding these issues, and reducing blatant offences.⁵³⁵ Anti-discrimination legislation operates at both the federal and state/territory level with key differences within each jurisdiction.⁵³⁶ However, across all jurisdictions, employees are afforded a right of action against discriminatory behaviour in certain circumstances such as in employment.⁵³⁷ Discrimination claims may be pursued based on either direct or indirect discrimination.

A direct discrimination claim requires demonstrating that an employee was treated less favourably because of a relevant protected characteristic, thereby protecting equal treatment

⁵³³ Ibid 13–4.

⁵³⁴ Belinda Smith and Joellen Dilsy, 'Family-Friendly Work Practices and the Law' (2004) 26 *Sydney Law Review* 395, 402.

⁵³⁵ Belinda Smith, 'Australian Anti-Discrimination Laws — Framework, Developments and Issues' in Hiroya Nakakubo and Takashi Araki (eds), *New Developments in Employment Discrimination Law* (Kluwer Law International, 2008) 115, 115.

⁵³⁶ Adams (n 48) 20. See, eg, *Equal Opportunity Act 1984* (SA); *Anti-Discrimination Act 1977* (NSW); *Equal Opportunity Act 1984* (WA); *Anti-Discrimination Act 1991* (Qld); *Discrimination Act 1991* (ACT); *Anti-Discrimination Act 1992* (NT); *Anti-Discrimination Act 1998* (Tas) s 16; *Equal Opportunity Act 2010* (Vic); *Sex Discrimination Act 1984* (Cth).

⁵³⁷ Adams (n 48) 19.

via comparison.⁵³⁸ However, '[a] facially neutral policy may nevertheless be discriminatory if it has the *effect* of disadvantaging a protected group'.⁵³⁹ This is classified as indirect discrimination. An employment condition will amount to indirect discrimination where 'a person having a protected attribute is unable to comply [or] where a higher (or "substantially higher") proportion of persons not having such an attribute *can* comply' and the requirement to comply is 'unreasonable'.⁵⁴⁰

In all jurisdictions, family or carer responsibilities are included as a protected characteristic in some form.⁵⁴¹ However, family responsibilities, as defined at the federal level, are limited to responsibilities for 'dependent children' or 'immediate' family members, which has the potential to exclude certain caregiving relationships.⁵⁴² At the federal level, the attribute of family responsibilities is only protected with respect to instances of direct discrimination, not indirect discrimination.⁵⁴³ To circumvent this omission, women have had some success relying on the protected attribute of sex in instances of indirect discrimination based on carer responsibilities by arguing that caring responsibilities fall disproportionately on women.⁵⁴⁴ For example, in *Howe v Qantas Airways Ltd* it was found that:

the present state of Australian society shows that women are the dominant caregivers to young children. While that position remains (and it may well change over time) ... the [*Sex Discrimination Act 1984* (Cth)] operates to protect women against indirect discrimination in performance of that caregiving role.⁵⁴⁵

However, this has effectively created a system where for women to continue to have some recourse for indirect discrimination at the federal level, it is necessary to continue perpetuating the narrative that caring is an inherently feminine pursuit. This also leaves men incapable of

⁵³⁸ Ibid 20.

⁵³⁹ Ibid.

⁵⁴⁰ Ibid 21.

⁵⁴¹ See, eg, *Equal Opportunity Act 1984* (SA) s 85T(5)–(6); *Anti-Discrimination Act 1977* (NSW) ss 49S–49T; *Equal Opportunity Act 1984* (WA) s 35A; *Anti-Discrimination Act 1991* (Qld) s 7; *Discrimination Act 1991* (ACT) s 7; *Anti-Discrimination Act 1992* (NT) ss 19–20; *Anti-Discrimination Act 1998* (Tas) s 16; *Equal Opportunity Act 2010* (Vic) s 6; *Sex Discrimination Act 1984* (Cth) s 7A.

⁵⁴² See, eg, *Sex Discrimination Act 1984* (Cth) ss 4, 4A; Human Rights and Equal Opportunity Commission (n 500) 54.

⁵⁴³ *Sex Discrimination Act 1984* (Cth) s 7A. Note: the Northern Territory also does not explicitly protect against indirect discrimination.

⁵⁴⁴ See, eg, *Hickie v Hunt & Hunt* (1998) EOC 92–910; *Escobar v Rainbow Printing Pty Ltd* (No 2) (2002) EOC 93–229; *Community and Public Sector Union v CSL Ltd* (2002) 116 IR 84; *Mayer v Australian Nuclear Science and Technology Organisation* (2003) EOC 93–285; *Howe v Qantas Airways Ltd* (2004) 188 FLR 1; Adams (n 48) 18, 19–20; Squire and Tilly (n 542) 55.

⁵⁴⁵ *Howe v Qantas Airways Ltd* (2004) 188 FLR 1 [147].

bringing indirect discrimination claims, which is a glaring omission. Indirect discrimination claims allow workers to challenge systemic forms of discrimination in their workplaces. This is often where some of the greatest barriers to accommodating a worker-carer lifestyle are found, such as unreasonable working hours or conditions.⁵⁴⁶

Where indirect discrimination is prohibited in Australia, it is generally confined to the imposition of a ‘requirement, condition or practice (or term) that is *not reasonable*’.⁵⁴⁷ This means that otherwise discriminatory conduct may be excused under Australia’s anti-discrimination framework where such practices are considered reasonable under the circumstances. Such an exception may limit the extent of this framework’s capacity to overturn industry or workplace norms and accommodate caregiving through better work-care supports if the absence of supports is accepted as ‘reasonable’.

The threat of potential sanctions such as damages, compliance notices, and enforceable undertakings for discriminating against an employee may encourage employers to provide appropriate work-care supports more readily. However, there is a significant burden on wronged individuals to enforce discrimination claims.⁵⁴⁸ ‘There is generally no public prosecution of breaches’, and no regulatory body has the necessary powers to enforce compliance with anti-discrimination provisions.⁵⁴⁹ While Australia has equality commissions, they serve more as ‘gatekeepers’ investigating complaints and attempting to resolve them through conciliation before a complainant can pursue litigation, remaining neutral and offering complainants no support.⁵⁵⁰ The system relies on individuals’ willingness and ability to pursue enforcement.

Delegating prosecution to wronged individuals requires workers to be able to identify problematic behaviour, the perpetrator, and the appropriate legal avenues and remedies to pursue.⁵⁵¹ In a society where work and care are widely understood to be separate and exclusive

⁵⁴⁶ Smith (n 86) 124; Pocock et al (n 3) 603.

⁵⁴⁷ Queensland Human Rights Commission, ‘Review of Queensland’s Anti-Discrimination Act’ (Discussion Paper, November 2021) 34 (emphasis added).

⁵⁴⁸ Smith and Dilsy (n 534) 402.

⁵⁴⁹ Ibid; Charlesworth (n 86) 90; Beth Gaze, ‘Context and Interpretation in Anti-Discrimination Law’ (2002) 26 *Melbourne University Law Review* 325, 326–7; Dominique Allen, ‘Thou Shalt Not Discriminate: Moving from a Negative Prohibition to a Positive Obligation on Business to Tackle Discrimination’ (2020) 26 *Australian Journal of Human Rights* 110, 113.

⁵⁵⁰ Dominique Allen, ‘Strategic Enforcement of Anti-Discrimination Law: A New Role for Australia’s Equality Commissions’ (2010) 36 *Monash University Law Review* 103, 104.

⁵⁵¹ Smith (n 86) 132–3, citing Charlesworth (n 86) 93.

spheres with caregiving generally considered a private affair, problematic patterns can easily go unrecognised and left unchallenged.⁵⁵² Individuals must also be willing and able to pursue enforcement ‘at their own expense’, contending with limited resources, potentially challenging power dynamics and the risk of compromising their employment relationship.⁵⁵³ This is an inherent flaw in the enforceability of the anti-discrimination framework as ‘any system of regulation that relies on traditionally disempowered individuals being able to navigate the legal system to enforce rights is inherently limited’.⁵⁵⁴

The very nature of the process as reliant on individual complaints also fails to support the rights of worker-carers in the public sphere.⁵⁵⁵ In focussing on individual complaints, issues of discrimination are presented as failures to accommodate the special needs of specific individuals, as opposed to a systemic issue deserving of public scrutiny.⁵⁵⁶ A supportive system would provide suitable public enforcement measures in recognition of the fact that discrimination that threatens the worker-carer is an unacceptable affront to us all.⁵⁵⁷ The confidential conciliation process further contributes to this perception that discrimination is a private affair undeserving of robust, public support by requiring disputes to take place behind closed doors.⁵⁵⁸

Recent changes have attempted to impose greater powers on government bodies to take a more positive role in enforcement. For example, as of 13 December 2023, the Australian Human Rights Commission has the power to ‘inquire into any matter that may relate to systemic [or suspected systemic] unlawful discrimination’ and ‘do anything incidental or conducive’ to performing these functions.⁵⁵⁹ Representative bodies such as trade unions, advocacy groups and human rights organisations have also been given the ability to make a representative application in the Federal Court where they have lodged a complaint with the Commission, conciliation has failed or was terminated, and certain procedural requirements have been satisfied such as having the written consent of all persons on whose behalf the claim is

⁵⁵² Charlesworth (n 86) 93.

⁵⁵³ Ibid 94; Smith and Dilsy (n 534) 402.

⁵⁵⁴ Smith and Dilsy (n 534) 402.

⁵⁵⁵ Ibid 394–5, citing Thornton (n 109) 37–8.

⁵⁵⁶ Charlesworth (n 86) 112.

⁵⁵⁷ Dominique Allen, ‘In Defence of Settlement: Resolving Discrimination Complaints by Agreement’ (2014) 14 *International Journal of Discrimination and the Law* 200, 214–5.

⁵⁵⁸ Allen and Blackham (n 109) 413; Thornton (n 109) 37–8.

⁵⁵⁹ *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022* (Cth) sch 3, amending Australian Human Rights Commission Act 1986 (Cth) by inserting a new div 4B.

brought.⁵⁶⁰ This may help to ameliorate some of the access to justice issues that individual complainants may face. However, the extent to which these powers will be used and the consequent impact on improving the enforceability of Australia's anti-discrimination measures remain to be seen.

Further, confidential and compulsory conciliation remains 'the first and primary means of resolving discrimination disputes' across all jurisdictions, with most claims settled at this stage.⁵⁶¹ There are important benefits to this process, such as cost savings and the more informal and therefore less intimidating nature of the process.⁵⁶² However, the confidentiality of the process limits the establishment of precedent or guidance on the application of the law or likely outcomes.⁵⁶³ This can complicate decisions about whether to pursue a discrimination claim. The confidentiality of a pre-trial dispute settlement also limits the ability to assess the effectiveness of the remedies that are typically issued and how well they support worker-carers.⁵⁶⁴ The lack of a public trial also arguably limits the deterrent effect of the scheme and the incentive for offending workplaces to commit to systemic change.⁵⁶⁵

Besides these challenges, several aspects of the scheme enshrine the status quo and its neglect of the worker-carer, thereby limiting the scheme's ability to encourage the introduction of robust work-care supports. First, complying with federal legislation is a full defence to a discrimination claim, 'which quarantines from challenge the distributive rules contained in legislation'.⁵⁶⁶ This offers no recourse for carers to challenge provisions of modern awards or EAs that may disadvantage worker-carers but that have been explicitly provided for in these instruments — for example, a clause in a modern award that allows shift patterns and hours of work that are not family-friendly. This limits the potential for the framework to encourage more

⁵⁶⁰ Ibid sch 4, amending the *Australian Human Rights Commission Act 1986* (Cth).

⁵⁶¹ Ibid; Allen and Blackham (n 109) 389–90.

⁵⁶² Smith and Dilsy (n 534) 402; Allen and Blackham (n 109) 412.

⁵⁶³ Allen and Blackham (n 109) 413.

⁵⁶⁴ Ibid 412–3.

⁵⁶⁵ Smith and Dilsy (n 534) 402. Cf Allen (n 557) 210 found that settlement processes were more conducive to establishing substantive outcomes that tribunals cannot order or enforce. See discussion on available remedies below.

⁵⁶⁶ Belinda Smith, 'What Kind of Equality Can We Expect from the Fair Work Act?' (2011) 35 *Melbourne University Law Review* 545, 553, referring to *Sex Discrimination Act 1984* (Cth) s 40, which exempts 'anything done by a person in direct compliance with' the law including legislation as well as modern awards and enterprise agreements. See sections 3.5 and 4.2, however, for how these instruments may contain provisions that disadvantage carers and women. State anti-discrimination laws are also exempt from coverage practices in compliance with legislation, including federal legislation. See, eg, *Equal Opportunity Act 2010* (Vic) s 75; *Anti-Discrimination Act 1977* (NSW) s 54.

generous work-care supports beyond these legislated entitlements. Second, by not allowing indirect discrimination claims based on caregiving responsibilities at the federal level, the framework prioritises formal equality and fails to allow carers to challenge discriminatory work conditions indirectly.⁵⁶⁷ Third, while the prospect of discrimination litigation could encourage workplaces to take proactive steps to avoid such claims,⁵⁶⁸ the system is predominantly reactive. Discriminatory behaviour is only addressed after the harm has taken place, with most cases involving employment relationships that have already been severed.⁵⁶⁹

Recent legislative changes have attempted to import positive duties in the context of Australia's anti-discrimination framework. For example, effective 13 December 2022, the *Sex Discrimination Act 1984* (Cth) now includes a positive duty on workplaces to 'take reasonable and proportionate measures to eliminate, as far as possible' sex discrimination in the workplace.⁵⁷⁰ To facilitate compliance with this new duty, from December 2023, the Australian Human Rights Commission will receive new powers, including the powers to prepare and publish guidelines, promote understanding and acceptance of the duty, and undertake research and educational programs about the duty.⁵⁷¹ The Human Rights Commission will also be able to inquire into a person's compliance with the duty where it reasonably suspects non-compliance.⁵⁷²

If the duty is found to have been contravened, the Commission will be able to issue written compliance notices and apply to the Federal Court for a compliance order if the person does not comply.⁵⁷³ The Human Rights Commission will also be able to enter into enforceable undertakings with a duty holder.⁵⁷⁴ At the time of writing, it remains to be seen how this duty will be implemented and enforced and whether it will contribute to improved work-care supports in the workplace. The positive duty, after all, has been confined to sex discrimination. As discussed above, sex discrimination has been taken to include discrimination based on family and caring responsibilities since these are considered an inherent characteristic of

⁵⁶⁷ Allen (n 549) 113.

⁵⁶⁸ Adams (n 48) 18; Smith (n 535) 122.

⁵⁶⁹ Pocock et al (n 3) 603.

⁵⁷⁰ *Sex Discrimination Act 1984* (Cth) ss 14, 47C(2)(a)(i).

⁵⁷¹ *Australian Human Rights Commission Act 1986* (Cth) s 35A.

⁵⁷² Ibid s 35B.

⁵⁷³ Ibid ss 35F, 35J.

⁵⁷⁴ Ibid s 35K.

womanhood, but this means the positive duty is unlikely to help ensure appropriate work-care supports for men too.⁵⁷⁵

Some states/territories have similarly imposed a positive obligation to accommodate employees' care responsibilities, as opposed to a mere prohibition against discrimination.⁵⁷⁶ Victoria, for example, features the most expansive provision, which prohibits employers from unreasonably refusing to accommodate an employee's carer responsibilities,⁵⁷⁷ with a promisingly inclusive definition of carers.⁵⁷⁸ Notably, the wording of this provision is still framed in the negative and is contingent on employers not refusing a request.⁵⁷⁹ It is still incumbent on the employee to request accommodations as opposed to a positive obligation on employers to provide work-care supports.⁵⁸⁰ The provision is further weakened by the qualification that employers may refuse requests where it is 'reasonable' to do so, which preserves the status quo and favours employer concerns over the needs of worker-carers.⁵⁸¹

In *Richold v Victoria*,⁵⁸² for example, the first (and only) case to apply this provision, it was found that the employer could roster a casual employee as they saw fit given her casual status, in spite of the tribunal's finding that the employee would be disadvantaged by the new arrangement.⁵⁸³ That case exemplifies how industry norms that fail to support the worker-carer

⁵⁷⁵ *Sex Discrimination Act 1984* (Cth) ss 5, 47C(2).

⁵⁷⁶ See, eg, *Equal Opportunity Act 2010* (Vic) ss 17, 19, 22, 32, which prohibits unreasonable refusals to accommodate the responsibilities that a person has as a parent or carer; *Anti-Discrimination Act 1992* (NT) s 24, which prohibits failures or refusals to accommodate special needs because a person has a specified attribute such as parenthood, breastfeeding, and pregnancy; and *Anti-Discrimination Act 1977* (NSW) ss 49V(4), 49U, which provides an exception against discrimination where it would 'impose an unjustifiable hardship on the employer' to accommodate an employee's carer responsibilities, presumably importing an obligation to make reasonable accommodations where possible. See also Anna Chapman, 'Australian Anti-Discrimination Law, Work, Care and Family' (Working Paper No 51, Centre for Employment and Labour Relations Law, University of Melbourne, January 2012) 9; Pocock (n 3) 603.

⁵⁷⁷ Anna Chapman, 'Care Responsibilities and Discrimination in Victoria: The *Equal Opportunity Amendment (Family Responsibilities) Act 2008* (Vic)' (2008) 21 *Australian Journal of Labour Law* 200, 207.

⁵⁷⁸ *Equal Opportunity Act 2010* (Vic) s 4 defines carer as 'a person on whom another person is wholly or substantially dependent for ongoing care and attention, other than a person who provides that care and attention wholly or substantially on a commercial basis'. See also Anna Chapman, 'Reasonable Accommodation, Adverse Action and the Case of Deborah Schou' (2012) 33 *Adelaide Law Review* 39, 52.

⁵⁷⁹ *Equal Opportunity Act 2010* (Vic) ss 17, 19, 22, 32 — prohibits unreasonable refusals to accommodate the responsibilities that a person has as a parent or carer. See also Chapman (n 578) 54.

⁵⁸⁰ See, eg, *Richold v Victoria* (2010) VCAT 433 [38], [40], which found that the need to request accommodation was implicit for the operation of the provision.

⁵⁸¹ Chapman (n 578) 58–9.

⁵⁸² (2010) VCAT 433.

⁵⁸³ *Ibid* [42]; Pocock (n 3) 603; Charlesworth (n 115) 99.

will weigh against caring needs so long as adjudicators are expected to decide these issues with reference to the ‘reasonable’.⁵⁸⁴

Finally, the remedies available under the anti-discrimination framework limit the law’s ability to encourage employers to offer work-care supports. Remedies for successful claims are typically limited to compensatory measures, precluding more systemic remedies such as corrective or preventative measures or more serious consequences such as sanctions or punitive damages⁵⁸⁵ — although, as mentioned above, the outcomes of most discrimination claims are admittedly difficult to assess given the confidential nature of settlements that are made at the conciliation stage.⁵⁸⁶ In summary, the influence of anti-discrimination provisions in providing a normative effect on the provision of work-care supports is ‘limited by the proscriptive and general nature of the prohibition, the individual and civil nature of enforcement, the narrow range of sanctions and the limited role the State has played in building incentives and capacity for employers to address inequality’.⁵⁸⁷ Therefore, the effect these frameworks have on an employer’s willingness to offer gender just work-care supports is probably minimal.

4.5.2 General Protections Framework

The general protections framework operates in a similar way to anti-discrimination legislation. Under the *FW Act*, employees are protected from adverse action, which includes discrimination based on protected grounds, such as family or carer responsibilities, pregnancy, sex, and breastfeeding.⁵⁸⁸ This is the type of adverse action that is the focus of this section’s analysis. The adverse action provisions include protection for all national system employees,⁵⁸⁹ and adverse action is defined to cover an expansive range of detrimental actions in employment.⁵⁹⁰ There are three key differences between the general protections and anti-discrimination framework that arguably make the general protections scheme more enforceable and perhaps

⁵⁸⁴ Smith (566) 565.

⁵⁸⁵ Allen (n 565) 205; Belinda Smith, ‘A Regulatory Analysis of the *Sex Discrimination Act 1984* (Cth): Can It Effect Equality or Only Redress Harm?’ in Christopher Arup et al (eds), *Labour Law and Labour Market Regulation — Essays on the Construction, Constitution and Regulation of Labour Markets and Work Relationships* (Federation Press, 2006) 105, 113; Smith (n 566) 554; Smith (n 535) 125; Gaze (n 549) 329, 332–3, 338–9.

⁵⁸⁶ Smith and Dilsy (n 534) 402; Allen and Blackham (n 109) 389–90.

⁵⁸⁷ Smith (n 78) 694.

⁵⁸⁸ *FW Act* (n 20) s 351(1).

⁵⁸⁹ See section 3.4.1.

⁵⁹⁰ *FW Act* (n 20) ss 338, 342.

more likely to encourage the introduction of suitable accommodations and work-care supports within workplaces.

First, unlike most anti-discrimination provisions, employees need only argue that they are eligible to make their claim and have been subject to a particular detriment before the onus shifts to the employer to explain why the action in question does not amount to adverse action.⁵⁹¹ Second, unlike the anti-discrimination framework, there is a much stronger public enforcement component as the FWO can enforce matters on behalf of employees and private claims can be brought by employees or industrial associations.⁵⁹² This public enforcement component has the potential to mitigate the many challenges of relying on private action, outlined above.⁵⁹³ However, litigation by the FWO ‘is reserved for serious non-compliance cases and misconduct’ where the FWO believes the litigation will have a significant impact and is in the public interest, limiting the frequency of these actions.⁵⁹⁴ Third, possible remedies are more expansive than under anti-discrimination laws and include the possibility of financial penalties and injunctions in addition to orders for compensation.⁵⁹⁵

However, the narrow and unreliable interpretation of discrimination under the framework compromises the enforceability of the scheme. Discrimination is referenced thrice in the general protections framework — as a heading to the adverse action provision and as two examples of adverse action to ‘discriminate between’ and ‘discriminate against’.⁵⁹⁶ However, discrimination is not defined in the *FW Act*. This initially led to the hope that the provision could cover more expansive instances of discrimination, thereby addressing, for example, the lack of protections for indirect discrimination based on carer responsibilities at the federal

⁵⁹¹ Dominique Allen, ‘Adverse Effects: Can the Fair Work Act Address Workplace Discrimination for Employees with a Disability?’ (2018) 41 *University of New South Wales Law Journal* 846, 864; Anna Chapman, Beth Gaze and Kathleen Love, ‘Adverse Action, Discrimination and the Reverse Onus of Proof’ (Conference Paper, Centre for Employment and Labour Relations Law, 2012) 12; Pocock et al (n 3) 603. Note that there are exceptions to this as certain anti-discrimination provisions also involve a reverse onus of proof. See, eg, *Sex Discrimination Act 1984* (Cth) s 7C; *Age Discrimination Act 2004* (Cth) s 15(2); *Equal Opportunity Act 2010* (Vic) s 9(2).

⁵⁹² *FW Act* (n 20) s 351.

⁵⁹³ See section 4.5.1.

⁵⁹⁴ Fair Work Ombudsman, *Annual Report 2021–22* (Report) 33 <<https://www.fairwork.gov.au/sites/default/files/2022-10/fworocce-annual-report-2021-22.pdf>>. Only three cases where FWO pursued a case involving an adverse action claim on the basis caregiving responsibilities: *Fair Work Ombudsman v Austrend International Pty Ltd (No 2)* [2020] FCA 1193; *Fair Work Ombudsman v A Dalley Holdings Pty Ltd* [2013] FCA 509; *Fair Work Ombudsman v Tiger Telco Pty Ltd (in liq)* [2012] FCA 479.

⁵⁹⁵ *FW Act* (n 20) s 545. See also Chapman (n 578) 44.

⁵⁹⁶ Allen (n 591) 855.

level.⁵⁹⁷ However, the courts have since adopted limited interpretations of discrimination. In most cases, discrimination has simply meant different but not unequal treatment. This might seem like a broader category and therefore easier to enforce but ‘unlike anti-discrimination laws, the *FW Act* does not explicitly permit an employee to show how a hypothetical employee would have been treated’, which may require claimants to obtain the often-difficult evidence of actual differential treatment from other employees to enforce their claims.⁵⁹⁸ The Federal Court has found indirect discrimination to be included as a possible form of adverse action under the framework.⁵⁹⁹ However, this is not stated explicitly in the statute, nor was it referenced in the statute’s parliamentary proceedings.⁶⁰⁰ There is, therefore, no certainty that the framework may be used to enforce protections against indirect discrimination if the case goes before the same or a higher court.

Finally, under the framework, adverse action is permitted where it is ‘taken because of the inherent requirements of the particular position concerned’.⁶⁰¹ This exception mirrors many of the challenges of the reasonableness exceptions for indirect discrimination under the anti-discrimination framework discussed above,⁶⁰² as this allowance fails to challenge the inherent requirements of positions that currently fail to support worker-carers.⁶⁰³

The larger range of remedies is nevertheless a welcome improvement to the anti-discrimination framework, potentially enabling work-care supports to be ordered as a remedy to a successful claim.⁶⁰⁴ However, such orders are not necessarily guaranteed, and the system is still, as with the anti-discrimination provisions, reactionary. The fact that case law has interpreted

⁵⁹⁷ See, eg, Belinda Smith, ‘Fair and Equal in the World of Work: Two Significant Federal Developments in Australian Discrimination Law’ (2010) 23 *Australian Journal of Labour Law* 199, 212–15.

⁵⁹⁸ Allen (n 591) 846, 867. There has been at least one case though that relied on a hypothetical employee: *Sayed v Construction, Forestry, Mining and Energy Union* (2015) 149 ALD 88 [162].

⁵⁹⁹ See, eg, *Klein v Metropolitan Fire and Emergency Services Board* (2012) 208 FCR 178, 206 [102] (Gordon J); *Wilkie v National Storage Operations Pty Ltd* [2013] FCCA 1056, [49] (Whelan J); *Wolfe v Australia and New Zealand Banking Group Ltd* [2013] FMCA 65, [83] (Whelan FM); *Sayed v Construction, Forestry, Mining and Energy Union* (2015) 327 ALR 460, 490–1 [155] (Mortimer J); *Keys v Sydney Night Patrol and Inquiry Co Pty Ltd* [2015] FCCA 776, [22].

⁶⁰⁰ Admittedly though, the same rationale could be used in the reverse to say that there is nothing to indicate that Parliament intended for the adverse action provisions to *exclude* indirect discrimination: Allen (n 591) 867–8.

⁶⁰¹ Simon Rice and Cameron Roles, ‘“It’s a Discrimination Law Julia, But Not as We Know It”: Part 3-1 of the Fair Work Act’ (2010) 21 *Economic and Labour Relations Review* 13, 29.

⁶⁰² See section 4.5.1.

⁶⁰³ Andrades (n 482) 10; Rice and Roles (n 601) 29.

⁶⁰⁴ See, eg, *Fair Work Ombudsman v Jewel Bay 2015 Pty Ltd & Anor* [2019] FCCA 3561 where in an adverse action case against a pregnant employee, mandatory training at the company’s own expense for their directors, supervisory and management staff on the obligations of employers under the general protections framework was ordered in addition to financial penalties.

discrimination to mean mere differential treatment may, in fact, discourage positive actions or special measures to support worker-carers for fear that such accommodations may themselves be considered ‘discrimination’.⁶⁰⁵ That being said, recent reforms to the *FW Act* have explicitly stated that modern awards and EAs may include ‘special measures to achieve equality’ without those measures being considered an unlawful term on account of being discriminatory.⁶⁰⁶ This explicit declaration that special measures are not discriminatory within the same legislation, albeit with reference to a different function, may lessen the likelihood that special measures would be viewed as discriminatory under the adverse action framework as well.

However, the negative duty imposed on employers by the adverse action regime not to discriminate against employees with caregiving responsibilities necessarily limits the framework’s ability to encourage workplaces to offer work-care supports proactively. Despite greater scope for public enforcement and broader potential remedies, the capacity for this mechanism to influence organisations to introduce gender just work-care supports remains questionable.

4.6 Conclusion

Work-care supports that are universally available, enforceable, supportive, and gender-neutral are central to normalising the worker-carer and achieving a gender just employment landscape. However, as discussed in Chapter 3, Australia’s regulatory framework consists of minimal government guarantees for work-care supports. Instead, these offerings are positioned as safety-net entitlements with further supports to be provided by employers. Measures to influence employer behaviour positively in this regard are crucial. However, the mechanisms that could have this effect reflect a light-handed approach to ensuring workplaces provide work-care supports above and beyond their legislated minimum requirements.

First, the enterprise bargaining process, despite its safeguards, ultimately enshrines deference towards productivity and market-based interests. This necessarily fails to champion work-care supports and perpetuates the male breadwinner paradigm. Second, the fringe benefits tax exemptions for childcare are limited to narrow circumstances, diminishing the practical use of this measure as a meaningful incentive for employers to provide gender just childcare supports. Third, gender equality reporting requirements fail to impose any positive duty to implement

⁶⁰⁵ Allen (n 591) 868–9.

⁶⁰⁶ *FW Act* (n 20) ss 172A, 195(2)(c), (4), (6) inserted by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth).

explicit work-care supports. There are no effective sanctions for failing to address gender inequality. The ‘Employer of Choice’ citation prescribes improved work-care supports for employers to receive the citation. However, few employers have received the citation, and the incentivising power of the citation is limited to little more than a title. Fourth and finally, the anti-discrimination and general protections frameworks fail to impose an explicit, positive duty on employers to accommodate worker-carers, instead including exceptions that preserve the status quo, with complicated and onerous enforcement processes and limited access to meaningful remedies. This all calls into question the ability of either framework to influence employers to introduce meaningful and robust work-care supports.

Nevertheless, it remains possible that despite the limitations of these mechanisms, workplaces may still be providing gender just work-care supports to employees. Understanding the offerings of work-care supports in the Australian labour market is, therefore, central to evaluating the effectiveness of Australia’s regulatory framework in providing work-care supports that meet the gender justice criteria. Chapters 5, 6, and 7 explore the range and spread of work-care supports in Australian workplaces, as well as the factors that account for differences in these offerings. Each chapter discusses the findings in relation to parental leave, flexible work, and other supports for worker-carers, respectively, looking both at the availability of these supports and the factors that drive their provision. The chapters illuminate the extent to which Australia’s reliance on the labour market to provide work-supports over and above legislated minimums is resulting in the provision of supports that are universally available, enforceable, substantive, and gender-neutral.

CHAPTER FIVE: PARENTAL LEAVE IN THE AUSTRALIAN WORKPLACE

5.1 Introduction

In this chapter, parental leave refers to *employer-funded* PPL. This is distinct from the payments administered by the federal government and the legislated requirement for employers to offer unpaid parental leave under the NES, as discussed in Chapter 3.⁶⁰⁷ As set out in section 3.2, the government funded payments for eligible primary carers for up to 18 weeks at the national minimum wage.⁶⁰⁸ From 1 July 2020, what was previously an 18-week payment period was amended from a non-flexible, consecutive 18-week block of payments to a 12-week consecutive period followed by six weeks of payments that could then be used more flexibly at any time within two years of the child's arrival.⁶⁰⁹ Eligible secondary carers were allowed secondary carer's payments or 'dad and partner pay', which offers up to two weeks of pay at the national minimum wage to be taken within a year of the child's birth.⁶¹⁰ As set out in section 3.2.2, these payments were amended with effect from 1 July 2023 such that partnered couples can now claim up to 20 weeks of payments between them subject to a 10-day 'use it or lose it' portion that must be used by the other parent. The *PPL Act*, however, still states that '[t]he financial support provided by the *PPL Act* is intended to *complement* and *supplement* existing entitlements to paid or unpaid leave in connection with the birth or adoption of a child' such as employer-funded parental leave entitlements.⁶¹¹

This chapter presents descriptive statistics from WGEA data (as discussed in 2.3.2.1), which set out the scale of the provision of employer-funded PPL within the Australian employment market. This is followed by the results of a series of binary and multinomial logistic regression models (Models 5A, 5B, and 5C as detailed in section 2.3.2.3), which are used to test the hypothesis set out in section 2.3.2.2 that larger, female-dominated, and specialised services organisations will be associated with a higher likelihood of offering work-care supports that go beyond the mandatory minimum. This is followed by the presentation of qualitative findings

⁶⁰⁷ See sections 3.2 and 3.4.4.

⁶⁰⁸ *PPL Act* (n 162) s 4.

⁶⁰⁹ *Ibid* s 4, 11D; *Paid Parental Leave (Flexibility Measures Act) 2020* (Cth).

⁶¹⁰ *PPL Act* (n 162) s 115AA.

⁶¹¹ *Ibid* s 3A(3) (emphasis added).

emerging from the analysis of interview data collected from 22 human resources professionals, as detailed in section 2.3.2.

Although these quantitative and qualitative findings pre-date the government's changes to the *PPL Act*, they offer recent insight into parental leave offerings within organisations and the factors influencing their provision. This provides some basis for developing informed predictions on how recent amendments to the *PPL Act* may influence corresponding workplace offerings in the future as is discussed in the concluding section of this chapter, which outlines the implications emerging from these quantitative and qualitative findings. The discussion illuminates the scale of parental leave offered in the market, what drives the provision of parental leave, and the extent to which this provision meets the gender justice criteria of universal availability, enforceability, substantiveness, and gender-neutrality.

5.2 Quantitative Results

5.2.1 The Provision of Parental Leave

5.2.1.1 Availability

Of the 4841 organisations included within the dataset, it was most common for organisations to offer no primary or secondary carer's leave to any of their employees (45.29%; n = 2192). The next most common practice in the dataset was to provide both primary and secondary carer's leave to men and women (41.56%; n = 2012).

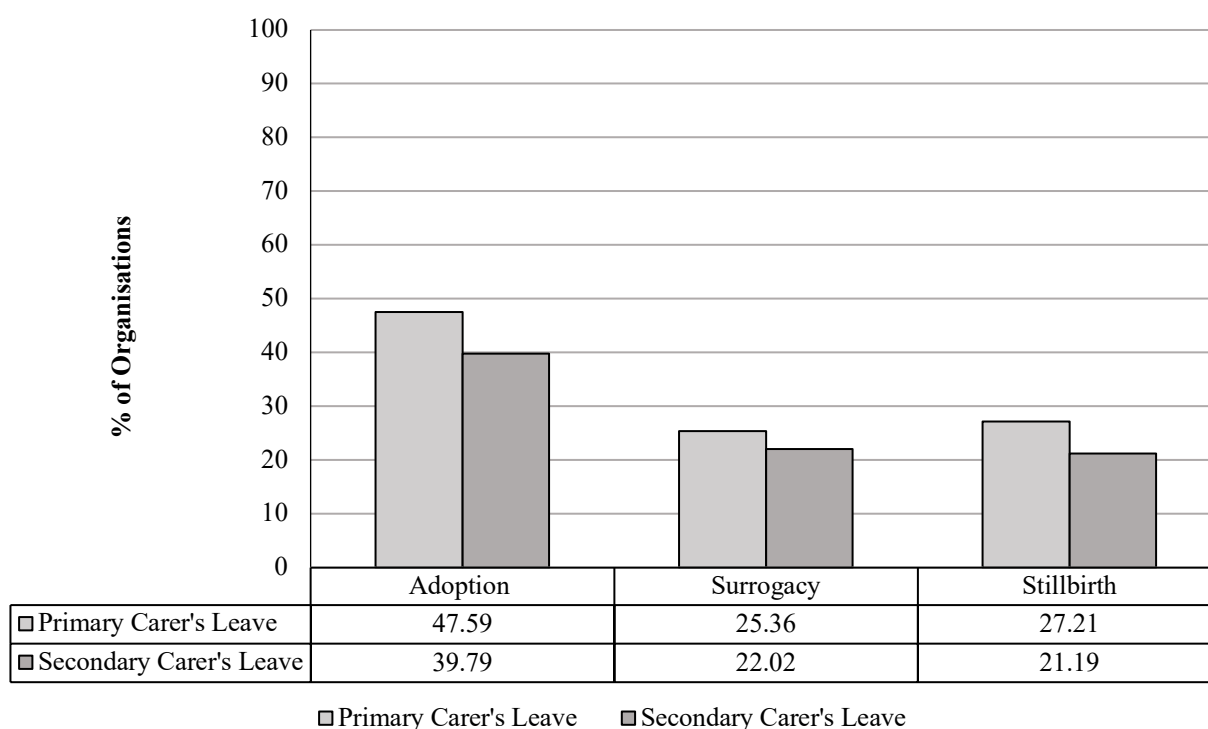
As shown in Table 5.1, some organisations offered only primary carer's leave (7.04%; n = 341) or only secondary carer's leave (0.48%; n = 23) but to both men and women. However, this was relatively rare. Gendered offerings were similarly rare, with only 4.79% (n = 232) of organisations offering primary carer's leave only to women and one organisation offering primary carer's leave only to men. Secondary carer's leave was offered only to men in 2.19% of organisations (n = 106), with no organisations offering secondary carer's leave only to women.

Table 5.1 Primary and secondary carer’s leave offerings by gender

		Primary Carer’s Leave									
		No		Men only		Women only		Men and women		Total	
		N	%	N	%	N	%	N	%	N	%
Secondary Carer’s Leave	No	2192	45.29	0	0.00	82	1.69	341	7.04	2615	54.02
	Men only	3	0.06	1	0.02	65	1.34	37	0.76	106	2.19
	Women only	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
	Men and women	23	0.48	0	0.00	85	1.76	2012	41.56	2120	43.79
	Total	2218	45.82	1	0.02	232	4.79	2390	49.37	4841	100.00

Organisations were also asked to report on whether parental leave was offered in instances of adoption, surrogacy, or stillbirth. As seen in Figure 5.1 below, it was more common for organisations to offer parental leave to those who had adopted a child (47.59% for primary carer’s leave; 39.79 % for secondary carer’s leave) than in circumstances of surrogacy or stillbirth. Interestingly, while more organisations offered primary carer’s leave for stillbirth than surrogacy (27.21% versus 25.36%), the same was not true in relation to secondary carer’s leave (21.19% versus 22.02%). This may be a result of primary carer eligibility being defined by a person’s status as the birth parent, thereby making it unavailable to those who had their child through surrogacy.

Figure 5.1 Primary and secondary carer’s leave offerings for adoption, surrogacy, and stillbirth



5.2.1.2 Payment

It was most common for organisations to offer parental leave at an employee's full salary regardless of any government payments (41.33%; n = 2001). The next most common methods were paying employees with an undefined lump-sum payment either pre- or post-leave (4.69%; n = 227) or paying the gap between any government payments the employee was entitled to and their full salary (4.44%; n = 215). Notably, these were the only payment methods that organisations could choose between in the dataset, so other payment methods may not necessarily be captured in the WGEA's data.

5.2.1.3 Duration

As for the duration of parental leave entitlements, the data showed that the mean offering for primary carer's leave was 10.53 weeks (SD = 4.95 weeks) and the median was 12 weeks.⁶¹² In contrast, the mean offering for secondary carer's leave was 8.69 days (SD = 7.29 days) while the median offering was 10 days.⁶¹³ Large standard deviations reaffirmed the tendency for the length of leave to vary considerably across organisations.⁶¹⁴

The number of organisations offering at least 12 weeks of primary carer's leave and 10 days of secondary carer's leave is detailed below in Table 5.2.⁶¹⁵ The table shows that only 16.07% (n = 778) of organisations offered at least 12 weeks of primary carer's leave *and* at least 10 days of secondary carer's leave. So, almost all organisations in the dataset did not offer employer-funded primary and secondary carer's leave for as long as the *PPL Act*, as it was at the time this data was collected.

⁶¹² Min = 1 week; Max = 52 weeks. Statistics were calculated based on the 2615 organisations that reported offering more than zero weeks of primary carer's leave.

⁶¹³ Min= 1 day; Max = 112 days.

⁶¹⁴ Statistics are calculated excluding three organisations of the original 2226 organisations that indicated they offered some form of primary leave but did not indicate the length of leave they offered.

⁶¹⁵ At the time this data was collected, the *PPL Act* offered 18 weeks of parental leave (12 weeks to be taken in a single, consecutive period and six weeks to be used flexibly). Twelve weeks was used for the purposes of this calculation to reflect the median offering of the dataset. Similarly, as 10 days was the offering for secondary carer's leave under the *PPL Act* at the time this data was collected and was the median offering in the dataset, it was selected for the secondary carer's leave variable.

Table 5.2 The availability of 12 weeks or more, fewer than 12 weeks, or no primary carer’s leave by the offering of 10 days or more, fewer than 10 days, or no secondary carer’s leave

		Primary Carer’s Leave							
		<i>No</i>		<i><12 weeks</i>		<i>≥12</i>		<i>Total</i>	
		N	%	N	%	N	%	N	%
Secondary Carer’s Leave	<i>No</i>	2200	45.45	288	5.95	130	2.69	2618	54.08
	<i><10 days</i>	18	0.37	575	11.88	516	10.66	1109	22.91
	<i>≥10 days</i>	8	0.2	328	6.78	778	16.07	1114	23.01
	<i>Total</i>	2226	46.0	1191	24.60	1424	29.42	4841	100.0

5.2.2 The Drivers of Parental Leave Provision

Descriptive statistics were used to determine the extent to which the provision and duration of primary and secondary parental leave differed by organisation size, industry type, and gender dominance.⁶¹⁶ This revealed a general pattern in which the availability and length of parental leave offerings increased alongside organisation size and was more common in specialised services and female-dominated organisations. Based on this analysis, a series of regression models was used to explore the strength and practical impact of any association between the availability of parental leave and the variables of organisation size, industry type, and gender dominance. The results of these models and corresponding predicted probabilities are set out below.

5.2.2.1 Availability

As set out in Chapter 2 (section 2.3.2.3), Model 5A predicted the offering of some form of primary or secondary carer’s leave (irrespective of the availability of this leave across genders or the length of leave offered) based on the organisation’s gender dominance, size, industry type, and the interaction between gender dominance and organisation size.⁶¹⁷ The model output is detailed in Table 5.3 below.

⁶¹⁶ See Appendix Tables A.5–A.6.

⁶¹⁷ See section 2.3.2.3 for an explanation on how interaction terms were selected for each model.

Table 5.3 Binary logistic regression model predicting availability of some form of primary or secondary carer’s leave based on organisation’s gender dominance, size, industry type, and gender dominance*organisation size (Model 5A)

		Coefficient	Std. err.
	Constant	-0.39***	0.11
Gender	Female	0.00	-
	Neutral	-0.20	0.13
	Male	-0.51***	0.12
Organisation Size	<250	0.00	-
	250–499	0.08	0.14
	500–999	-0.10	0.16
	1000–4999	0.24	0.17
	5000+	0.79*	0.37
Industry Type	Non-service based	0.00	-
	General services	0.03	0.09
	Specialised services	1.45***	0.08
Gender Dominance* Organisation Size	Female*250–499	0.00	-
	Neutral* 50–499	0.08	0.21
	Neutral*500–999	0.68**	0.25
	Neutral*1000–4999	0.52*	0.26
	Neutral*5000+	0.76	0.52
	Male*250–499	0.23	0.18
	Male*500–999	0.83***	0.21
	Male*1000–4999	1.14***	0.22
	Male*5000+	1.39*	0.55

Note R² = 5.2 (Hosmer & Lemeshow), 0.14 (Cox & Snell), 0.19 (Nagelkerke). Model $\chi^2(16) = 726.68$

*p<0.05; **p<0.01; ***p<0.001

The model revealed that female-dominated organisations were associated with a higher likelihood of offering some form of primary or secondary carer’s leave when compared to neutral or male-dominated organisations. However, the addition of a statistically significant model interaction term between organisation size and gender dominance revealed more nuance

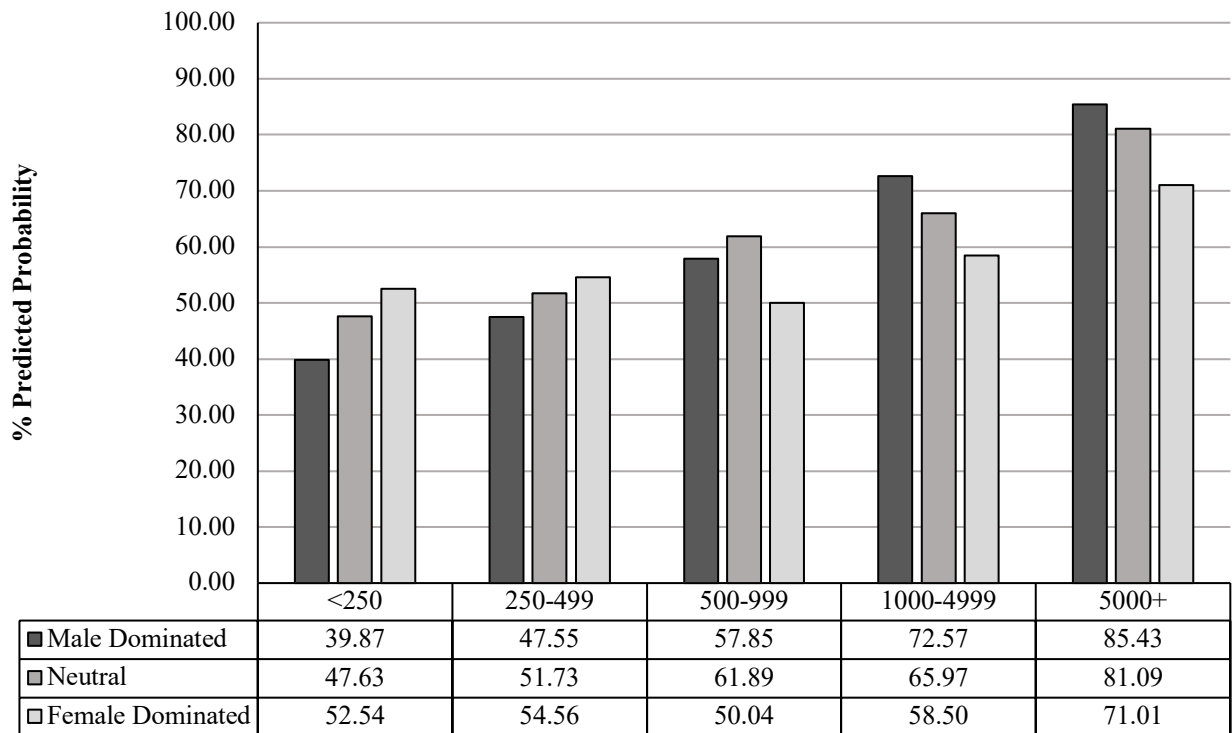
in the effect of organisation size and gender dominance in bringing about a higher or lower likelihood of an organisation offering some type of parental leave.

As shown in Table 5.3, on its face, female-dominated organisations were associated with a higher likelihood of offering parental leave compared to male-dominated and neutral organisations, with the likelihood of offering some type of parental leave increasing alongside organisation size. However, organisation size had a different impact for male-dominated and neutral organisations than for female-dominated organisations.

This pattern is depicted in Figure 5.2 below, which uses the model in Table 5.3 to simulate the predicted probability of an organisation offering parental leave based on organisation size *and* gender dominance, controlling for the impact of industry type.⁶¹⁸ Figure 5.2 illustrates that, except for female-dominated organisations of 500–599 employees, the likelihood of offering some form of parental leave increased across all three categories of gender dominance in line with an increase in organisation size. However, it also revealed that the likelihood of female-dominated organisations offering parental leave was lower relative to neutral and male-dominated organisations once the organisation’s size surpassed 500 employees. Additionally, the model shows that although male-dominated organisations had a comparably lower likelihood of offering parental leave when the organisation’s size was small, the rate of increased likelihood of parental leave offering in line with size was steeper for male-dominated organisations. In essence, organisation size played a much more important role in determining the likelihood of male-dominated organisations offering parental leave in comparison to female-dominated organisations. As a result, while female-dominated organisations had the greatest likelihood of offering some form of parental leave when the organisation’s size was below 500 employees, it was male-dominated organisations that had the greatest likelihood once the organisation’s size exceeded 1000 employees.

⁶¹⁸ As industry type has an impact on the likelihood of an organisation offering some form of parental leave, holding the impact of industry constant effectively equates to neutralising the impact of industry when calculating how organisation size and gender dominance bring about a variation in the likelihood of a parental leave offering. All model estimates were produced using ‘Margins’ in Stata. Specifically, average adjusted predictions were calculated. For example, for gender dominance, it was assumed that every organisation in the sample was female-dominated (regardless of the organisation’s actual gender-dominance status) and their predicted probability of being offered some form of parental leave was then calculated (using our statistical model and based on all their characteristics). Those predictions were then averaged. The exercise was repeated, treating every organisation in the sample as male-dominated, and again those predictions were averaged. We then compared these adjusted average predictions.

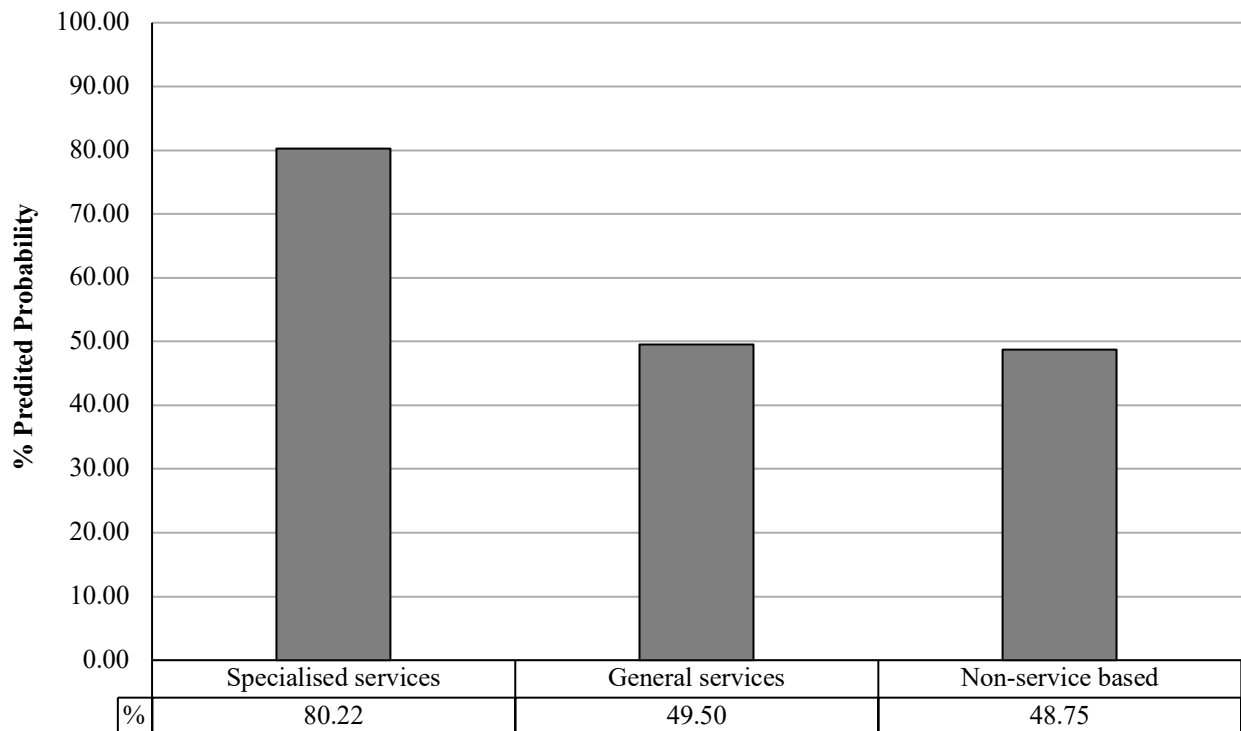
Figure 5.2 Predicted probability (simulated from the model outlined in Table 5.3) of some form of primary or secondary carer’s leave being offered based on organisation size and gender dominance (holding the effect of industry type constant)



The likelihood of an organisation offering parental leave also varied by industry type, as shown in Figure 5.3 below, with statistically significant differences observed with specialised services in the model output in Table 5.3.⁶¹⁹ Simulated from the model, the predicted probability of an organisation within the industry of specialised services offering some form of parental leave (controlling for the impact of organisation size and gender dominance) was 80.22%, compared to 49.50% for someone working in general services and 48.75% for those working in non-service-based industries.

⁶¹⁹ $\beta = 1.45, \chi^2 = 4.26, p = <0.001.$

Figure 5.3 Predicted probability (simulated from the model) of some form of primary or secondary carer’s leave being offered based on industry type (holding the effect of gender dominance and organisation size constant)



5.2.2.2 Duration

The second model, as outlined in section 2.3.2.3, used multinomial logistic regression to predict the likelihood of an organisation offering ‘>0 to <12 weeks’ or ‘≥12’ of primary carer’s leave, compared to ‘no weeks’ of primary carer’s leave based on gender dominance, organisation size, industry type and the interaction between gender dominance and organisation size. The offer of ‘no weeks’ leave can be thought of as the ‘baseline’ or comparator.

Table 5.4 Multinomial logistic regression model predicting length of primary carer’s leave offering based on organisation gender dominance, size, industry type, and gender dominance*organisation size (Model 5B)

		>0 to <12 WEEKS (compared to no weeks)		≥12WEEKS (compared to no weeks)	
		Coefficient	Std. err.	Coefficient	Std. err.
Constant		-1.20***	0.13	-1.12***	0.12
Gender	Female	0.00	-	0.00	-
	Neutral	-0.29	0.16	-0.02	0.14
	Male	-0.33*	0.14	-0.68***	0.14

Organisation Size	<250	0.00	-	0.00	-
	250–499	0.16	0.16	0.06	0.16
	500–999	0.13	0.19	-0.22	0.19
	1000–4999	0.57**	0.18	-0.17	0.20
	5000+	1.22**	0.39	0.39	0.43
Industry Type	Non-service-based	0.00	-	0.00	-
	General services	0.18	0.11	-0.11	0.11
	Specialised services	1.34***	0.10	1.58***	0.10
Gender Dominance* Organisation Size	Female*<250	0.00	-	0.00	-
	Neutral*250–499	0.01	0.25	0.06	0.24
	Neutral*500–999	0.28	0.30	0.81**	0.28
	Neutral*1000–4999	0.08	0.30	1.03***	0.29
	Neutral*5000+	0.28	0.58	1.22*	0.59
	Male*250–499	-0.03	0.22	0.48*	0.22
	Male*500–999	0.39	0.25	1.18***	0.26
	Male*1000–4999	0.33	0.26	2.04***	0.26
	Male*5000+	0.52	0.61	2.26***	0.61

Note $R^2 = 0.16$ (Cox & Snell), 0.18 (Nagelkerke). Model $\chi^2(32) = 827.80$

* $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$

As seen from Table 5.4, this model reinforces the findings on the availability (or not) of any parental leave, as discussed in section 5.2.2.1 above.

Looking at the first category of '>0 to <12 weeks' primary carer's leave, female-dominated organisations with fewer than 250 employees were more likely to offer this than male-dominated and neutral organisations of the same size, with this difference reaching statistical significance in male-dominated organisations.⁶²⁰

The multinomial model also confirmed the pattern of primary carer's leave offerings increasing alongside organisation size. For female-dominated organisations, where organisation size exceeded 250 employees, an organisation was increasingly more likely to offer '>0 to <12 weeks' primary carer's leave than 'no weeks' of leave. However, increases in the likelihood of a large organisation offering parental leave, compared to an organisation of less than 250 employees, only reached statistical significance once the organisation's size exceeded 1000

⁶²⁰ $\beta = -0.33$, $\chi^2 = 5.58$, $p = 0.018$.

employees.⁶²¹ Generally speaking, the same pattern was observed for male-dominated and neutral organisations, whereby a larger organisation size was associated with a higher likelihood of an organisation offering ‘>0 to <12 weeks’ primary carer’s leave. In fact, once male-dominated organisations exceeded 5000 employees, they were more likely to offer ‘>0 to <12 weeks’ of primary carer’s leave than female-dominated organisations of the same size. However, these findings did not reach statistical significance, meaning it is not possible to exclude the possibility that the difference was a function of chance.

As for offerings of ‘≥12 weeks’ of primary carer’s leave, it was also the case that female-dominated organisations with fewer than 250 employees were more likely than male-dominated and neutral organisations of the same size to offer primary carer’s leave of this duration, with this finding reaching statistical significance for male-dominated organisations.⁶²² However, unlike the offer of ‘>0 to <12 weeks’ leave, a larger size was not associated with an increase in the likelihood of an offer of ‘≥12 weeks’ of primary carer’s leave for female-dominated organisations. In fact, as shown by the negative co-efficient terms in Table 5.4, each category of organisation size over 500 employees was associated with a decrease in the likelihood of female-dominated organisations offering ‘≥12 weeks’ of leave. While these findings did not reach statistical significance, the pattern is nonetheless interesting. Again, as with the offer of ‘>0 to <12 weeks’ leave, male-dominated and neutral organisations of <250 employees were less likely to offer ‘≥12 weeks’ than female-dominated organisations of the same size. However, this pattern did not hold once the organisation’s size exceeded 500 employees. As shown by the interaction terms in Table 5.4, organisation size had a strong effect on the likelihood of offering ‘≥12 weeks’ primary carer’s leave for male-dominated and neutral organisations at statistically significant levels.⁶²³

The patterns revealed by the model can be seen in Figure 5.4, which charts the predicted probabilities of ‘no weeks’, ‘>0 to <12 weeks’, and ‘≥12 weeks’ of employer-funded primary carer’s leave being offered based on gender dominance and organisation size. As shown in

⁶²¹ $\beta = 0.57$, $\chi^2 = 9.78$ $p = 0.002$ (for organisations with 1000–4999 employees); $\beta = 1.22$, $\chi^2 = 9.92$, $p = 0.002$ (for organisations with 5000+ employees).

⁶²² $\beta = -0.68$, $\chi^2 = 23.05$, $p < 0.001$

⁶²³ $\beta = 0.81$, $\chi^2 = 8.13$, $p = 0.004$ (neutral*500-999); $\beta = 1.03$, $\chi^2 = 12.40$, $p < 0.001$ (neutral*1000-4999); $\beta = 1.22$, $\chi^2 = 4.43$, $p = 0.037$ (neutral*5000+); $\beta = 1.18$, $\chi^2 = 21.02$, $p < 0.001$ (male*500-999); $\beta = 2.04$, $\chi^2 = 61.06$, $p < 0.001$ (male*1000-4999); $\beta = 2.06$, $\chi^2 = 13.81$, $p < 0.001$ (male*5000+).

Figure 5.4, the probability of being offered parental leave increased for female-dominated organisations in line with organisation size but only for '>0 to <12 weeks' leave. In contrast, increases in organisation size were associated with increases in the likelihood of being offered leave of both durations of primary carer's leave for neutral and male-dominated organisations. Drawing from Figure 5.4, holding the impact of industry type constant, the probability of a male-dominated organisation of 5000+ employees offering '≥12 weeks' of parental leave was calculated as 56.54%, compared to 50.40% for neutral organisations and 24.07% for female-dominated organisations. By contrast, the probability of a male-dominated organisation of 5000+ employee offering '>0 to <12 weeks' of parental leave was 28.32%, compared to 30.17% for neutral organisations and 47.33% for female-dominated organisations. In essence, the rate of offering 'no weeks' of primary carer's leave decreased for female, male, and neutral organisations as organisation size increased. This translated to a higher availability of '>0 to <12 weeks' of primary carer's leave for female-dominated organisations, compared to a higher availability of '≥12 weeks' leave for neutral and male-dominated organisations as organisation size increased.

Figure 5.4 Predicted probability (simulated from the model) of being offered 'no weeks', '>0 to <12 weeks' and '≥12 weeks' of primary carer's leave based on organisation gender dominance and size (holding the effect of industry type constant)

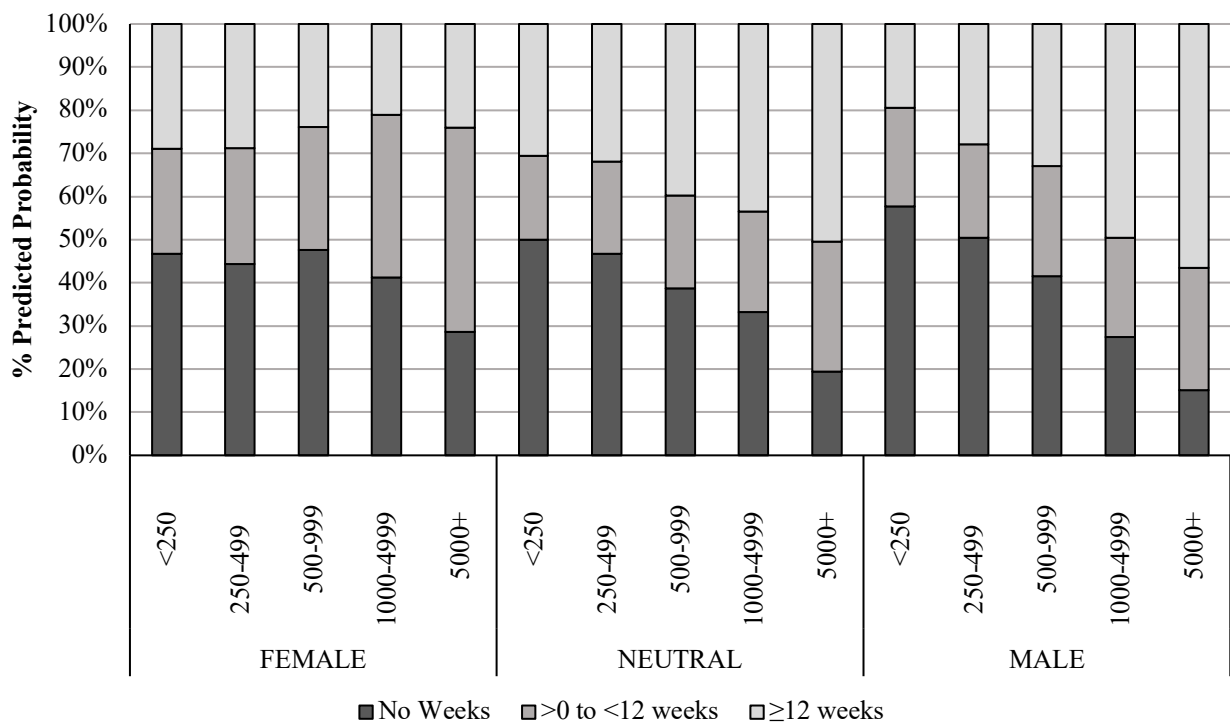
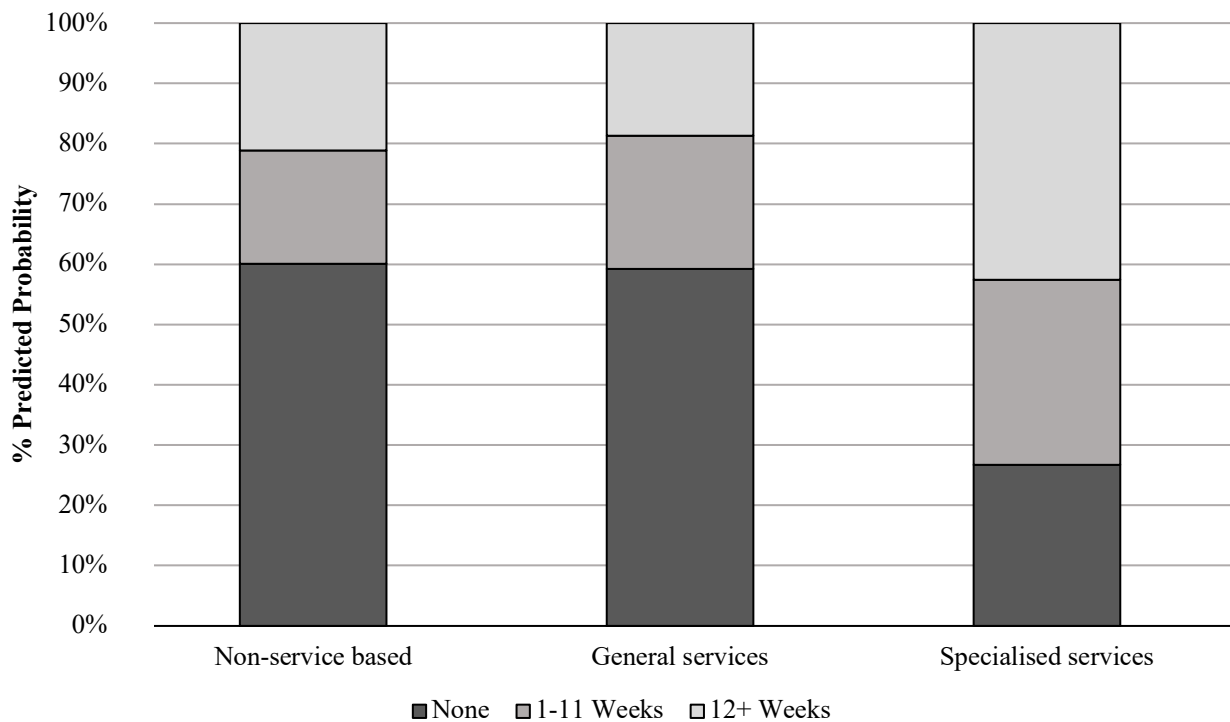


Figure 5.5 below charts the predicted probabilities (simulated from the model in Table 5.4) of offering 'no weeks', '>0 to <12 weeks', and '≥12 weeks' of paid primary carer's leave based

on industry type. As industry type was added to the model as a main effect, its influence is calculated holding the impact of organisation size and gender dominance constant. As shown in Table 5.4, statistically significant differences were observed in specialised services, which increased the likelihood of offering ‘>0 to <12 weeks’ and ‘≥12 weeks’ of leave.⁶²⁴ As depicted in Figure 5.5, an offering of ‘≥12 weeks’ of primary carer’s leave was shown to be most likely in specialised services at 42.61%, compared to 18.73% in general services and 21.15% in non-service-based industries. Specialised services were also more likely to offer ‘>0 to <12 weeks’ of leave (30.67%), compared to general services (22.03%) and non-service-based industries (18.74%). Both non-service-based organisations and general services organisations were predicted to have comparable rates of ‘no weeks’ of parental leave (60.11% and 59.24%, respectively).

Figure 5.5 Predicted probability (simulated from the model) of being offered ‘none’, ‘1–11 weeks’ and ‘12+ weeks’ of primary carer’s leave based on industry type (holding the effect of gender dominance and organisation size constant)



The third model, as outlined in section 2.3.2.3, used multinomial logistic regression to predict the offering of ‘<0 to <10 days’ or ‘≥10 days’ of secondary carer’s leave, compared to ‘no

⁶²⁴ $\beta = 1.34$, $\chi^2 = 3.83$, $p < 0.001$ (for >0 to <12 weeks); $\beta = 1.58$, $\chi^2 = 4.86$, $p = < 0.001$ (for ≥ 12 weeks).

days' of secondary carer's leave, based on gender dominance, organisation size, industry type, and the interaction between gender dominance and organisation size.

Table 5.5 Multinomial logistic regression model predicting length of secondary carer's leave offering based on organisation gender dominance, size, industry type, and gender dominance*organisation size (Model 5C)

		>0 to <10 DAYS (compared to no days)		≥10 DAYS (compared to no days)	
		Coefficient	Std. err.	Coefficient	Std. err.
Constant		-1.24***	0.13	-1.72***	0.13
Gender	Female	0.00	-	0.00	-
	Neutral	-0.16	0.15	0.01	0.15
	Male	-0.62***	0.14	-0.37**	0.15
Organisation Size	<250	0.00	-	0.00	-
	250–499	-0.14	0.16	0.27	0.15
	500–999	-0.52**	0.20	0.04	0.18
	1000–4999	-0.02	0.19	0.28	0.18
	5000+	-0.17	0.37	0.00	0.37
Industry Type	Non-service-based	0.00	-	0.00	-
	General services	-0.18	0.12	0.21	0.12
	Specialised services	1.20***	0.10	1.57***	0.10
Gender Dominance* Organisation Size	Female*<250	0.00	-	0.00	-
	Neutral*250–499	0.23	0.25	-0.14	0.24
	Neutral*500–999	0.95**	0.30	0.69*	0.28
	Neutral*1000–4999	0.43	0.30	0.57*	0.29
	Neutral*5000+	0.86	0.54	1.37**	0.51
	Male*250–499	0.59**	0.22	0.09	0.23
	Male*500–999	1.36***	0.26	0.50	0.27
	Male*1000–4999	1.48***	0.25	0.96***	0.26
Male*5000+	2.60***	0.54	1.63**	0.61	

Note R² = 0.13 (Cox & Snell), 0.15 (Nagelkerke). Model $\chi^2(32) = 693.25$

*p<0.05; **p<0.01; ***p<0.001

The model output in Table 5.5 reveals a similar pattern wherein male-dominated and neutral organisations of less than 250 employees were less likely to offer secondary carer's leave of

either duration compared to female-dominated organisations of the same size; however, differences were only statistically significant in male-dominated organisations.⁶²⁵

Interestingly, however, unlike the pattern seen with primary carer's leave, increases in the availability of the secondary carer's leave did not increase consistently in line with the organisation's size. With female-dominated organisations, increased organisation size was not associated with an increase in the availability of '>0 to <10 days' of secondary carer's leave relative to the baseline of 'no leave'. In fact, female-dominated organisations with more than 250 employees were associated with a reduced likelihood of '>0 to <10 days' of leave being offered, although this reduced likelihood only reached statistical significance for organisations with 500–999 employees.⁶²⁶ While there was some indication that increases in organisation size for female-dominated organisations were associated with an increased likelihood of '≥10 days' of secondary carer's leave being offered, findings did not reach statistical significance and did not rise consistently as organisation size increased.

In contrast, neutral organisations with 500–999 employees were associated with a small increased likelihood of offering '>0 to <10 days' of secondary carer's leave compared to female-dominated organisations of the same size,⁶²⁷ and the likelihood of neutral organisations offering '≥10 days' of secondary carer's leave increased with organisation size but only once the size exceeded 500 employees.⁶²⁸ An increased likelihood of offering '>0 to <10 days' of secondary carer's leave was also seen in male-dominated organisations where the size exceeded 500 employees.⁶²⁹ However, it was not until male-dominated organisations exceeded 1000 employees that increases were seen in the likelihood of them offering '≥10 days' of secondary carer's leave.⁶³⁰

In summation, the pattern of the likelihood of leave offerings rising in line with organisation size was not replicated consistently in relation to secondary carer's leave for female-dominated organisations. For male-dominated organisations, a consistent increase in the likelihood of

⁶²⁵ $\beta = -0.62$, $\chi^2 = 18.94$, $p < 0.001$ (for >0 to <10 days); $\beta = -0.37$, $\chi^2 = 6.51$, $p = 0.011$ (for ≥10 days).

⁶²⁶ $\beta = -0.52$, $\chi^2 = 6.70$, $p = 0.010$

⁶²⁷ $\beta = 0.95$, $\chi^2 = 9.74$, $p = 0.002$ (for >0 to <10 days).

⁶²⁸ $\beta = 0.69$, $\chi^2 = 6.00$, $p = 0.014$ (for ≥10 days with 500-999 employees); $\beta = 0.57$, $\chi^2 = 4.00$, $p = 0.047$ (for >10 days with 1000–4999 employees); $\beta = 1.37$, $\chi^2 = 7.11$, $p = 0.008$ (for ≥10 days with 5000 employees).

⁶²⁹ $\beta = 1.36$, $\chi^2 = 26.46$, $p < 0.001$ (for 500-999 employees); $\beta = 1.48$, $\chi^2 = 34.10$, $p < 0.001$ (for 1000–4999 employees); $\beta = 2.60$, $\chi^2 = 23.65$, $p < 0.001$ (for 5000+ employees).

⁶³⁰ $\beta = 0.96$, $\chi^2 = 13.5$, $p < 0.001$ (for 1000–4999 employees); $\beta = 1.63$, $\chi^2 = 7.23$, $p = 0.007$ (for 5000+ employees).

secondary carer's leave was seen as organisation size increased but only in relation to offerings of '>0 to <10 days'. This consistent rise was also seen in neutral organisations but only in relation to offerings of '≥10 days' for organisations with more than 500 employees.

This pattern is shown in Figure 5.6, which simulates the model detailed in Table 5.5 to predict the likelihood of receiving 'no days', '>0 to <10 days' and '≥10 days' of paid secondary carer's leave based on gender dominance and organisation size, holding the impact of industry type constant. While neutral organisations saw consistent increases in the predicted likelihood of offering '≥10 days' of secondary carer's leave as organisation size increased, male-dominated organisations only saw steady increases alongside organisation size with respect to the less generous offering of '>0 to <10 days'.

This is unlike the findings about the length of primary carer's leave for male-dominated organisations discussed above, where a reduction in an offering of 'no weeks' leave was met with a higher likelihood of being offered the more generous of the two forms of leave ('≥12 weeks leave' as opposed to '>0 to <12 weeks leave'). For female-dominated organisations, however, the likelihood of offering leave did not appear to link consistently to organisation size. Female-dominated organisations with fewer than 250 employees were most likely to offer '>0 to <10 days' of secondary carer's leave and those with 250–499 employees were most likely to offer '≥10 days' of secondary parental leave.

Figure 5.6 Predicted probability (simulated from the model) of being offered ‘none’, ‘>0 to <10 days’, and ‘≥10 days’ of secondary carer’s leave based on organisation gender dominance and size (holding the effect of industry type constant)

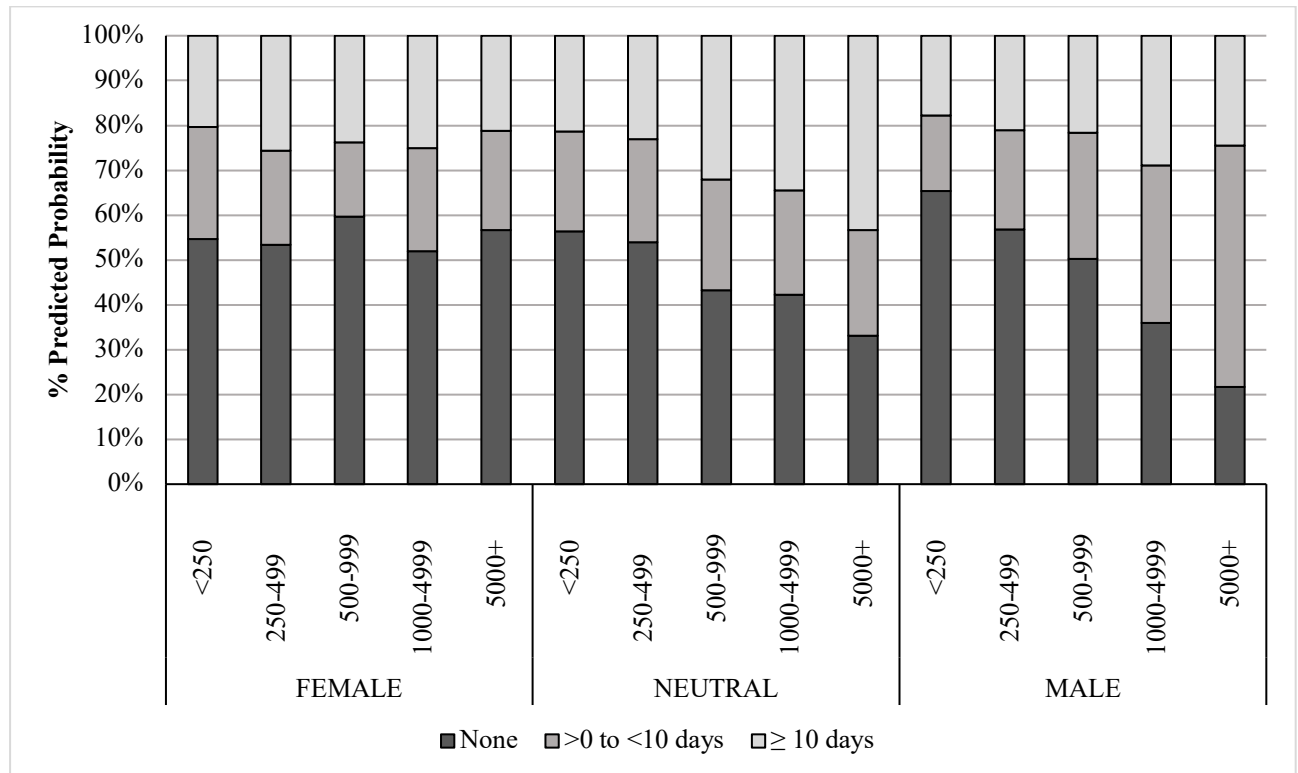
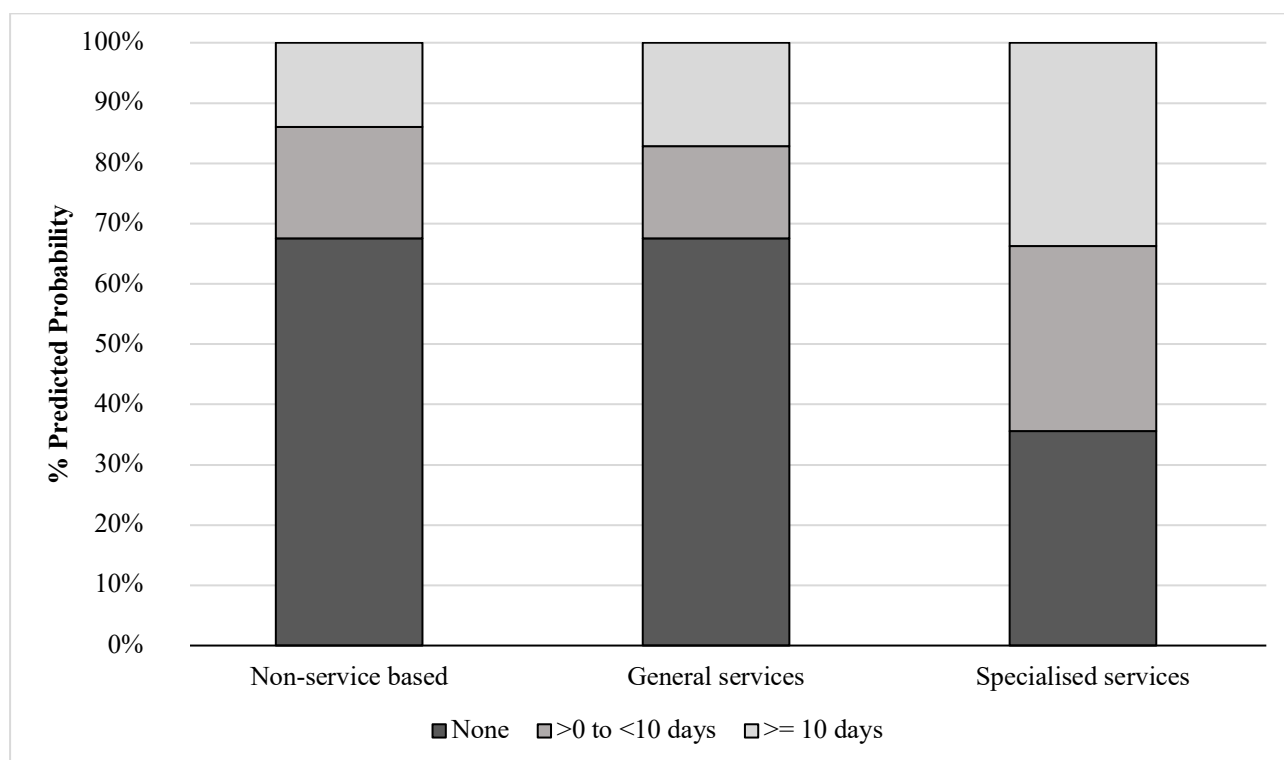


Figure 5.7 below also charts the predicted probabilities (simulated from the model) of offering ‘none’, ‘>0 to <10 days’ and ‘≥10 days’ of paid secondary carer’s leave based on industry type. Once again, as shown in Table 5.5, statistically significant differences were observed in specialised services, which increased the likelihood of offering ‘>0 to <10 days’ and ‘≥10 days’.⁶³¹ As shown in Figure 5.7, offering ‘≥10 days’ of secondary parental leave was more likely in specialised services (33.73%) compared to general services (17.12%) and non-service-based industries (13.96%). Specialised services were also more likely to offer ‘>0 to <10 days’ leave (30.72%) compared to general services (15.36%) and non-service-based industries (18.44%). Both non-service-based organisations and general services organisations were predicted to have comparable rates of not offering any secondary carer’s leave (67.60% and 67.52%, respectively).

⁶³¹ $\beta = 1.20, \chi^2 = 3.31, p < 0.001$ (for >0 to <10 days); $\beta = 1.57, \chi^2 = 4.80, p = < 0.001$ (for ≥ 10 days).

Figure 5.7 Predicted probability (simulated from the model) of being offered ‘none’, ‘>0 to <10 days’, and ‘≥10 days’ of secondary carer’s leave based on industry type (holding the effect of gender dominance and organisation size constant)



5.2.2.3 Reasons for Not Offering Parental Leave

The models above offer key insights into the factors influencing the provision of parental leave. To explain these results, the dataset also captured organisations’ reasons for not offering primary or secondary carer’s leave (as shown in Table 5.6). The most common reason given by organisations for both primary and secondary carer’s leave was that the government scheme was sufficient (59.4%, n = 1318 for primary carer’s leave; 53.2%, n = 1392 for secondary carer’s leave). The prevalence of this response suggests a widespread misunderstanding in the market as to the stated objective of the government’s parental leave payments under the *PPL Act* to complement and supplement employer-funded leave. The next most common response was providing no reason — 14.70% (n = 326) for primary carer’s leave and 15.31% (n = 401) for secondary carer’s leave.

Table 5.6 Reasons given by organisations for not offering primary and secondary carer’s leave

	Primary Leave		Secondary Leave	
	N	%	N	%
No reason provided	326	14.70	401	15.31
Currently under development	97	4.38	97	3.70
Insufficient resources/expertise	140	6.31	184	7.02

Government scheme is sufficient	1318	59.45	1392	53.13
Not a priority	142	6.41	242	9.24
Other reason	195	8.80	229	8.74

5.2.3 Summary

The quantitative results revealed that a relatively small number of organisations from the dataset offered parental leave for as long a duration as the government’s parental leave payments provided at the minimum wage at the time the data was collected (ie 18 weeks’ primary carer’s leave and 2 weeks’ secondary carer’s leave). Gendered offerings of parental leave, offerings of primary carer’s leave or secondary carer’s leave without the other, and very different durations of primary and secondary carer’s leave were also seen in the data. The models revealed that the influence of gender dominance varied according to organisation size. While female-dominated organisations appeared to offer parental leave more often, this was typically only the case when the organisation had <500 employees.

Indeed, parental leave was mostly offered by male-dominated organisations once the organisation size exceeded 1000 employees. Regarding primary carer’s leave specifically, increases in organisation size resulted in a greater offering of ‘≥12 weeks’ of leave for male-dominated and neutral organisations and a greater offering of ‘>0 to <12 weeks’ of leave for female-dominated organisations. With secondary carer’s leave, organisation size resulted in a greater likelihood of ‘>0 to <10 days’ of leave for male-dominated organisations and ‘≥10 days’ of leave in neutral organisations with no consistent increases in line with organisation size for female-dominated organisations. As for industry type, across all three models, specialised services organisations were associated with the greatest likelihood of offering any parental leave and offerings of primary carer’s leave for ‘≥12 weeks’ and secondary carer’s leave for ‘≥10 days’.

These findings generally align with the stated hypothesis that larger, specialised service-based industries would be more generous in their parental leave offerings, although the inclusion of the interaction term did demonstrate that female-dominated organisations are not necessarily the most generous in their parental leave offerings. These results empirically affirm the arguments expressed in the existing literature that organisation size, gender dominance and industry type influence the provision of parental leave but cast doubt on the longstanding view that female-dominance would result in more family-friendly entitlements. To explain *why* organisation size, gender dominance and industry type affect the provision of parental leave and identify other factors that may affect parental leave provisions, the quantitative findings

above must be supplemented by qualitative research. The qualitative findings also enable an exploration of facets of parental leave that could not be ascertained from the quantitative data alone. To this end, as outlined in Chapter 2 (section 2.3.3), human resources professionals were interviewed about their understanding of the nature of parental leave offerings in the workplace and what factors affect the provision of parental leave. These findings are discussed in the following section.

5.3 Qualitative Results

5.3.1 Availability of Parental Leave

As shown in section 5.2.1.1, most organisations offered parental leave in some form (54.71%, n = 2649). It was most common to offer it in the form of both primary and secondary carer's leave without restricting availability by gender (41.56%; n = 2012). This was mirrored in the interview sample where no interviewees reported limiting their primary and secondary carer offerings by gender. Only one interviewee from a large professional services organisation reported not offering primary and secondary carer's leave, but this was because the organisation had a standard 18-week parental leave offering for all employees.⁶³²

The quantitative findings suggested that parental leave policies rarely restrict availability by gender. However, the interviews illustrated how the primary and secondary carer labels hinder gender equal take-up in practice. The interviews revealed strong cultural assumptions surrounding the role of fathers as primary carers, that organisations often impose administrative hurdles for non-birth parents to access primary carer's leave, and that financial considerations within the family unit can affect whether men access primary carer's leave. The interviews also revealed further restrictions on the availability of parental leave within organisations that could not be determined from the quantitative data — for example, length of service requirements, having to access parental leave within a specified period from the arrival of the child, and having to access parental leave in a consecutive block of time. These findings are discussed below.

5.3.1.1 Availability of Primary and Secondary Carer Leave in Practice

While interviewees' organisations offered primary and secondary carer's leave to all employees, the labels were often associated with gendered expectations. For example, an

⁶³² Interview 9: Head of diversity and inclusion, professional, science and tech services organisation, 1000–4999 employees.

interviewee from a large manufacturing organisation shared a story involving two employees who belonged to the same family unit. Both employees wanted to take primary carer's leave at separate times and, as this interviewee explained:

there was no reason why they couldn't access both but there were some really heated discussions to say, 'No, he's now secondary'. And I [said], 'No, she's coming back, she's more senior than him, ... we do want her back after four months' ... A lot of execs can't get their head around it..., [they think] 'he's always the secondary'. And I [say], 'he's now at home with the four-month-old baby, that's pretty primary'.⁶³³

The same interviewee recounted how three fathers who took four months of primary carer's leave during her tenure had managers who 'were not happy about it'.⁶³⁴ A human resources consultant described how a father who was intending to take the five months of parental leave he was entitled to had to 'pitch it to some of the older partners' as 'long service leave' as opposed to parental leave.⁶³⁵ Even the interviewee from the organisation that offered a blanket parental leave provision of 18 weeks (without a primary or secondary carer delineation) found that only one male partner, who happened to be in a same-sex relationship, had accessed the leave.⁶³⁶ The interviewee suspected that this was because men 'feel the double bind [because] they not only see the impact on women's careers but secondly ... culturally there's still a[n] expectation that men don't take a long period of parental leave ... at the societal level'.⁶³⁷ This would be in keeping with an interviewee from a male-dominated, public sector organisation who said they had seen men who took on the role of primary carer 'relegated to the side' and 'pigeonholed as a particular ilk'.⁶³⁸

Other interviewees highlighted cultural barriers that may not emanate from the employer but from peers and the general community. An interviewee from a large manufacturing organisation stated that fathers who are primary carers often face 'derogatory gender comments around the role reversal'.⁶³⁹ Another interviewee said her brother 'got a lot of pushback and

⁶³³ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁶³⁴ Ibid.

⁶³⁵ Interview 8: Human resources consultant.

⁶³⁶ Interview 9: Head of diversity and inclusion, professional, science and tech services organisation, 1000–4999 employees.

⁶³⁷ Ibid.

⁶³⁸ Interview 14: Gender equality adviser, public administration and safety organisation, 5000+ employees.

⁶³⁹ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

also even ... side jokes from the other guys at work' when taking on the primary carer role.⁶⁴⁰ Another interviewee from a large manufacturing organisation talked about how in a dads' program she had started, she found that 'a lot of [fathers] felt ... apologetic for taking up space that they thought should be assigned to women' and that when she first started talking about gender-neutral parental leave in her organisation she was met with 'some not diversity and inclusion friendly things like ... "I wouldn't want to be home with my kids in the first three months anyway"'.⁶⁴¹

The fact that these gender assumptions persist may explain the 2.19% (n = 106) of organisations that offered secondary carer's leave only to men and the 4.79% (n = 232) of organisations that offered primary carer's leave only to women.⁶⁴² It may be simply assumed that women will take on the primary carer role, and men will take on the secondary role. As a diversity and inclusion consultant pointed out, while a pregnant or female employee would often immediately be assumed to take the full primary carer entitlement, 'I don't know that the assumption is there for men'.⁶⁴³

Interviews revealed how restrictions on the ability of an employee to shift between a primary and secondary carer role further reinforced gendered assumptions. A range of interviewees from organisations of all sizes and across all industry types reported the ability of an employee to take on a primary carer role after having taken secondary carer's leave. However, these managers positioned this offering as a distinguishing feature of their workplace's practice. There were also instances where such flexibility was not permitted, with one manager in a small professional services organisation indicating that their employees had to choose to be either the primary or secondary carer under their organisation's leave entitlement.⁶⁴⁴

This may suggest that some organisations force parents to assume a permanent primary or secondary carer role at the outset. Such an approach precludes a 'secondary carer' from having the flexibility to take on an equal or primary carer role later. Given that the birth parent typically

⁶⁴⁰ Interview 12: Diversity, inclusion and development lead, electricity, gas, water, and waste services organisation (public), 1000–4999 employees.

⁶⁴¹ Interview 6: Inclusion and diversity lead, manufacturing organisation, 1000–4999 employees.

⁶⁴² Table 5.1.

⁶⁴³ Interview 16: Diversity and inclusion consultant.

⁶⁴⁴ Interview 10: People and culture manager, professional, science and tech services organisation, <100 employees.

requires leave at the start of parenthood to recover from the effects of childbirth, this would permanently place them in the position of primary carer by default.

Where organisations allowed parents to swap between the roles of primary and secondary caregiver, however, interviewees reported requiring proof of the non-birth parent's caregiving status. For example, an interviewee from a large education institution required parents to 'come and just really sign a [statutory declaration] saying that I am the primary carer of my child. I would like those full provisions'.⁶⁴⁵ An interviewee from a large transportation organisation stated that their policy required evidence of the original primary carer's return to work before allowing the other parent to take on the role of primary carer.⁶⁴⁶ This was echoed by an interviewee from a different transportation organisation who described the practice as a norm, saying, 'a lot of organisations require the employee to put forward a stat dec to say, "Yes, my partner will be going back to work on this day and that's when I'll take over as the primary carer"'.⁶⁴⁷ The interviewee explained that this policy was to 'promote the sharing of primary caring' to avoid 'end[ing] up in a situation where what we were incentivising was both parents getting six weeks or seven weeks off together because the benefits of that to our employees is limited'.⁶⁴⁸

In one small utilities organisation, the policy allowed for an employee's parental leave to be taken on a part-time basis where their partner had returned to work part-time, but this also required a statutory declaration that detailed the days that the partner returned to work so the employee could access their leave on only those same days.⁶⁴⁹ Only one interviewee, from a large professional services organisation, stated that their policy did not require a statutory declaration for their employees to later take on a primary carer role, although there was still a 'requirement that the partner is working while the male takes the primary carer's leave portion of their parental leave'.⁶⁵⁰

⁶⁴⁵ Interview 11: Diversity and inclusion manager, education and training organisation, 5000+ employees.

⁶⁴⁶ Interview 15: Diversity and inclusion manager, transport, postal and warehousing organisation, 5000+ employees.

⁶⁴⁷ Interview 19: Head of diversity, inclusion and talent, transport, postal and warehousing organisation, 1000–4999 employees.

⁶⁴⁸ Interview 15: Diversity and inclusion manager, transport, postal and warehousing organisation, 5000+ employees.

⁶⁴⁹ Interview 22: People and culture executive, electricity, gas, water, and waste services organisation, <100 employees.

⁶⁵⁰ Interview 20: Human resources manager, professional, science and tech services organisation, 5000+ employees.

Consequently, the interviews revealed that while some organisations allowed an employee to switch between a primary and secondary carer role, non-birth parents often had to confirm that they were now primary carers, usually by demonstrating that their partners had returned to work. This requirement reinforces gendered assumptions that birth parents will remain as primary carers unless legal evidence is provided to suggest otherwise.

The financial implications of accessing leave within the family unit also tended to reinforce cultural assumptions around primary and secondary carers. As one human resources consultant set out:

the average age of a first-time mother is 30. The average age of a first-time father is sort of three years older than that, around 33, that age gap translates to a pay gap, a gender pay gap in the home, and that influences the decisions that many couples make at that particular time. They hinge... their mortgage on the salary of the higher-income earner and make rather short-term decisions about career and care based on those financial circumstances.⁶⁵¹

This was compounded by the practical implications of taking leave and the potential adverse career consequences of doing so. For example, one interviewee highlighted how employees may be cognisant of the impact their absence may have on their work. An interviewee from a large professional services organisation described how men would usually only access employer-funded (paid) parental leave, which was usually no more than 14 weeks, but this period was generally not enough time for the organisation to consider backfilling the role, resulting in ‘the rest of the team having to cover, [so] you’ve got that person feeling the pressure that while they’re gone ... balls are going to be dropped and so that’s a barrier’.⁶⁵²

Interviewees across a range of industry types and sizes believed that the labels of primary and secondary carers contributed to the gendered take-up of parental leave in their organisations, describing the designation as outdated or illogical. A few interviewees from a range of organisations of varying sizes and industry types reported that they were considering moving towards a blanket parental leave provision — although, as mentioned above, only one interviewee from a large professional services organisation had removed this designation in

⁶⁵¹ Interview 18: Human resources consultant.

⁶⁵² Interview 13: Diversity and inclusion manager, professional, science and tech services organisation, 1000–4999 employees.

their policy and had still not seen a marked increase in men’s utilisation of the scheme.⁶⁵³ An interviewee from a large administrative services organisation noted that policy changes require ‘time and capacity of HR teams’ and although they were ‘pretty confident there would be the appetite to change [the designation of primary and secondary carers in their policy], ... there just hasn’t been the capacity for the conversations with the decision-makers’.⁶⁵⁴

However, interviewees also expressed concerns about the removal of these labels. A manager from a large professional services organisation expressed their concerns as follows:

my fear is that if you were to remove the primary and secondary labels and not have a requirement for the person taking leave to have a primary carer role, which we currently have — you have to be the person in charge for at least half a day or so to take the leave — then the strength of these gendered roles will mean that the, and I’ll just use the heterosexual binary normative here, the dad will do the shopping or mow the lawn... but it’s not the caring of the child and that is the critical element for gender equal parenting.⁶⁵⁵

Another concern with removing the designation of primary and secondary leave appeared to be accommodating the biological effects of childbirth. For example, an interviewee from a large manufacturing organisation highlighted that ‘women typically started their parental leave four to six weeks before they had their child. So really women are getting less time to be with their child *after* birth if they are the birth parent’ and therefore deserve the longer designation of leave that comes with being the primary carer.⁶⁵⁶ The same interviewee acknowledged that ‘some organisations have found ways to address that now with ... maternity leave before you go and then parental leave once your child is born’.⁶⁵⁷ However, she also highlighted that this was also more expensive for an organisation and as such ‘moving to a space of gender-neutral[ity] could be at the cost of extensively available primary carer’s leave’.⁶⁵⁸

Taking the interviews as a whole, the findings indicate that the gender-neutral terminology of primary and secondary carers may provide (as a gender equality adviser for a public sector

⁶⁵³ Interview 9: Head of diversity and inclusion, professional, science and tech services organisation, 1000–4999 employees.

⁶⁵⁴ Interview 4: Wellbeing, diversity and inclusion lead, administrative and support services organisation, 500–999 employees.

⁶⁵⁵ Interview 13: Diversity and inclusion manager, professional, science and tech services organisation, 1000–4999 employees.

⁶⁵⁶ Interview 6: Inclusion and diversity lead, manufacturing organisation, 1000–4999 employees.

⁶⁵⁷ Ibid.

⁶⁵⁸ Ibid.

organisation put it) the ‘*impression of equality*’ but without meaningfully changing the reality of gendered take-up of leave within organisations.⁶⁵⁹ As described by an interviewee from a small utilities organisation, ‘they kind of swapped out maternity for primary, paternity for secondary ... under the guise of keeping it all gender-neutral, but it’s pretty much the same’.⁶⁶⁰ The interviews revealed that despite primary and secondary carer’s leave often being provided regardless of gender, in practice, cultural assumptions, administrative hurdles and financial considerations discouraged men from accessing primary carer’s leave.

5.3.1.2 Other Restrictions on the Availability of Parental Leave

The interviews also revealed other restrictions on the availability of parental leave besides gender that could not be gleaned from the quantitative data.⁶⁶¹ For example, interviewees from a range of organisation sizes and industry types reported requiring employees to have worked for the organisation for a certain period before being eligible for parental leave entitlement. For example, an interviewee in a large public sector utilities organisation said that in ‘every organisation that [they’d] worked for’ there had been timeframes before a person could access parental leave.⁶⁶² A human resources consultant felt that a 12-month service requirement before employees could access parental leave was ‘pretty standard across the board’ with the option to sometimes negotiate this requirement,⁶⁶³ although the interviewee felt that employees who successfully negotiated an exception ‘always [had] pressure on them to return quicker’.⁶⁶⁴ This arrangement was reflected in the experience of an interviewee from a large professional services organisation who reported ‘a hurdle barrier that you have to be with the company for 12 months before you can access paid parental leave’, with allowances for employees to

⁶⁵⁹ Interview 14: Gender equality adviser, public administration and safety organisation, 5000+ employees (emphasis added).

⁶⁶⁰ Interview 22: People and culture executive, electricity, gas, water, and waste services organisation, <100 employees.

⁶⁶¹ As highlighted in section 2.3.2.1, later datasets do address some of the information that was raised by the interviewees but was not covered in the 2018–19 dataset. For example, length of service requirements to access parental leave and the time in which parents must access their leave: Workplace Gender Equality Agency (n 134), 42, 43 <<https://www.wgea.gov.au/sites/default/files/documents/WGEA-Gender-Equality-Scorecard-2022.pdf>>.

⁶⁶² Interview 7: Inclusion and diversity manager, electricity, gas, water, and waste services organisation (public), 1000–4999 employees.

⁶⁶³ Interview 8: Human resources consultant.

⁶⁶⁴ Ibid.

negotiate this requirement in their organisation.⁶⁶⁵ The interviewee described the policy as ‘an issue’ and said they would be raising it for revision at the next review of the policy.⁶⁶⁶

The requirement was explained by an interviewee from a large manufacturing organisation who said that this policy is ‘pretty common’ in ‘a lot of places’ because of concerns ‘that someone will join in, then announce they’re pregnant the next day, go on leave, and... leave two weeks after’,⁶⁶⁷ although the interviewee noted that there was an active effort to discourage this mindset and to encourage decision-makers to be grateful that generous parental leave policies were attracting good talent that could hopefully be encouraged to stay with ‘flexibility and the other great employee benefits’.⁶⁶⁸

Interviewees from a range of organisations also reported restricting the use of parental leave to the months following the child’s arrival, typically within the first year.⁶⁶⁹ For example, a manager in a large public sector utilities organisation found that ‘organisations tend to be very focussed on the first 12 months or two years of life’ for parents to access parental leave. However, the interviewee noted that this ‘one size fits all’ approach did not serve the full spectrum of parental needs and that ‘a broader range of options’ for when parents could ‘push pause’ on their careers would be ‘fabulous’.⁶⁷⁰ Despite this, no interviewees reported having no restrictions on when parents could access their leave. In fact, allowances to access parental leave within more than a year from the child’s arrival were positioned as exceptional. For example, an interviewee from a large professional services organisation that allowed parents to access their parental leave up until the child’s eighteenth month described this as ‘flexible’ and remarked that this allowance was the result of a recent extension.⁶⁷¹ An interviewee from a large education organisation reported the shortest period for access as six months.⁶⁷² The

⁶⁶⁵ Ibid.

⁶⁶⁶ Ibid.

⁶⁶⁷ Interview 6: Inclusion and diversity lead, manufacturing organisation, 1000–4999 employees.

⁶⁶⁸ Ibid.

⁶⁶⁹ Interview 4: Wellbeing, diversity and inclusion lead, administrative and support services organisation, 500–999 employees; 7: Inclusion and diversity manager, electricity, gas, water, and waste services organisation (public), 1000–4999 employees; 10: People and culture manager, professional, science and tech services organisation, <100 employees; 11: Diversity and inclusion manager, education and training organisation, 5000+ employees; 19: Head of diversity, inclusion and talent, transport, postal and warehousing organisation, 1000–4999 employees; 20: Human resources manager, professional, science and tech services organisation, 5000+ employees.

⁶⁷⁰ Interview 7: Inclusion and diversity manager, electricity, gas, water, and waste services organisation (public), 1000–4999 employees.

⁶⁷¹ Interview 4: Wellbeing, diversity and inclusion lead, administrative and support services organisation, 500–999 employees

⁶⁷² Interview 11: Diversity and inclusion manager, education and training organisation, 5000+ employees.

interviewee expressed dissatisfaction with the policy, saying that it would ideally be a 12-month access period to be ‘a bit more flexible’ but said that their policy was driven by a ‘traditional view of parental leave entitlements’, suggesting that this access period was perhaps the norm.⁶⁷³

A different interviewee from a large professional services organisation highlighted how this requirement could problematically overlap with the requirement for employees’ partners to have returned to work before they can access their own parental leave.⁶⁷⁴ Using their policy as an example, they explained that for fathers to access the 14 weeks of primary carer’s leave their workplace provided, their partners had to ‘go back to work at about 10 months’ because of the policy’s requirement for the employee’s partner to be working and for the leave to be accessed within the first year of the child’s arrival.⁶⁷⁵ In this way, one parent’s time on parental leave can directly cut into the other parent’s time to care for their child. Given the biological incentives for a birth parent to take that leave first, it is often the non-birth parent who will be left with less time to access their leave. One interviewee from a large professional services organisation described allowing employees to negotiate taking their leave outside the other 12-month limitation but only where there was a ‘strong commercial reason’ to do so.⁶⁷⁶

Interviewees also generally referred to their organisation’s leave as a continuous block of time. As mentioned above, one interviewee’s organisation did allow a pro-rata arrangement where leave could be taken on the days that their partner returned to work.⁶⁷⁷ However, this was not phrased as a standard policy but rather as an attempt at flexibility that the organisation was willing to negotiate on a case-by-case basis.

In general, it was clear that the availability of parental leave was often subject to additional restrictions beyond gender. The interviews revealed that structuring parental leave as primary and secondary carer’s leave created gendered expectations of caregiving, where primary carers were assumed to be birth parents and non-birth parents must prove their partners had returned to work before they could access primary carer leave. Other restrictions on availability from

⁶⁷³ Interview 11: Diversity and inclusion manager, education and training organisation, 5000+ employees.

⁶⁷⁴ Interview 21: Human resources manager, professional, science and tech services organisation, 500–999 employees.

⁶⁷⁵ Ibid.

⁶⁷⁶ Interview 13: Diversity and inclusion manager, professional, science and tech services organisation, 1000–4999 employees.

⁶⁷⁷ Interview 4: Wellbeing, diversity and inclusion lead, administrative and support services organisation, 500–999 employees.

the interviews included length of service requirements, having to access parental leave within a specified period from the arrival of the child, and having to access parental leave in a continuous block.

5.3.2 Payment of Parental Leave

As for the payment of parental leave, all interviewees reported paying their parental leave at the employee's full salary. Interviewees did not explain this practice, but this finding was in keeping with the quantitative data where paying employees at their full salary was the most common payment method of organisations offering parental leave too (41.33%; n = 2001).⁶⁷⁸

An aspect of payment that was not addressed in the 2018–19 dataset was the payment of superannuation while on parental leave.⁶⁷⁹ There is no legal requirement for employees to receive superannuation contributions while on parental leave.⁶⁸⁰ In keeping with this, interviewees who did pay some superannuation while on parental leave positioned this as a differentiator. For example, a wellbeing, diversity and inclusion leader described superannuation payments by an organisation on paid and unpaid parental leave as 'really proactive'.⁶⁸¹ Another interviewee from a large professional services organisation described their superannuation payments during both paid and unpaid parental leave up to 28 weeks as 'above requirement payments'.⁶⁸² A human resources consultant described superannuation payments while on parental leave as 'a new thing'.⁶⁸³

Two interviewees were conscious of the need to start paying superannuation while employees were on parental leave but highlighted the cost of doing so as a barrier. An interviewee from a large professional services organisation reported being in the process of proposing to pay superannuation on the unpaid portions of parental leave but noted that 'preliminary modelling is [showing] that's quite an expensive thing for us to do'.⁶⁸⁴ An interviewee from a small

⁶⁷⁸ See section 5.2.1.2.

⁶⁷⁹ This has also since been addressed in later WGEA datasets, Workplace Gender Equality Agency (n 134), 47 <<https://www.wgea.gov.au/sites/default/files/documents/WGEA-Gender-Equality-Scorecard-2022.pdf>>.

⁶⁸⁰ Services Australia, 'Providing Parental Leave Pay' (Web Page, 10 December 2021) <<https://www.servicesaustralia.gov.au/providing-parental-leave-pay?context=23121>>.

⁶⁸¹ Interview 4: Wellbeing, diversity and inclusion lead, administrative and support services organisation, 500–999 employees.

⁶⁸² Interview 13: Diversity and inclusion manager, professional, science and tech services organisation, 1000–4999 employees.

⁶⁸³ Interview 8: Human resources consultant.

⁶⁸⁴ Interview 9: Head of diversity and inclusion, professional, science and tech services organisation, 1000–4999 employees.

utilities organisation reported offering superannuation contributions on the paid portion of parental leave and knew that ‘other organisations do it on the unpaid portion’ but said that they were ‘not there yet’.⁶⁸⁵ Therefore, it appeared that superannuation payments on parental leave were rare despite the FWO describing it as ‘best practice’,⁶⁸⁶ with resourcing being a key barrier to its implementation.

5.3.3 Duration of Parental Leave

The quantitative results revealed that the length of primary and secondary carer’s leave differed greatly. The median offering of primary carer’s leave is 12 weeks as compared to 10 days for secondary carer’s leave.⁶⁸⁷ This was reflected by interviewees’ experiences, where reported lengths of primary and secondary carer’s leave generally ranged from 12 to 18 weeks for primary carer’s leave and 10 days for secondary carer’s leave.

An interviewee from a large manufacturing organisation explained how organisations set the duration of their parental leave offerings as follows:

since [secondary carer’s leave] is two weeks [in the *PPL Act*] then typically people just default to two weeks rather than making it larger and I think that’s just kind of a guidance post and that’s probably the same thing with the 18 weeks... [there’s kind of an] unspoken rule that corporates are around 12 to 14 [weeks of primary carer’s leave].⁶⁸⁸

A human resources consultant was of the view that a lot of organisations now offered a minimum of 16 weeks’ primary carer’s leave.⁶⁸⁹ A consultant, however, reported that the best policies they saw offered 12 weeks of primary carer’s leave. One organisation offered two months while another offered four weeks but described this as being ‘on the lower end’.⁶⁹⁰ This was explained by the interviewee as being because the companies they worked with were ‘quite small’ and in a ‘growth phase’.⁶⁹¹ This interviewee’s experience is in keeping with the large standard deviations in the quantitative data, suggesting stark differences in the length of

⁶⁸⁵ Interview 22: People and culture executive, electricity, gas, water, and waste services organisation, <100 employees.

⁶⁸⁶ Fair Work Ombudsman, ‘Parental Leave’ (Web Page) <<https://www.fairwork.gov.au/tools-and-resources/best-practice-guides/parental-leave>>.

⁶⁸⁷ See section 5.2.1.3.

⁶⁸⁸ Interview 6: Inclusion and diversity lead, manufacturing organisation, 1000–4999 employees.

⁶⁸⁹ Interview 8: Human resources consultant.

⁶⁹⁰ Interview 17: Human resources consultant.

⁶⁹¹ Ibid.

primary and secondary carer's leave offered in the dataset.⁶⁹² After all, the quantitative data revealed that only 16.07% (n = 778) of organisations offered at least 12 weeks of primary carer's leave and 10 days of secondary carer's leave.⁶⁹³ The fact that most interviewees' duration of offerings reflected this despite the minority of organisations doing so in the dataset may be because interviewees generally came from more established, larger organisations.

Interviewees also appeared to be revisiting their organisations' parental leave durations and reported that these were likely to increase or had increased in recent years. A consultant, for example, found that the length of employer-funded parental leave had increased 'significantly' over the last 15 years that he had been working.⁶⁹⁴ An interviewee from a large professional services organisation reported increasing their secondary carer's leave entitlement from two to three weeks because it was a requirement of the WGEA's Employer of Choice citation.⁶⁹⁵ An interviewee from a large administrative services organisation said their organisation offered 14 weeks of primary carer's leave but noted that 'the dial keeps shifting'.⁶⁹⁶ Still, no interviewees suggested changing the length of secondary carer's leave such that it would more closely resemble the length of primary carer's leave.

In the WGEA dataset, respondents could only provide one answer to their length of primary and secondary carer leave offerings. However, interviewees revealed that some organisations had different durations of leave depending on an employee's length of service. For example, an interviewee at a small professional services organisation described their primary carer leave entitlement as beginning at 12 weeks, increasing to a maximum of 18 weeks after five years of service.⁶⁹⁷ Similarly, an interviewee from a large education organisation reported 18 weeks of primary carer's leave at the point of hire, increasing up to 24 weeks.⁶⁹⁸ The extent to which this is the norm, however, is unclear.

⁶⁹² See section 5.2.1.3.

⁶⁹³ Table 5.2.

⁶⁹⁴ Interview 5: Inclusion and diversity manager and consultant, government departments and education and training organisations, ranging in size from 250–499 to over 5000 employees.

⁶⁹⁵ Interview 13: Diversity and inclusion manager, professional, science and tech services organisation, 1000–4999 employees.

⁶⁹⁶ Interview 4: Wellbeing, diversity and inclusion lead, administrative and support services organisation, 500–999 employees.

⁶⁹⁷ Interview 10: People and culture manager, professional, science and tech services organisation, <100 employees.

⁶⁹⁸ Interview 11: Diversity and inclusion manager, education and training organisation, 5000+ employees.

5.3.4 Organisational Factors Affecting the Provision of Parental Leave

As for the factors influencing the provision of parental leave, the quantitative regression models found that the organisational factors of organisation size, industry type, and gender dominance influenced the provision and duration of parental leave.⁶⁹⁹ Generally speaking, larger, male-dominated, specialised services organisations had a higher likelihood of offering parental leave and for longer periods than the median offering.⁷⁰⁰

The interview results help explain these findings by contextualising the influence of these organisational factors. Interviewees raised staff and financial resourcing challenges as major contributors to limiting parental leave offerings. An interviewee from a small organisation in a technical area, for example, justified their 12-month length of service requirement to access parental leave by saying, ‘by the time someone gets up to speed, if they were to leave three months later to go on parental leave it will be difficult’.⁷⁰¹

As for financial resourcing limitations, a human resources consultant who worked mainly with smaller organisations explained that ‘small to medium-sized organisations ... have to be dependent on the government [parental leave payments] because financially they just can’t offer [their own]’.⁷⁰² The interviewee went on to say, ‘Small and medium organisations really struggle financially to cover too many parental leaves at once ... I think that they would offer as much as they could within the financial constraints and knowing that the government does offer funding as well’.⁷⁰³ This sentiment was echoed by another consultant who also worked with smaller organisations and described their clients as generally relying on the government’s scheme because they were constrained by their financial position despite feeling like they should be doing more.⁷⁰⁴ As an interviewee from a smaller utilities organisation pointed out, the financial implications of parental leave can go beyond the employee’s salary because ‘it’s not the cost of the parental leave alone, it’s then the cost of backfilling the role, [and] potentially

⁶⁹⁹ See section 5.2.2.

⁷⁰⁰ Ibid.

⁷⁰¹ Interview 22: People and culture executive, electricity, gas, water, and waste services organisation, <100 employees.

⁷⁰² Interview 8: Human resources consultant.

⁷⁰³ Interview 8: Human resources consultant.

⁷⁰⁴ Interview 17: Human resources consultant.

recruitment costs' to cover for the employee while on leave.⁷⁰⁵ This can make extended and flexible parental leave provisions prohibitively expensive for smaller organisations.

These factors help explain the quantitative finding that smaller organisations were generally less likely to offer parental leave or be less generous with their offerings, bearing in mind that organisations in the dataset were still relatively large given the WGEA dataset's focus on organisations with more than 100 employees. The interviewees' comments referred to much smaller organisations. According to the quantitative data, organisations in the dataset rarely reported resourcing as a reason for not offering parental leave.⁷⁰⁶ However, this may again be because most organisations in the dataset have more than 100 employees.

The interviewees also explained how resourcing considerations, and the impact of these considerations on parental leave offerings, intersect with the gender dominance of an organisation. As a human resources consultant described, the process for increasing parental leave offerings often involved modelling how much it would cost the organisation if all eligible parents took the maximum amount of time off.⁷⁰⁷ A consultant who worked with not-for-profit organisations (which tend to have large female workforces) found that this modelling exercise was particularly complicated when anticipating the maximum number of employees who may access parental leave in female-dominated organisations because there are greater expectations for women to access parental leave than men.⁷⁰⁸ Therefore, in female-dominated organisations, the increased prevalence of women may lead to higher anticipated costs should parental leave increases be contemplated. This may explain the quantitative findings that smaller female-dominated organisations would be more likely to offer parental leave but that the likelihood of offering generous parental leave entitlements decreased as female-dominated organisations increased in size.⁷⁰⁹

It would also explain the inverse finding that male-dominated organisations were more generous in their parental leave offerings, perhaps because decision-makers in these organisations anticipated lower levels of take-up and therefore lower projected costs. A human resources consultant, however, noted that they had not seen numbers in modelling that

⁷⁰⁵ Interview 22: People and culture executive, electricity, gas, water, and waste services organisation, <100 employees.

⁷⁰⁶ Table 5.6.

⁷⁰⁷ Interview 8: Human resources consultant.

⁷⁰⁸ Interview 17: Human resources consultant.

⁷⁰⁹ See section 5.2.3.

contrasted ‘the cost of giving everyone maternity leave who gets pregnant *versus* the cost of attrition of [losing] these women [as employees] ... and thus how long ... it [would] take to retrain’ a new staff member in that position’.⁷¹⁰ This may explain why the potential benefits that may flow from increased parental leave offerings may not be fully appreciated by an organisation’s decision-makers.

As for why an organisation might introduce more generous entitlements, interviewees from organisations of varying sizes and industry types were clear that the retention and attraction of staff, especially women, was a significant motivator. This was found to be particularly important for interviewees in male-dominated organisations. As an interviewee from a large male-dominated manufacturing organisation explained, decision-makers are ‘in a space [where] they’ll do just about anything ... to improve their gender balance targets and their goals’.⁷¹¹ A human resources consultant similarly highlighted how ‘some of the most progressive policies we’ve seen before now have been in male-dominated organisations who are seeking to attract more females’.⁷¹² This might further explain the quantitative results that demonstrated larger male-dominated organisations were most likely to offer relatively generous primary carer’s leave.⁷¹³ It might also explain why the increase in the likelihood of generous offerings for male-dominated organisations was not as strong in secondary carer’s leave provisions.⁷¹⁴ If the intention is to attract more women, organisations may focus on increasing primary carer’s leave offerings on the assumption that this will be of greater interest to women.

Interviewees from a range of organisation sizes and industry types also highlighted how generous parental leave provisions can reflect positively on an organisation’s public image. This was found to be especially helpful in competitive talent markets. As an interviewee from a large public sector organisation said, ‘professionals are probably going to be more choosy ... because ... they’ve got social capital that they can bargain with’, thereby creating pressure for

⁷¹⁰ Interview 8: Human resources consultant.

⁷¹¹ Interview 6: Inclusion and diversity lead, manufacturing organisation, 1000–4999 employees.

⁷¹² Interview 18: Human resources consultant.

⁷¹³ See section 5.2.3.

⁷¹⁴ Ibid.

employers to meet these higher expectations.⁷¹⁵ This helps explain the quantitative finding that parental leave offerings are likely to be more generous in specialised service organisations.⁷¹⁶

5.3.5 Influence of the *PPL Act* on Parental Leave Provision

The quantitative results also revealed that the most reported reason for organisations not offering employer-funded parental leave was that the government's scheme was seen to be sufficient (primary carer's leave: 59.45%, n = 1318; secondary carer's leave: 53.13%, n = 1392). This was explained by an interviewee from a large manufacturing organisation who said that the lack of a legislative mandate for employers to offer specific parental leave offerings of their own often posed a barrier for them to encourage the organisations they worked for to improve their own parental leave entitlements.⁷¹⁷ In this way, the data appear to suggest a widespread perception that the *PPL Act* sufficiently addresses employees' parental leave needs and that organisations do not need to offer further parental leave supports of their own.

The interviews also revealed how the *PPL Act* influenced *how* parental leave was offered when organisations decided to do so. As mentioned above, an interviewee from a large manufacturing organisation described the *PPL Act*'s offerings as a 'guidance post' for how organisations could structure their own entitlements.

Several interviewees across organisation sizes and types similarly described the *PPL Act* as a guide against which organisations designed their own offerings. As a human resources consultant put it:

I think [the *PPL Act*] tends to be the starting point and then they look at well, how do we improve it? So, how can we, for example, improve the parental leave policy, but it's still primary/secondary and gendered in nature. We might have additional weeks, or we might offer [parental leave] at their full-time salary rather than the minimum wage rather than saying, well, is that really the problem that we are solving ... as an organisation?⁷¹⁸

In this same vein, interviewees said that changes to the *PPL Act* would prompt revisions to their own offerings. An interviewee from a large professional services organisation, for example, stated that:

⁷¹⁵ Interview 14: Gender equality adviser, public administration and safety organisation, 5000+ employees.

⁷¹⁶ See section 5.2.3.

⁷¹⁷ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁷¹⁸ Interview 18: Human resources consultant.

when the government ... quite relatively recently introduced the flexible component to the government paid parental leave scheme we did the same in our own policy. Also ... there's some discussion of parental leave going to 26 weeks. If the government were to do that, we would of course, immediately increase our paid parental leave policy to 26 weeks and similarly if the government ... started paying superannuation ... we would immediately look at that. So, it's... very influential.⁷¹⁹

This deference to the *PPL Act* was reiterated by an interviewee from a large administrative services organisation, who said that 'the removal of secondary/primary carer [categories]' in the *PPL Act* 'would force us to be quicker because we'd have to respond to that ... [and if] the government required organisations to pay superannuation on extended parental leave ... that would force us to do that'.⁷²⁰ It was clear that while organisational factors influenced the nature and provision of parental leave, so did the *PPL Act* both in terms of whether an organisation offered parental leave and how it chose to do so.

5.4 Discussion and Conclusion

The quantitative data revealed that it was most common for organisations in the dataset to offer no parental leave at all (45.29%; n = 2192). These findings are from a dataset that focussed on private and higher education institutions with over 100 employees. It stands to reason that parental leave offerings would be rarer still in smaller organisations. The data therefore suggest that organisations that do offer employer-funded parental leave represent a minority of Australian workplaces overall.

Of these organisations, the quantitative data revealed that the most common offering of parental leave was to offer primary and secondary carer's leave to both men and women (41.56%, n = 2012).⁷²¹ The qualitative data illustrated that interviewees were dissatisfied with the labels of primary and secondary carers and had a desire to move away from this distinction in their own policies.

⁷¹⁹ Interview 9: Head of diversity and inclusion, professional, science and tech services organisation, 1000–4999 employees.

⁷²⁰ Interview 4: Wellbeing, diversity and inclusion lead, administrative and support services organisation, 500–999 employees.

⁷²¹ Table 5.1.

As discussed in Chapter 3 (section 3.2.2), recently enacted changes removed the designation of primary and secondary carers in the *PPL Act* from 1 July 2023. Given that the interview data suggested that changes in the *PPL Act* would often prompt an organisation to make corresponding changes to their own policies, the removal of the designation of primary and secondary carer's leave within the *PPL Act* may accelerate similar revisions within organisations' workplace policies too.

However, some interviewees felt the primary and secondary carer labels were important. For example, one interviewee felt parents should not be on parental leave concurrently due to the belief that a father would not care for his children if the mother was also present. Another interviewee felt that birth parents, who were often defined to be primary carers in the first instance, deserved a longer period of parental leave because of the biological effects and needs of childbirth. The decision-makers within organisations who hold these views may therefore be reluctant to mirror the changes in the *PPL Act*.

It is also not at all clear that the removal of the labels of primary and secondary carers would result in a greater take-up of parental leave among men and the adoption of gender-neutral parental leave procedures in practice within organisations. Interviewees described the labels of primary and secondary carers as failing to facilitate gender equal take-up of parental leave. However, the issues raised by interviewees as affecting men's take-up of parental leave may not necessarily be resolved by merely removing the primary carer label. For example, interviewees' experiences of fathers rarely being supported in a primary carer role seemed rooted in a lack of support for fathers accessing long periods of parental leave, regardless of what it was called. This was a strong theme in the interview data, suggesting that these views are prevalent within Australian society both inside and outside the workplace. It is unlikely that these attitudes will be reversed by simply not referring to longer periods of parental leave as 'primary carer's leave'. Indeed, the one interviewee who reported removing their primary and secondary carer designations in their parental leave policy found that male take-up of parental leave did not increase.

As for the length of parental leave in Australian workplaces, the quantitative data found the median offering of primary carer's leave to be 12 weeks, while the median offering of secondary carer's leave was 10 days. Under the *PPL Act*, at the time the WGEA's data was collected, the non-flexible period of primary carer's leave was 12 weeks, and the duration of secondary carer's leave was 10 days. Most organisations appeared to be mirroring the *PPL Act* in constructing the duration of their leave (albeit for a shorter period). This was reflected in the

interview data too, which found most organisations offered between 12 and 18 weeks of primary carer's leave and 10 days of secondary carer's leave. The quantitative data, however, revealed that only 16.07% (n = 778) of reporting organisations offered at least 12 weeks of primary carer's leave and 10 days of secondary carer's leave. This lends further support to the conclusion that the interviewees' views represent those of more proactive and generous organisations in offering parental leave.

The data revealed that this leave was usually paid at an employee's full salary, a feature highlighted in Chapter 3 as significant in encouraging take-up among men. The interviews also revealed, however, that superannuation was often not paid while a parent accessed parental leave. This arguably further exacerbates the financial disincentive for higher-earning parents to access longer periods of leave, which, as discussed in Chapter 3, is often the man in heterosexual couples due to the gender wage gap.

The data also revealed further restrictions on accessing parental leave that mirrored features of the *PPL Act*. For example, the requirement that parents access parental leave to the exclusion of each other. In the interviews, this practice was attributed to the fact that employees had to swap into a 'primary carer' role and therefore had to prove that they were accessing their leave to the exclusion of their partner and were now 'primarily' responsible for the child. This restriction on having to access primary carer's leave to the exclusion of the other parent mirrors the *PPL Act* (before the recent amendments), where only one parent could access the *PPL Act*'s primary carer payments at a time.

Under the recent amendments discussed in Chapter 3 (section 3.2.2), although the label of primary carer payments will be removed, only 10 days of payments can be made to more than one person on the same day. Therefore, it seems likely that organisations will continue to require non-birth parents to prove that their partners have returned to work with statutory declarations before allowing them to access their parental leave entitlements. This would effectively maintain the 'primary carer' requirement in practice and continue to entrench the idea that the birth parent is the sole and primary carer unless a statutory declaration is submitted to prove otherwise.

Another similar restriction between employer policies and the *PPL Act* was length of service requirements. Under the *PPL Act*, parents must work for 10 of the preceding 13 months to be eligible for the payments and pass the 'work test'. The interviews showed that 12-month length-of-service requirements were common. The *PPL Act* also requires that payments be accessed

within the first two years of the child's arrival. Interviewees reported similar time limits on accessing leave. However, workplace policies seemed to have much shorter durations of access, ranging from six to 18 months.

Finally, until the most recent amendments, the *PPL Act* required that the first 12 weeks of leave were taken in a consecutive block with a flexible six-week period. Most interviewees required consecutive leave days too with two exceptions where leave could be taken more flexibly. One interviewee's organisation mirrored the *PPL Act*'s former flexible six-week portion of leave and 12 weeks of consecutive leave. Another organisation allowed a pro-rata arrangement where if a partner of an employee had returned to work part-time, the employee could access their parental leave on those days and work on the others. This level of flexibility will now be possible under the *PPL Act*'s recent changes (effective from 1 July 2023), which allow parents to access their payments in blocks as small as a day at a time. This adjustment may prompt more organisations to change their policies in keeping with the tendency for organisations to defer to the *PPL Act* when structuring their own policies.

However, the quantitative data also revealed that the most reported reason for not offering employer-funded parental leave was that the government scheme was sufficient. This suggests that for some organisations the existence of the *PPL Act* discourages more generous parental leave provisions of their own because the government is seen as having already satisfactorily addressed this entitlement. In this way, improvements to the *PPL Act*, such as the promised increase in the overall duration of payments and improved flexibility, may further discourage such organisations from creating or improving their own parental leave policies.

The interview data also revealed that resourcing and administrative difficulties in backfilling roles while parents were on parental leave made it difficult to facilitate flexible policies. Interviewees discussed how these difficulties were especially challenging for smaller organisations. This was supported by the quantitative finding that found larger organisations to be much more likely to offer parental leave. The quantitative data showed that the effect of organisation size, however, varied with an organisation's gender dominance. Smaller female-dominated organisations were more likely to offer some primary carer's leave, but longer periods of primary carer's leave were more likely in male-dominated organisations as organisation size increased. This pattern, however, was not necessarily mirrored with secondary carer's leave. Male-dominated organisations were more likely to offer some secondary carer's leave as organisation size increased but not necessarily for more than 10 days.

This was explained by the interview findings. Where parental leave was offered, it was often justified as a useful employee benefit. Interviewees suggested that parental leave was usually seen as a way for employers to distinguish themselves in competitive talent markets, with parental leave positioned as an employee value proposition for retaining and recruiting staff. For male-dominated organisations, generous parental leave policies were described as an especially useful entitlement to diversify their workforces and attract more female talent. This would explain the disproportionate focus on more generous *primary carer's* leave as seen in the quantitative data. It also explains the quantitative findings that specialised services organisations were most likely to offer parental leave and to do so more generously, as these organisations probably have a more competitive talent market.

These findings suggest, however, that employer-funded parental leave is not offered because of the perceived utility of the entitlement. Rather, organisations see their parental leave entitlements as perks that distinguish them as employers of choice in the market. Organisations that do not share these commercial incentives for offering generous parental leave are unlikely to ever expand their parental leave offerings. Parental leave offerings are also unlikely to ever address broader social concerns such as facilitating more gender equal divisions of work and care. For most organisations, the goal is to merely match or outdo relevant competitors' offerings, using the *PPL Act* as a guide to tweak the edges without much critical reflection on employee needs or broader societal goals.

The findings make clear that employer-funded parental leave policies have several key deficiencies when measured against the gender justice criteria. The quantitative results reveal that most employees receive only the government's minimum wage payments while on leave. Where employer-funded parental leave is offered, it is far from **universally available**. Employer-funded parental leave congregates in larger, male-dominated specialised services organisations. Offerings are also often subject to internal eligibility requirements such as minimum lengths of service or proof of primary carer status. Some interviewees reported the possibility of negotiating around their policies' eligibility requirements. However, this demonstrates a lack of **enforceability** around parental leave provisions. Unspoken exceptions rely on employees being comfortable enough to negotiate modifications. The success of these negotiations also depends on the ad hoc decisions of superiors. All of this fails to provide a clearly expressed and broad entitlement to parental leave that employees can reliably enforce. Flexible policies also appear to be rare. Interviewees suggested that parents must generally access their leave alone, in a consecutive period, and usually within the first months of the

child's arrival. Such policies fail to be **substantive** enough to accommodate diverse parenting arrangements and the unique needs and preferences of each family.

The **gender-neutrality** of parental leave offerings in workplaces is also undermined by a range of factors. These include entrenched attitudes that do not support fathers in accessing a substantial period of parental leave; negative financial and career consequences for fathers who access this leave; and administrative hurdles for fathers to surmount, such as statutory declarations and the requirement for partners to return to work.

As discussed above, the recent legislative changes to the *PPL Act* may prompt some changes to organisations' policies, given interviewees' reported responsiveness to changes in legislation. For example, more organisations may remove the primary and secondary carer distinctions in their parental leave entitlements. It is unlikely, however, that this will result in any meaningful shifts in the gendered utilisation of parental leave as the interviews confirmed ingrained norms within organisations that generally failed to support men in taking a substantial period of parental leave.

Other changes may also flow from the legislative amendments, such as improvements in the flexibility of parental leave policies. Moreover, as the overall duration of parental leave is increased in the legislation, some organisations may follow suit in their offerings of employer-funded parental leave. These changes would improve the substantiveness of these policies. However, the expansion of the *PPL Act* may also dissuade some organisations from further action by affirming the widespread view from the dataset that the government scheme sufficiently addresses parents' needs.

In conclusion, the government's federal parental leave scheme was intended to complement employer-funded leave. However, employer-funded parental leave, where offered, generally fails to address the gender justice criteria. It can also only be found in less than half of Australia's largest private organisations. Furthermore, the finding that commercial considerations tend to be the strongest motivators for workplaces to introduce or increase parental leave offerings suggests that improvements will be limited to select organisations. These are likely to be organisations with the necessary resources in competitive talent markets that would benefit from the publicity of generous parental leave provisions. For organisations without these market incentives and financial means, changes that would improve employer parental leave policies to reflect the gender justice criteria are unlikely to ever happen without legislative intervention and leadership.

In summary, the chapter reveals that many employers do not offer employer-funded parental leave. Where they do, it is offered for purely commercial reasons, mirroring problematic features of the *PPL Act* and failing to embody the gender justice criteria of universal availability, enforceability, substantiveness, and gender-neutrality.

CHAPTER SIX: FLEXIBLE WORK IN THE AUSTRALIAN WORKPLACE

6.1 Introduction

As outlined in Chapter 3 (section 3.4.3), Australia's NES provide that eligible 'carers' may *request* flexible work arrangements.⁷²² Employers are required to respond to these requests but are not required to grant them. Employers have considerable discretion about what and how flexible work arrangements are offered under the current regulatory framework.

As of 6 June 2023, new provisions impose a prescribed list of further requirements for *how* employers must respond to requests for flexible work. This includes requirements to discuss alternative arrangements with employees where a request must be modified or refused. The new provisions also require employers to explain the business grounds used to justify refusals. Employees may resolve disputes relating to this amended right with the FWC.

This chapter examines WGEA data (as set out in section 2.3.2.1), presenting descriptive statistics about the scale of the provision of flexible work types and the mechanisms employed by organisations in the dataset to facilitate a flexible work culture ('flexible work mechanisms'). This is followed by a series of binary logistic regression models (Models 6A–F, as detailed in 2.3.2.3), which, as per the hypotheses set out in section 2.3.2.2, test the assumption that larger, female-dominated, specialised services organisations will have a higher likelihood of offering work-care supports. This analysis is supported and extended by the qualitative findings from the analysis of interview data gained through semi-structured interviews with 22 human resources professionals, as detailed in section 2.3.2 of Chapter 2.

For each organisation, the WGEA dataset records the formal/informal availability of several different types of flexible work (compressed weeks,⁷²³ flexible hours,⁷²⁴ telecommuting,⁷²⁵ and time-in-lieu⁷²⁶) and whether these offerings are limited by managerial status or gender. For each flexible work type, information is recorded on whether a specific offering is available

⁷²² See section 3.4.3.

⁷²³ Compressed weeks is defined by the Workplace Gender Equality Agency as 'working the same number of working hours but over a shorter period than a typical work week': Workplace Gender Equality Agency, 'Flexible Work' (Web Page) <<https://www.wgea.gov.au/flexible-work>>

⁷²⁴ Flexible hours are defined as the option to vary start and finish times: Ibid.

⁷²⁵ Telecommuting is defined as the option to work somewhere other than your official place of work: Ibid.

⁷²⁶ Time-in-lieu is defined as the option to work 'approved overtime' and then 'reclaim those hours as time off': Ibid.

formally or informally to male managers, male non-managers, female managers, and female non-managers (problematically reinforcing a gender binary).

For the purposes of this dataset, a flexible work arrangement is defined as ‘an agreement between a workplace and an employee to change the standard working arrangement to better accommodate an employee’s commitments out of work’, and a formal flexible work arrangement refers to an agreement to this effect that has been ‘articulated in writing and endorsed by a person with the authority to do so’.⁷²⁷ The WGEA does not define informal flexible work arrangements in the dataset. It is assumed that informal flexible work arrangements refer to arrangements that do not meet the WGEA definition of a formal flexible work arrangement — an agreement that is not in writing and not endorsed by a person with the authority to do so.

Organisations were also asked to report on the availability of job sharing and part-time work. Both types of flexible work are likely to affect rates of pay and reflect a more permanent and ongoing work arrangement that is unlikely to be negotiated informally without being ‘articulated in writing and endorsed by a person with the authority to do so’ (the definition of a formal offering in the dataset), especially in a large private organisation with at least 100 employees (the majority of respondents in the dataset).⁷²⁸ As such, only the rate of formal offerings of both these flexible work types is reported.

The quantitative and qualitative findings pre-date the government’s recent changes to the right to request flexible work. However, as with Chapter 5, the findings offer insight into recent flexible work provisions within organisations and the factors that influence their provision. The interview findings are also timely given that they were conducted during one of a series of lockdowns in Victoria, caused by the COVID-19 pandemic, which forced employers to shift rapidly to flexible and remote working and accommodations.⁷²⁹ The interview data extend the insights provided in the quantitative data, which pre-date the events of the COVID-19 pandemic.

⁷²⁷ Ibid; Workplace Gender Equality Agency, ‘Guide to Citation: WGEA Employer of Choice for Gender Equality 2020–21’ (Guide, 2020) <<https://www.wgea.gov.au/sites/default/files/documents/2020-05-01-2020-21%20Guide%20to%20Citation%20v2.0.pdf>>.

⁷²⁸ Workplace Gender Equality Agency, ‘Guide to Citation’ (n 727).

⁷²⁹ Victoria’s sixth lockdown commenced on 5 August 2021, with restrictions only easing on 21 October 2021. See Cassidy Knowlton, ‘A Timeline of Covid-19 in Australia, Two Years On’, *TimeOut* (Article, 4 July 2022) <<https://www.timeout.com/melbourne/things-to-do/a-timeline-of-covid-19-in-australia-two-years-on>>.

The data in this chapter provide the basis for an informed analysis of recent attitudes and practices relating to flexible work. In the concluding section of this chapter, the implications of the data for the likely effectiveness of recent legislative changes are highlighted. The section also summarises the scale of flexible work offerings, the prevalence of flexible work mechanisms, and the factors driving the provision of flexible work. The chapter concludes by discussing how flexible work offerings meet the gender justice criteria of universal availability, enforceability, substantiveness, and gender-neutrality.

6.2 Quantitative Results

6.2.1 The Provision of Flexible Work

Given the range of informal/formal, managerial/non-managerial and male/female combinations possible in the WGEA data captured, each formal and informal flexible work type was categorised into three categories: not offered ('none'), limited by managerial status or gender ('limited'), and offered across all categories of managerial status and gender ('unlimited'). Tables 6.1 to 6.4 below set out the extent to which each of the flexible work offerings (compressed weeks, flexible hours, telecommuting, and TOIL) are offered on an informal/formal and limited/unlimited basis. The presentation of both the formal and informal availability of each offering within the same table (as depicted below) reflects the reality that certain flexible work types may be offered both formally and informally within a single organisation. The results given in Tables 6.1–6.4 are discussed below the tables.

Table 6.1 Compressed week offerings by formality and whether the offerings were not available ('none'), available but limited by managerial status or gender ('limited'), or available to all employees irrespective of managerial status/gender ('unlimited')

		INFORMAL COMPRESSED WEEKS							
		None		Limited		Unlimited		Total	
		N	%	N	%	N	%	N	%
FORMAL COMPRESSED WEEKS	None	2193	45.30	139	2.87	991	20.47	3321	68.60
	Limited	126	2.60	79	1.63	28	0.58	232	4.79
	Unlimited	753	15.55	16	0.33	516	10.66	1285	26.54
	Total	3071	63.44	232	4.79	1535	31.71	4841	100.0

Table 6.2 Telecommuting offerings by formality and whether the offerings were not available ('none'), available but limited by managerial status or gender ('limited'), or available to all employees irrespective of managerial status/gender ('unlimited')

		INFORMAL TELECOMMUTING							
		None		Limited		Unlimited		Total	
		N	%	N	%	N	%	N	%
FORMAL TELE- COMMUTING	None	1522	31.45	319	6.59	1323	27.33	3164	65.37
	Limited	60	1.24	76	1.57	34	0.70	170	3.51
	Unlimited	603	12.46	20	0.41	883	18.24	1506	31.12
	Total	2185	45.14	415	8.57	2240	46.28	4840	100.0

Table 6.3 Flexible hours offerings by formality and whether the offerings were not available ('none'), available but limited by managerial status or gender ('limited'), or available to all employees irrespective of managerial status/gender ('unlimited')

		INFORMAL FLEXIBLE HOURS							
		None		Limited		Unlimited		Total	
		N	%	N	%	N	%	N	%
FORMAL FLEXIBLE HOURS	None	222	4.59	98	2.02	1398	28.87	1717	35.47
	Limited	27	0.56	123	2.54	49	1.01	198	4.09
	Unlimited	1282	26.48	66	1.36	1576	32.56	2924	60.40
	Total	1530	31.61	286	5.91	3023	62.45	4841	100.0

Table 6.4 TOIL offerings by formality and whether the offerings were not available ('none'), available but limited by managerial status or gender ('limited'), or available to all employees irrespective of managerial status/gender ('unlimited')

		INFORMAL TOIL								
		None		Limited		Unlimited		Total		
FORMAL TOIL		N	%	N	%	N	%	N	%	
		None	403	8.32	171	3.53	1617	33.40	2190	45.24
		Limited	142	2.93	272	5.62	152	3.14	566	11.69
		Unlimited	1087	22.45	45	0.93	952	19.67	2084	43.05
	Total	1632	33.71	487	10.05	2721	56.21	4841	100.0	

Formal offerings of compressed weeks (31.33%; n = 1517) and telecommuting (34.63%; n = 1676) were relatively low in the dataset. In contrast, formal offerings of flexible hours (64.49%; n = 3122) and TOIL (54.74%; n = 2650) were found in more than half the organisations in the dataset.

Informal offerings of compressed weeks (36.50%; n = 1767), telecommuting (54.85%; n = 2655), flexible hours (68.36%; n = 3309), and TOIL (66.26%; n = 3208) were all more common than their corresponding formal offerings.

Of the organisations offering compressed weeks and TOIL formally, it was most common for organisations in the dataset to offer it to all employees irrespective of managerial status or gender ('unlimited') with no corresponding informal offerings (15.55%; n = 753 and 22.45%; n = 1087, respectively). Of the organisations that offered telecommuting and flexible hours formally, it was most common to offer it in an unlimited fashion but alongside unlimited, corresponding informal offerings of telecommuting (18.24%; n = 883) and flexible hours (32.56%; n = 1576), respectively.

Of the organisations that offered informal compressed weeks, telecommuting, and TOIL, it was most common to offer it in an unlimited fashion with no corresponding formal offerings (20.47%; n = 991, 27.33%; n = 1323, and 33.40%; n = 1617, respectively). This was also the most common offering of these flexible work types in the dataset. The only exception to this was flexible hours, where it was most common for informal offerings to be offered in an unlimited fashion alongside an unlimited formal offering of flexible hours. This was the most common way of offering flexible hours in the dataset (32.56%; n = 1576).

It was relatively common for organisations in the dataset to offer no compressed weeks (45.30%; n = 2193) or telecommuting offerings (31.45%; n = 1522) of any kind. In contrast, it

was very rare for organisations to have no offerings of any kind of flexible hours (4.59%; n = 222) or TOIL (8.32%; n = 403).

Table 6.5 Formal part-time work and job-sharing offerings and whether limited by managerial status or gender ('limited') or not ('unlimited')

	Part-time work		Job sharing	
	N	%	N	%
No	756	15.62	2662	54.99
Limited	312	6.44	411	8.49
Unlimited	3773	77.94	1768	36.52
Total	4841	100.0	4841	100.0

As shown in Table 6.5 above, a large majority of organisations offered part-time work formally to all employees (77.94%; n = 377), but only 36.52% (n = 1768) of reporting organisations offered job sharing. Offering either arrangement in a manner that was limited by managerial status or gender was rare (8.49%; n = 411 and 6.44%; n = 312, respectively).

A proximity matrix was used to determine how various flexible work/employment types coexist within organisations in the dataset. This revealed that combinations of the three most common flexible work/employment offerings — TOIL, part-time work, and flexible hours — were shown to co-occur most frequently. Part-time work was commonly available alongside flexible hours (0.95) and TOIL (0.92), and TOIL was commonly available alongside flexible hours (0.93). Conversely, part-time work and compressed weeks (0.57) and flexible hours and compressed weeks (0.57) were shown to be the least commonly offered in combination.⁷³⁰

6.2.1.2 Flexible Work Mechanisms

Organisations were also asked to report on whether they implemented a variety of mechanisms for normalising and improving the culture surrounding the provision of flexible work. For the purposes of this analysis, these mechanisms were grouped thematically and categorised as

⁷³⁰ Numbers closer to 1 indicate that offerings are more likely to co-occur, and numbers closer to 0 indicate that offerings are less likely to co-occur. Full output from the proximity matrix is available in Table A.7 (appendix).

accountability,⁷³¹ embedding,⁷³² monitoring,⁷³³ and training⁷³⁴ flexible work mechanisms. Most organisations provided no accountability (89.9%; n = 4353), embedding (74.8%; n = 3623), monitoring (82.8%; n = 4006), or training flexible work mechanisms (90.1%; n = 4363).

Table 6.6 The prevalence of accountability, embedding, monitoring, and training flexible work mechanisms

		N	%
ACCOUNTABILITY	None	4353	89.92
	One or more	488	10.08
	Targets have been set for engagement in flexible work.	72	1.49
	Targets have been set for men’s engagement in flexible work.	29	0.60
	Leaders are held accountable for improving workplace flexibility.	472	9.75
EMBEDDING	None	3623	74.84
	One or more	1218	25.16
	Leaders are visible role models of flexible working.	914	18.88
	Flexible working is promoted throughout the organisation.	1024	21.15
	The organisation’s approach to flexibility is integrated into client conversations.	304	6.28
	A business case for flexibility has been established and endorsed at the leadership level.	694	14.34
MONITORING	None	4006	82.75
	One or more	835	17.25
	The impact of flexibility is evaluated. ⁷³⁵	456	9.42
	Metrics on the use/impact of flexibility measures are reported to key management personnel.	299	6.18
	Metrics on the use/impact of flexibility measures are reported to the governing body/board.	182	3.76

⁷³¹ The accountability mechanisms are: ‘Targets have been set for engagement in flexible work’, ‘Targets have been set for men’s engagement in flexible work’, and ‘Leaders are held accountable for improving workplace flexibility’.

⁷³² The embedding mechanisms are: ‘Leaders are visible role models of flexible working’, ‘Flexible working is promoted throughout the organisation’, ‘The organisation’s approach to flexibility is integrated into client conversations’, and ‘A business case for flexibility has been established and endorsed at the leadership level’.

⁷³³ The monitoring mechanisms are: ‘The impact of flexibility is evaluated’, ‘Metrics on the use/impact of flexibility measures are reported to key management personnel’, ‘Metrics on the use/impact of flexibility measures are reported to the governing body/board’, and ‘Employees are surveyed on whether or not they have sufficient flexibility’.

⁷³⁴ The training mechanisms are: ‘Manager training on flexible working is provided throughout the organisation’, ‘Employee training is provided throughout the organisation’ and ‘Team-based training is provided throughout the organisation’.

⁷³⁵ For example, reduced absenteeism, increased employee engagement.

	Employees are surveyed on whether they have sufficient flexibility.	655	13.53
TRAINING	None	4363	90.13
	One or more	478	9.87
	Manager training on flexible working is provided throughout the organisation.	367	7.58
	Employee training is provided throughout the organisation.	323	6.67
	Team-based training is provided throughout the organisation.	194	4.01

As shown in Table 6.6 above, of the different categories of flexible work mechanisms, ‘embedding’ was the most common overall (25.16%; n = 1218); within this category, it was most common for organisations to indicate that ‘flexible working is promoted throughout the organisation’ (21.15%; n = 1024). This was also the most common mechanism overall. The ‘embedding’ category also included the mechanism least common of all in the dataset — ‘targets for men’s engagement in flexible work’ (0.60%; n = 29). Of the different categories of mechanisms, having one or more training mechanisms for flexible work (9.87%; n = 478) was the least common, with ‘team-based training’ least common within this category (4.01%; n = 194).

6.2.2 The Drivers of Flexible Work Provision

As in Chapter 5, descriptive statistics revealed a general pattern where the availability of flexible work types increased with organisation size and was more common in neutral or female-dominated and specialised services organisations.⁷³⁶ Based on this analysis, a series of regression models was used to explore the strength of and practical impact of any association between the availability of flexible work types or mechanisms and the variables of organisation size, industry type, and gender dominance.

As set out in Chapter 2 (section 2.3.2.3), Models 6A–F predicted the offering of some form of flexible work (irrespective of its formality or availability by managerial status or gender) based on organisations’ gender dominance, size, and industry type. Due to insufficient cell counts, it was not possible to include a three-way interaction term between the independent variables. However, where it was possible and doing so improved model fit, two-way interaction terms were included.⁷³⁷ The model output is detailed in Table 6.7 below.

⁷³⁶ See Table A.8 (appendix).

⁷³⁷ See section 2.3.2.3 for a further explanation on how interaction terms were selected for each model.

Table 6.7 Binary logistic regression models predicting the availability of some form of flexible work based on organisation gender dominance, size, industry type, gender dominance*organisation size, organisation size*industry type, and industry type*gender dominance

		Compressed Weeks⁷³⁸	Telecommuting⁷³⁹	Flexible Hours⁷⁴⁰	Time-in-Lieu⁷⁴¹	Part-Time Work⁷⁴²	Job Sharing⁷⁴³
		β (S.E.)	β (S.E.)	β (S.E.)	β (S.E.)	β (S.E.)	β (S.E.)
Constant		-0.67 (0.19)***	0.17 (0.19)	2.18 (0.21)***	1.67 (0.29)***	2.31 (0.31)***	-0.61 (0.19)***
Gender	Female	0.00 (-)	0.00 (-)	0.00 (-)	0.00 (-)	0.00 (-)	0.00 (-)
	Neutral	0.53 (0.22)	0.55 (0.23)*	1.03 (0.29)***	0.78 (0.38)*	0.46 (0.42)	0.76 (0.23)***
	Male	0.25 (0.19)	0.17 (0.20)	0.59 (0.23)**	0.12 (0.30)	-0.36 (0.31)	0.32 (0.19)
Organisation Size	<250	0.00 (-)	0.00 (-)	0.00 (-)	0.00 (-)	0.00 (-)	0.00 (-)
	250–499	0.40 (0.21)	0.42 (0.23)	0.65 (0.28)*	0.34 (0.38)	0.40 (0.16)*	0.51 (0.22)*
	500–999	0.98 (0.24)***	1.12 (0.28)***	1.44 (0.47)**	1.85 (0.51)***	0.77 (0.22)***	1.07 (0.25)***
	1000+	0.80 (0.24)***	0.69 (0.29)*	1.18 (0.38)**	0.53 (0.45)	1.22 (0.25)***	1.04 (0.26)***
Industry Type	Non-service Based	0.00 (-)	0.00 (-)	0.00 (-)	0.00 (-)	0.00 (-)	0.00 (-)
	General services	1.06 (0.22)***	0.33 (0.23)	0.14 (0.20)	1.13 (0.39)**	0.29 (0.41)	1.00 (0.22)***

⁷³⁸ Akaike's Information Criterion (AIC) 244.25. R² = 1.61 (Hosmer and Lemeshow), 0.04 (Cox & Snell), 0.06 (Nagelkerke). Model $\chi^2(23) = 211.29$.

⁷³⁹ Akaike's Information Criterion (AIC) 238.57. R² = 1.42 (Hosmer and Lemeshow), 0.05 (Cox & Snell), 0.07 (Nagelkerke). Model $\chi^2(23) = 249.69$.

⁷⁴⁰ Akaike's Information Criterion (AIC) 189.23. R² = 3.47 (Hosmer and Lemeshow), 0.02 (Cox & Snell), 0.07 (Nagelkerke). Model $\chi^2(23) = 102.57$.

⁷⁴¹ Akaike's Information Criterion (AIC) 197.06. R² = 0.71 (Hosmer and Lemeshow), 0.02 (Cox & Snell), 0.04 (Nagelkerke). Model $\chi^2(23) = 78.00$.

⁷⁴² Akaike's Information Criterion (AIC) 162.77. R² = 4.98 (Hosmer and Lemeshow), 0.02 (Cox & Snell), 0.07 (Nagelkerke). Model $\chi^2(7) = 111.249$.

⁷⁴³ Akaike's Information Criterion (AIC) 271.80. R² = 1.39 (Hosmer and Lemeshow), 0.08 (Cox & Snell), 0.11 (Nagelkerke). Model $\chi^2(23) = 419.91$.

	Specialised services	0.50 (0.19) **	0.10 (0.20)	0.30 (0.19)	0.52 (0.31)	1.06 (0.35)**	1.43 (0.20)***
Gender Dominance* Organisation Size	Female*<250	0.00 (-)	0.00 (-)	0.00 (-)	0.00 (-)	-	0.00 (-)
	Neutral*250–499	-0.27 (0.20)	-0.47 (0.22)*	-0.97 (0.46)*	-0.02 (0.40)	-	-0.41 (0.22)
	Neutral*500–999	-0.37 (0.25)	-0.60 (0.27)*	-1.26 (0.70)	-0.71 (0.50)	-	0.04 (0.27)
	Neutral*1000+	0.21 (0.25)	0.46 (0.31)	-0.25 (0.74)	0.18 (0.53)	-	0.62 (0.30)*
	Male*250–499	0.04 (0.21)	-0.24 (0.23)	-0.74 (0.37)*	0.16 (0.39)	-	0.05 (0.21)
	Male*500–999	-0.36 (0.24)	-0.65 (0.28)*	-0.80 (0.60)	-1.14 (0.49)*	-	-0.08 (0.25)
	Male*1000+	0.48 (0.25)	0.35 (0.30)	-0.20 (0.56)	0.38 (0.49)	-	0.69 (0.27)**
						-	
Organisation Size*Industry Type	Non-service*<250	0.00 (-)	0.00 (-)	-		-	0.00 (-)
	General*250–499	-0.30 (0.22)	0.08 (0.23)	-	-0.74 (0.37)*	-	-0.53 (0.22)*
	General*500–999	-0.79 (0.26)**	-0.41 (0.28)	-	-1.44 (0.46)**	-	-0.65 (0.27)**
	General*1000+	-0.55 (0.25)*	-0.23 (0.29)	-	-0.42 (0.48)	-	-0.67 (0.27)*
	Specialised*250–499	0.05 (0.20)	-0.03 (0.23)	-	0.13 (0.40)	-	-0.10 (0.21)
	Specialised*500–999	-0.25 (0.23)	-0.3 (0.28)	-	-1.30 (0.48)**	-	-0.47 (0.25)
	Specialised*1000+	0.17 (0.25)	0.45 (0.31)	-	0.25 (0.50)	-	0.10 (0.28)
						-	
Industry Type*Gender Dominance	Non-service*Female	0.0 (-)	0.0 (-)	-	0.0 (-)	0.0 (-)	0.00 (-)
	General*Neutral	-0.65 (0.25)**	-0.69 (0.26)**	-	-1.22 (0.46)**	-0.58 (0.54)	-0.98 (0.26)***
	General*Male	-0.69 (0.24)**	-0.05 (0.25)	-	-0.67 (0.41)	-0.60 (0.47)	-0.65 (0.24)**
	Specialised*Neutral	-0.01 (0.22)	0.25 (0.24)	-	-0.23 (0.42)	-0.37 (0.56)	-0.83 (0.24)***
	Specialised*Male	-0.04 (0.20)	1.30 (0.24)***	-	0.75 (0.40)	0.17 (0.48)	-1.14 (0.21)***

*p<0.05; **p<0.01; ***p<0.001

6.2.2.1 Compressed Weeks

The regression model revealed two statistically significant interaction terms — ‘organisation size*industry type’,⁷⁴⁴ and ‘industry type*gender dominance’.⁷⁴⁵ However, the interaction term of ‘gender dominance*organisation size’ fell short of statistical significance.

The model illustrated that the likelihood of offering compressed weeks increased as organisational size reached 250–499, and increased considerably as it reached 500–999 (at statistically significant levels)⁷⁴⁶ before tailing off once organisation size exceeded 1000 employees.⁷⁴⁷ Non-significant terms for the interaction ‘gender dominance*organisation size’ show that this pattern did not differ for neutral and male-dominated companies, though more generally, neutral organisations were more likely than female-dominated organisations to offer compressed weeks.⁷⁴⁸

As shown by the ‘organisation size*industry type’ interaction term, while general services organisations had a higher probability overall of offering compressed weeks compared to non-service-based organisations, organisation size had less of a relationship with the offer of compressed weeks for general services organisations compared to non-service-based organisations, with significant negative general services organisation interaction terms for 500–999 and 1000+ employees.⁷⁴⁹

As for the ‘gender dominance*industry type’ interaction, female-dominated organisations working in the general services industry were associated with a greater likelihood of offering compressed weeks than were non-service-based organisations.⁷⁵⁰ The same was true of specialised services, though to a slightly lesser degree.⁷⁵¹ While general services organisations had a higher likelihood of offering compressed weeks, as shown by the statistically significant ‘general*neutral and general*male’ interaction terms, the effect was not as large for neutral

⁷⁴⁴ $\chi^2(6) = 15.78, p = 0.015$.

⁷⁴⁵ $\chi^2(4) = 14.83, p = 0.005$.

⁷⁴⁶ $\beta = 0.98, \chi^2 = 16.48, p < 0.001$.

⁷⁴⁷ While 1000+ companies were associated with a greater likelihood of offering compressed weeks at a statistically significant level when compared to the reference category ($\beta = 0.80, \chi^2 = 10.80, p = 0.001$), this likelihood was lower than it was for companies sized 500–999.

⁷⁴⁸ $\beta = 0.53, \chi^2 = 5.88, p = 0.015$.

⁷⁴⁹ $\beta = -0.79, \chi^2 = 9.50, p = 0.002$ (for general services organisations with 500-999 employees); $\beta = -0.55, \chi^2 = 4.84, p = 0.028$ (for general services organisations with 1000+ employees).

⁷⁵⁰ $\beta = 1.06, \chi^2 = 22.93, p < 0.001$.

⁷⁵¹ $\beta = 0.50, \chi^2 = 6.79, p = 0.009$.

and male-dominated organisations as it was for female-dominated organisations.⁷⁵² The small non-significant interaction terms associated with ‘specialised*neutral and specialised*male’ suggest that being a specialised organisation had an equivalent effect for neutral and male-dominated organisations as for female-dominated organisations.

Figure 6.1 places these findings into context by displaying predicted probabilities from the model, allowing easy interpretation of the combined relationship between gender, organisation size, industry type, and whether compressed weeks were offered.

Figure 6.1 Predicted probability (simulated from the model outlined in Table 6.8) of some form of compressed weeks being offered based on organisation size, gender dominance, and industry type

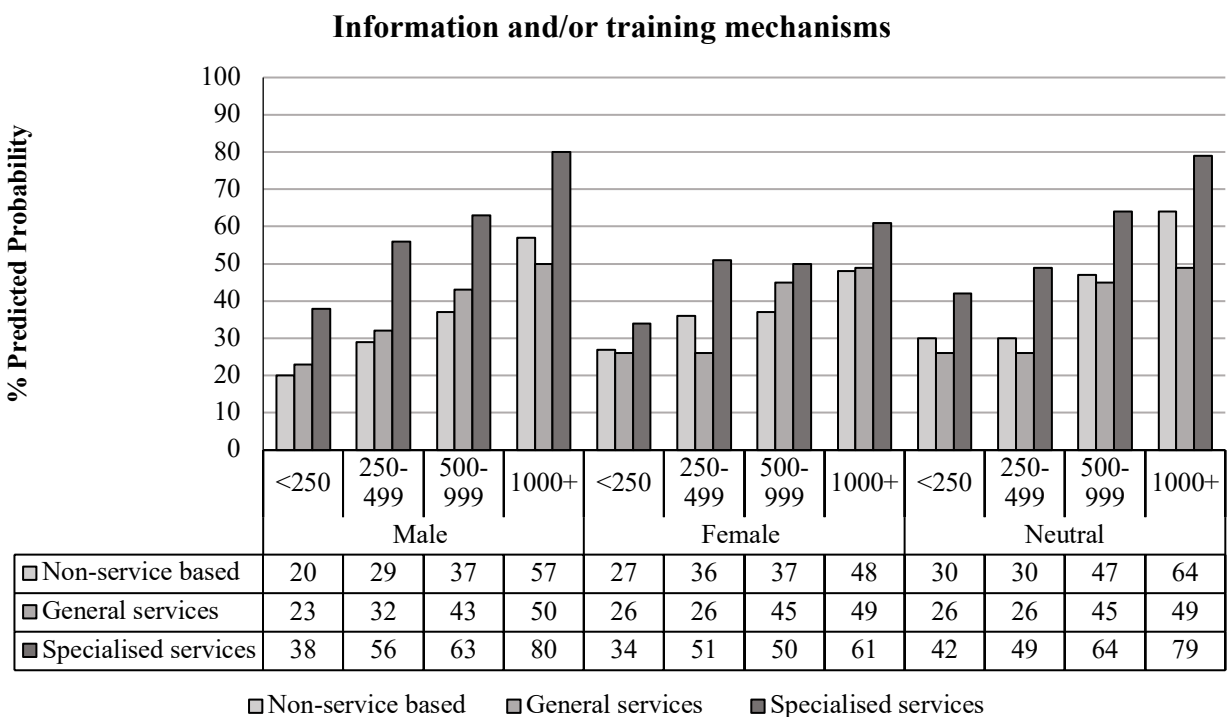


Figure 6.1 reveals a pattern unlike that presented in Chapter 5, where female-dominated companies were associated with the highest likelihood of offering parental leave when organisations had fewer than 250 employees but were overtaken by male and neutral companies as organisation size increased.⁷⁵³ However, Figure 6.1 reveals that female-dominated companies across all organisation sizes were associated with a lower probability of offering compressed weeks when compared to neutral and male-dominated companies. The only

⁷⁵² $\beta = -0.65$, S.E. = 0.25, $p = 0.009$ (for general services organisations that were neutral); $\beta = -0.69$, S.E. = 0.24, $p = 0.004$ (for general services organisations that were male-dominated).

⁷⁵³ See section 5.2.3.

exception to this was in general services. In this industry sector, female-dominated companies were associated with a higher likelihood of offering compressed weeks across all organisation sizes when compared to neutral or male-dominated companies, except for the largest organisations (1000+ employees). As it relates to industry sector, except for female-dominated organisations with fewer than 1000 employees, specialised services organisations were associated with the highest likelihood of offering compressed weeks. In specialised services organisations, neutral organisations had the highest predicted probabilities of offering compressed weeks until organisation size exceeded 1000 employees, at which point male-dominated organisations reached parity.

6.2.2.2 Telecommuting

For telecommuting, the model revealed statistically significant interaction terms for ‘industry type*gender dominance’⁷⁵⁴ and ‘gender dominance*organisation size’ interactions,⁷⁵⁵ though the ‘organisation size*industry type’ interaction was not significant.

As was the case with compressed weeks, the probability of offering telecommuting increased with organisation size for female-dominated organisations but tailed off once the organisation size exceeded 1000 employees. These findings were statistically significant for organisations sized 500–999⁷⁵⁶ and 1000+.⁷⁵⁷

The significant ‘gender dominance*organisation size’ interaction showed that organisation size had a different relationship to the likelihood of offering telecommuting for neutral and male-dominated organisations than for female-dominated organisations. Significant negative interaction terms for neutral organisations with 250–499 employees and neutral and male-dominated organisations with 500–999 employees indicated that there was not a comparable increase in the likelihood of offering telecommuting as size increased for these organisation types compared to female-dominated organisations.⁷⁵⁸ While an organisation size of 1000+ employees was associated with a somewhat higher likelihood of offering telecommuting for neutral and male-dominated organisations, compared to female-dominated organisations, the

⁷⁵⁴ $\chi^2 (4) = 56.33, p = <0.001$.

⁷⁵⁵ $\chi^2 (6) = 15.64, p = 0.016$.

⁷⁵⁶ $\beta = 1.12, \chi^2 = 16.22, p = <0.001$.

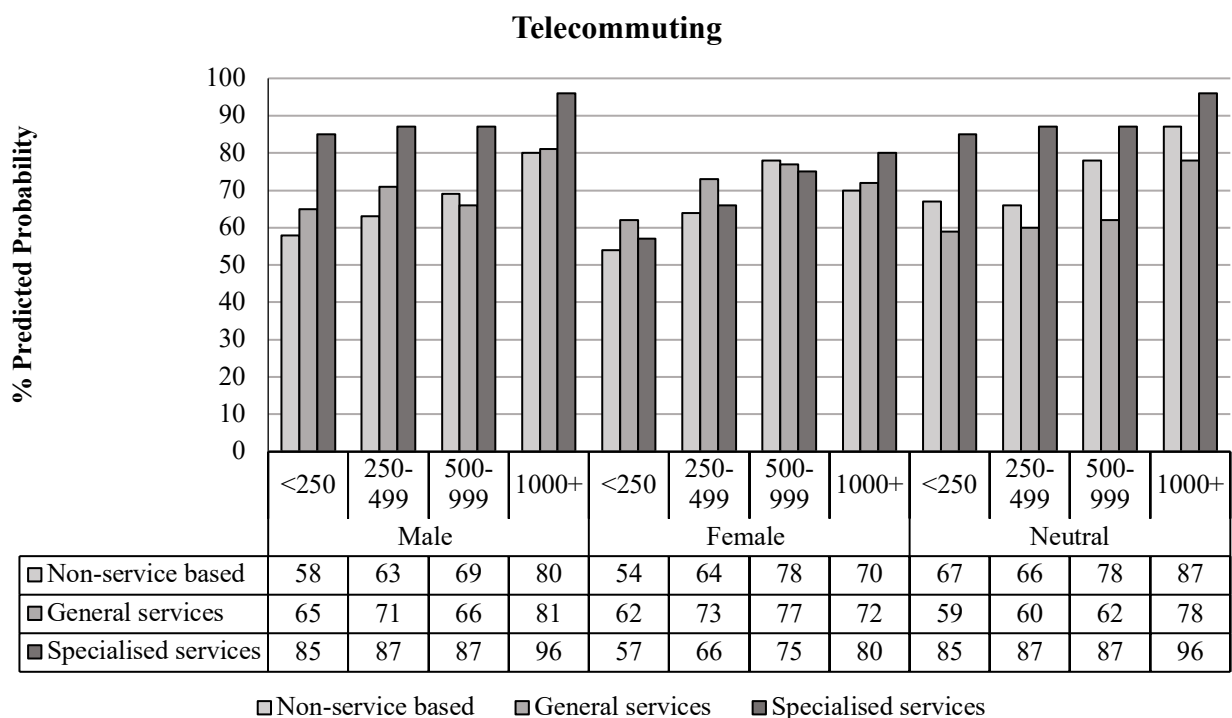
⁷⁵⁷ $\beta = 0.69, \chi^2 = 5.96, p = 0.016$.

⁷⁵⁸ $\beta = -0.47, \chi^2 = 4.62, p = 0.032$ (neutral organisations with 250–499 employees); $\beta = -0.60, \chi^2 = 4.73, p = 0.030$ (neutral organisations with 500–999 employees); $\beta = -0.65, \chi^2 = 5.50, p = 0.019$ (male-dominated organisations with 500–999 employees).

findings did not reach significance. This impact of organisation size was not shown to vary by industry type, as evidenced by the non-significant ‘organisation size*industry type’ interaction term.

For female-dominated organisations, both general services and specialised services organisations were associated with an increased probability of offering telecommuting, though the results were not statistically significant. A significant ‘gender dominance*industry type’ interaction term showed that this pattern was reversed for neutral organisations in general services.⁷⁵⁹ The relationship between being a specialised service organisation and offering telecommuting was also much stronger for male-dominated organisations than for female-dominated organisations and statistically significant.⁷⁶⁰ Figure 6.2 below contextualises these findings by illustrating predicted probabilities from the model.

Figure 6.2 Predicted probability (simulated from the model outlined in Table 6.8) of some form of telecommuting being offered based on organisation size, gender dominance, and industry type



Referring to Figure 6.2 above, unlike the results for compressed weeks, female-dominated organisations were not necessarily associated with a lower predicted probability of offering telecommuting in comparison with male-dominated and neutral organisations, though they did

⁷⁵⁹ $\beta = -0.69, \chi^2 = 6.78, p = 0.009.$

⁷⁶⁰ $\beta = 1.29, \chi^2 = 28.70, p = <0.001.$

have the lowest predicted probability of offering telecommuting in specialised services organisations with fewer than 250 employees and over 1000 employees.

Overall, however, there was not necessarily a clear pattern between gender dominance and the likelihood of offering telecommuting. Neutral organisations tended to have the highest predicted probabilities in the non-service-based industry sector but the lowest predicted probabilities in the general services industry sector. In specialised services organisations, male-dominated organisations were associated with the highest predicted probabilities. Increases in organisation size were generally associated with an increase in the likelihood of offering telecommuting, subject to a few exceptions where small decreases were predicted. For industry type, as with compressed weeks, specialised services organisations generally had the highest predicted probability of offering telecommuting, with the same exception for female-dominated organisations of fewer than 1000 employees.

6.2.2.3 Flexible Hours

The flexible hours model included the non-significant interaction term ‘gender dominance*organisation size’, significant main effects for gender dominance and organisation size, and a non-significant main effect for industry type.

Overall, neutral and male-dominated companies were associated with a statistically significant higher likelihood of offering flexible hours compared to female-dominated organisations.⁷⁶¹ However, the interaction term revealed that the influence of organisation size affected the relationship between gender dominance and the likelihood of offering flexible hours.

For female-dominated organisations, as with compressed weeks and telecommuting, statistically significant increases in the likelihood of offering flexible hours were found as organisation size increased, with this increase dipping slightly once the size reached 1000+ employees.⁷⁶² As shown by the interaction term, the impact of organisation size in increasing the likelihood of being offered flexible hours was less pronounced for neutral and male-

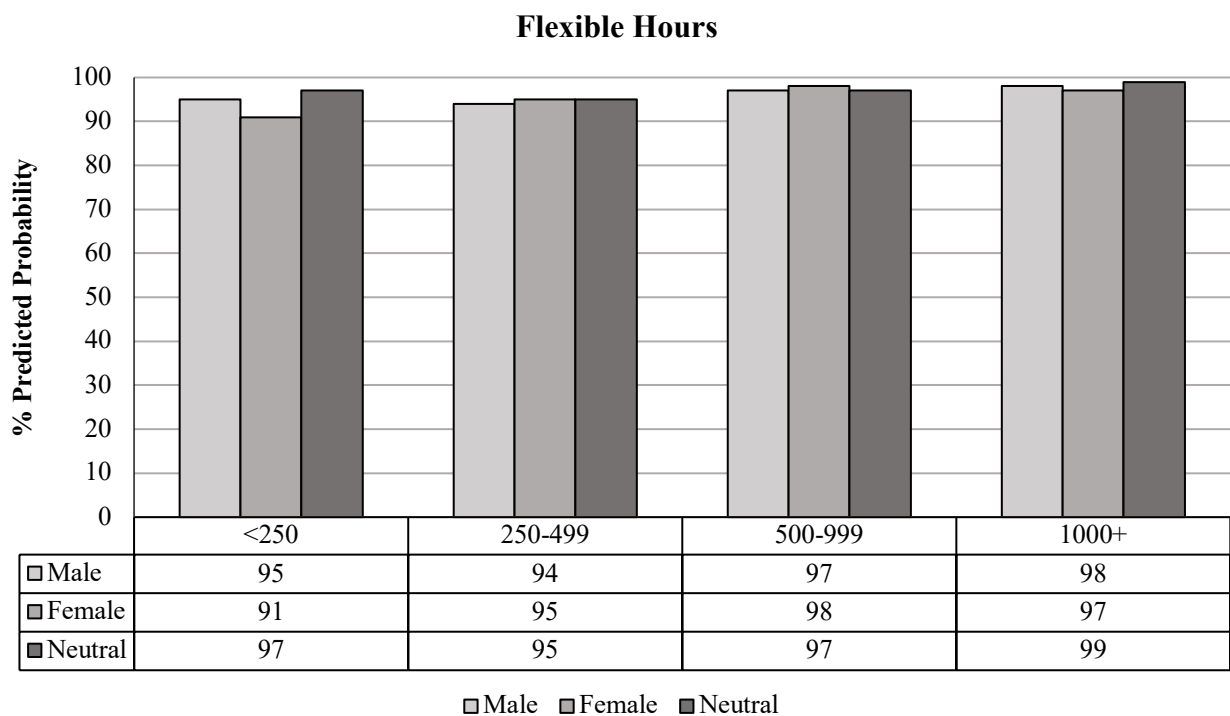
⁷⁶¹ $\beta = 1.03$, $\chi^2 = 12.77$, $p = <0.001$ (for neutral organisations); $\beta = 0.59$, $\chi^2 = 6.94$, $p = 0.008$ (for male-dominated organisations).

⁷⁶² $\beta = 0.65$, $\chi^2 = 5.57$, $p = 0.018$ (for female-dominated organisations with 250–499 employees); $\beta = 1.44$, $\chi^2 = 9.29$, $p = 0.002$ (for female-dominated organisations with 500–999 employees); $\beta = 1.18$, $\chi^2 = 9.39$, $p = 0.002$ (for female-dominated organisations with 1000+ employees).

dominated organisations, though differences were only statistically significant for organisations with 250–499 employees.⁷⁶³

With industry type, general and specialised services organisations had an increased probability of offering flexible hours compared to non-service-based organisations, though as mentioned above, these results were not statistically significant. Figure 6.3 contextualises the results from the interaction term of ‘gender dominance*organisation size’.

Figure 6.3 Predicted probability (simulated from the model outlined in Table 6.8) of some form of flexible hours being offered based on organisation size and gender dominance (holding the effect of industry type constant)



As shown in Figure 6.3 above, organisation size did not necessarily lead to an increase in the predicted probability of offering flexible hours; where it did, increases tended to be modest. Variations between categories did not exceed 8 percentage points; changes in the likelihood of offering flexible hours between organisation size and gender dominance were relatively small.

⁷⁶³ $\beta = -0.97$, $\chi^2 = 4.43$, $p = 0.035$ (for neutral organisations with 250–499 employees); $\beta = -0.74$, $\chi^2 = 3.93$, $p = 0.048$ (for male-dominated organisations with 240–499 employees).

6.2.2.4 Time-off-in-Lieu

For TOIL, the model revealed statistically significant results for all three two-way interaction terms.⁷⁶⁴ In line with compressed weeks and telecommuting, the provision of TOIL in female-dominated organisations increased as organisation size increased, though only organisations sized 500–999 had a statistically significant higher likelihood than those sized <250.⁷⁶⁵ As shown by the significant interaction term ‘male*500–999’, this effect was much less pronounced with male-dominated organisations.⁷⁶⁶

Another consistent pattern seen with the offerings of compressed weeks and telecommuting was that across all ranges of organisation size in non-service-based organisations with more than 250 employees there was an associated increased likelihood of offering TOIL compared to organisations with fewer than 250 employees. However, in general services organisations, organisations sized 250–499 had a decreased likelihood of offering TOIL,⁷⁶⁷ and the increased likelihood of offering TOIL seen in non-service-based organisations with 500–999 employees was much smaller for general and specialised service organisations.⁷⁶⁸

For female-dominated organisations, the specialised services industry was associated with a (non-significant) increase in the probability of offering TOIL. This effect doubled for the general services industry, where findings were statistically significant.⁷⁶⁹ The ‘gender dominance*industry type’ interaction term demonstrated that variation by industry type was not consistent across an organisation’s gender dominance, with general services organisations associated with a statistically significant decrease in the likelihood of offering TOIL in neutral organisations when compared to female-dominated organisations.⁷⁷⁰ Figure 6.4 below presents predicted probabilities from the model concerning organisation size, gender dominance, and industry type.

⁷⁶⁴ Industry type*gender dominance: $\chi^2(4) = 15.74$, $p = 0.003$; gender dominance*organisation size: $\chi^2(6) = 7.57$, $p = 0.27$; Organisation size*industry type $\chi^2(6) = 16.42$, $p = 0.012$.

⁷⁶⁵ $\beta = 1.85$, $\chi^2 = 13.09$, $p = <0.001$.

⁷⁶⁶ $\beta = -1.14$, $\chi^2 = 5.53$, $p = 0.019$.

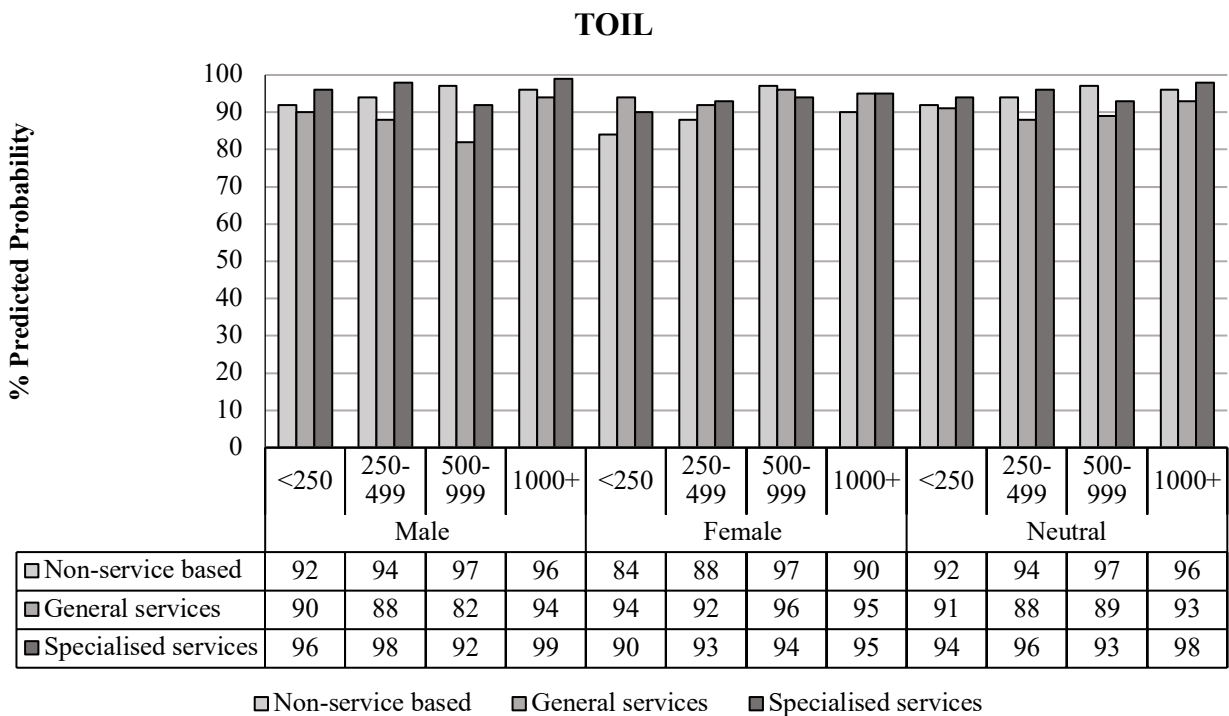
⁷⁶⁷ $\beta = -0.74$, $\chi^2 = 3.92$, $p = 0.048$.

⁷⁶⁸ General services $\beta = -1.43$, $\chi^2 = 9.74$, $p = 0.002$; Specialised services $\beta = -1.30$, $\chi^2 = 7.44$, $p = 0.006$.

⁷⁶⁹ $\beta = 1.13$, $\chi^2 = 8.59$, $p = 0.003$.

⁷⁷⁰ $\beta = -1.22$, $\chi^2 = 7.07$, $p = 0.008$.

Figure 6.4 Predicted probability (simulated from the model outlined in Table 6.8) of some form of TOIL being offered based on organisation size, gender dominance, and industry type



As shown in Figure 6.4 above, and consistent with the findings for flexible hours, organisation size does not necessarily lead to an increase in the predicted probability of offering flexible hours; where it does, increases tend to be modest. In the case of TOIL, variations between categories reflected changes that were larger in scale than those seen for flexible hours but still relatively small between each category of gender dominance, organisation size, and industry type.

6.2.2.5 Part-Time Work

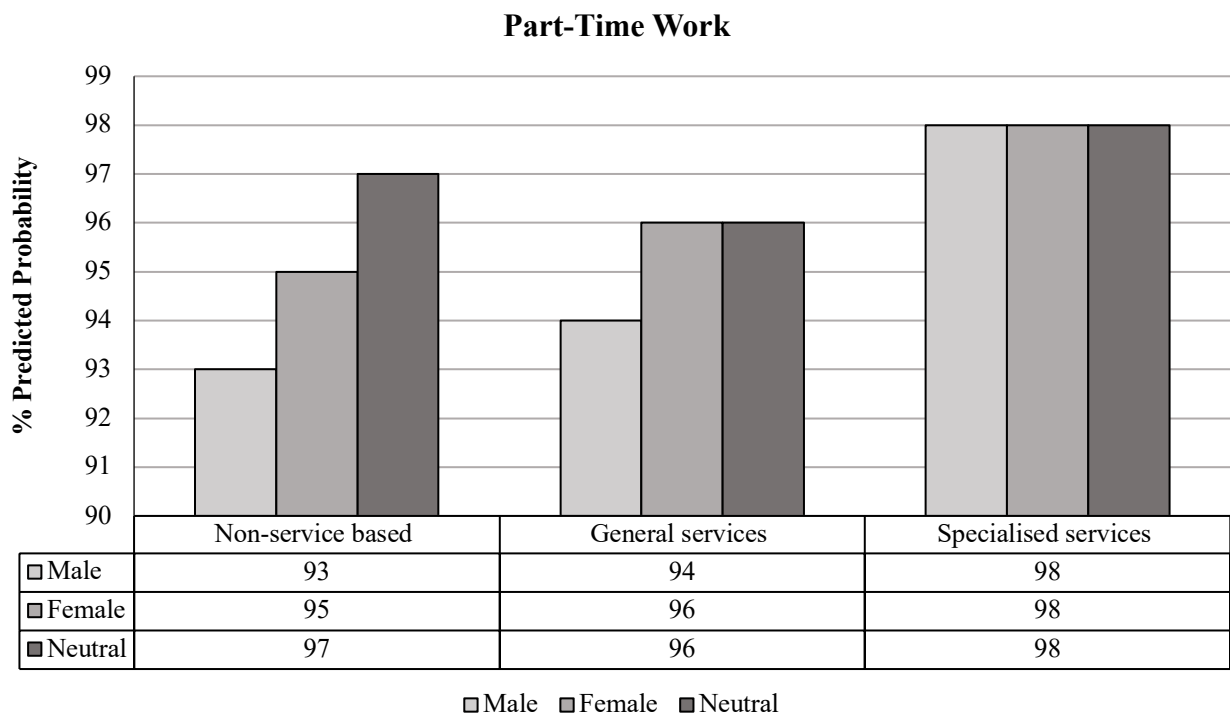
The part-time work model included the interaction term ‘gender*industry type’ alongside the main effects. While the main effects findings were all statistically significant, the interaction term was not. The model revealed a highly statistically significant relationship between organisation size and the offer of part-time work, which increased in line with organisation size.⁷⁷¹ Specialised services organisations were most likely to offer part-time work and significantly more likely to offer part-time work than non-service-based industries.⁷⁷² The

⁷⁷¹ $\beta = 0.40$, $\chi^2 = 6.11$, $p = 0.013$ (for female-dominated organisations with 250–499 employees); $\beta = 0.77$, $\chi^2 = 12.47$, $p = <0.001$ (for female-dominated organisations with 500–999 employees); $\beta = 1.23$, $\chi^2 = 24.58$, $p = <0.001$ (for female-dominated organisations with 1000+ employees).

⁷⁷² $\beta = 1.06$, $\chi^2 = 8.93$, $p = 0.003$.

model also revealed that male-dominated organisations were less likely and neutral organisations more likely to offer part-time work than female-dominated organisations were. However, these results did not reach statistical significance. Similarly, while the ‘industry type*gender’ interaction term indicated that industry type was less influential for neutral and male-dominated organisations than for female-dominated organisations, these findings were not statistically significant.

Figure 6.5 Predicted probability (simulated from the model outlined in Table 6.8) of some form of part-time work being offered based on gender dominance, and industry type



Referring to Figure 6.5 above, as was the case with flexible hours and TOIL, variations between categories did not exceed 5 percentage points, reflecting that neither industry type nor gender dominance played a substantial role in driving the offer of part-time work.

6.2.2.6 Job Sharing

The model revealed statistically significant results for all three interaction terms.⁷⁷³

For female-dominated organisations, all size categories were associated with an increased likelihood of offering job sharing when compared to the smallest size category (<250 employees) at statistically significant levels, though increases were not linear, with

⁷⁷³ Industry type*gender dominance: $\chi^2(4) = 34.38, p < 0.001$; gender dominance*organisation size: $\chi^2(6) = 8.5, p = 0.20$; Organisation size*industry type $\chi^2(6) = 15.86, p = 0.015$.

organisations sized 500–999 associated with the highest likelihood of offering job sharing, followed by organisations with 1000 or more employees.⁷⁷⁴ The absence of a linear pattern was also true of neutral and male-dominated organisations; however, in both of these categories, the largest-sized organisations (1000+ employees) were associated with the highest likelihood of offering job sharing, with these results being statistically significant.⁷⁷⁵ The ‘industry type*organisation size’ interaction term revealed that the impact of organisation size on increased job sharing was less pronounced among general industries than non-service-based organisations.⁷⁷⁶

For female-dominated organisations, both general and specialised services organisations were associated with a highly statistically significant increased likelihood of offering job sharing in comparison to non-service-based organisations, with the increased likelihood being slightly greater for specialised services organisations.⁷⁷⁷ For both neutral and male-dominated organisations, the relationship between industry type and the offer of job sharing was far less pronounced than for female-dominated organisations, as indicated by the four significant negative ‘industry type*gender dominance’ interaction terms.⁷⁷⁸

⁷⁷⁴ Female-dominated organisations — 250–499 employees: $\beta = 0.51$, $\chi^2 = 5.62$, $p = 0.018$; 500–999 employees: $\beta = 1.07$, $\chi^2 = 18.10$, $p = <0.001$; 1000+ employees: $\beta = 1.04$, $\chi^2 = 15.5$, $p = <0.001$.

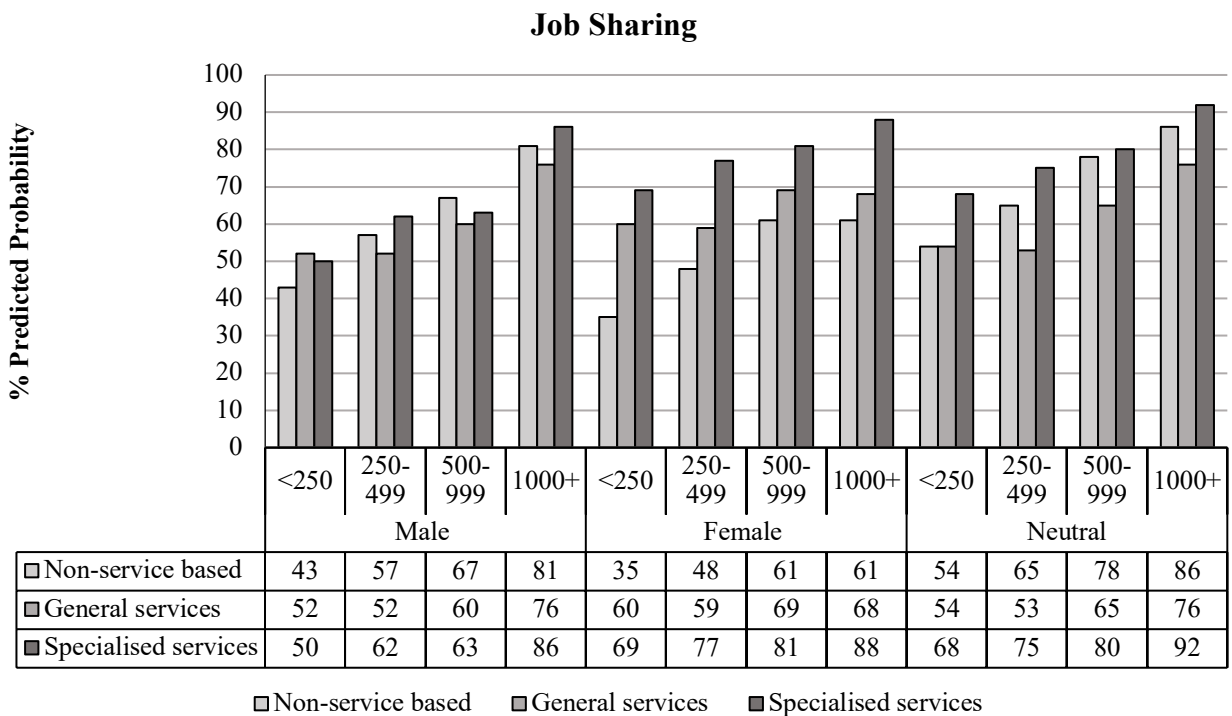
⁷⁷⁵ For organisations with over 1000 employees — neutral organisations: $\beta = 0.62$, $\chi^2 = 4.20$, $p = 0.040$; male-dominated organisations: $\beta = 0.69$, $\chi^2 = 6.25$, $p = 0.012$.

⁷⁷⁶ General services organisations — 250–499 employees: $\beta = -0.53$, $\chi^2 = 5.87$, $p = 0.015$; 500–999 employees: $\beta = -0.65$, $\chi^2 = 5.98$, $p = 0.014$; 1000+ employees: $\beta = -0.67$, $\chi^2 = 5.93$, $p = 0.015$.

⁷⁷⁷ Female-dominated organisations — general services organizations: $\beta = 1.00$, $\chi^2 = 20.13$, $p = <0.001$; specialised services organisations: $\beta = 1.43$, $\chi^2 = 53.60$, $p = <0.001$.

⁷⁷⁸ Neutral — general services organizations: $\beta = -0.98$, $\chi^2 = 14.77$, $p = <0.001$; specialised services organisations: $\beta = -0.83$, $\chi^2 = 11.90$, $p = <0.001$. Male-dominated organisations — general services organisations: $\beta = -0.65$, $\chi^2 = 7.40$, $p = 0.007$; specialised services organisations: $\beta = -1.14$, $\chi^2 = 29.43$, $p = <0.001$.

Figure 6.6 Predicted probability (simulated from the model outlined in Table 6.8) of some form of job sharing being offered based on organisation size, gender dominance, and industry type



Referring to Figure 6.6 above, for the most part, the predicted probability of offering job sharing increased with organisation size. In general, specialised services organisations tended to have the highest predicted probability in comparison to the other industry types. As for gender, in non-service-based organisations, neutral organisations had the highest predicted probability. General and specialised services organisations generally had higher rates of offering among female-dominated organisations, the only exceptions occurring once organisation size exceeded 1000 employees. At that point, neutral and male-dominated organisations reached parity and had a higher predicted probability in general services organisations, and neutral organisations had a slightly higher predicted probability in specialised services organisations.

6.2.3 Summary

The quantitative results above reveal that some flexible work entitlements were more commonly offered than others. For example, most organisations did not offer compressed weeks and telecommuting; where these were offered, they were predominately offered informally. In contrast, it was most common for organisations to offer flexible hours both formally and informally and TOIL informally. Part-time work was formally offered to all employees in over three in every four organisations, while formal job sharing was offered in

only one in every three. In keeping with these findings, TOIL, part-time work, and flexible hours were shown to co-occur most frequently in organisations.

The quantitative data also revealed a general lack of mechanisms to facilitate a flexible work culture. The three most common mechanisms were ‘flexible work is promoted throughout the organisation’, ‘leaders are visible role models of flexible working’, and ‘a business case for flexibility has been established and endorsed at the leadership level’. However, these were found at relatively low rates, ranging from one in every five to one in every six organisations.

The regressions demonstrated that size generally resulted in an increased likelihood of a flexible work offering, though the two largest size categories produced a stronger effect for male-dominated and neutral organisations than for female-dominated organisations. Having more than 1000 employees also tended to be more influential in increasing the likelihood of flexible work offerings in non-service-based organisations than in general or specialised services organisations. As for the interaction between industry type and gender dominance, general services organisations were associated with an overall higher likelihood of offering a flexible work arrangement for female-dominated organisations compared to non-service-based industries, but the effect of general services organisations was less pronounced for neutral and male-dominated organisations.

Similarly, specialised services organisations were associated with an overall increased likelihood of offering flexible work arrangements for female-dominated organisations in comparison to neutral and male-dominated organisations. For neutral and male-dominated organisations, being in the specialised services industry had a stronger effect on the likelihood of offering telecommuting than in female-dominated organisations but a weaker effect on the likelihood of offering other flexible work arrangements. However, these patterns were not necessarily statistically significant.

Examining the statistical and practical significance of the findings revealed a more nuanced and inconsistent operation of the predictor variables across the dependent variables. In keeping with the generally high rates of offering for flexible hours, part-time work and TOIL, limited differences were seen across the categories of gender dominance, industry type, and organisation size. With the less commonly offered flexible work arrangements — compressed weeks, telecommuting, and job sharing — the variables appeared to have varying influences with few consistent patterns emerging.

Regarding compressed weeks, for example, while general services organisations appeared the most likely to offer compressed weeks, this was not necessarily true once organisation size exceeded 500 employees. For telecommuting, the likelihood of offering did not vary much across predictor variables, except in specialised services organisations where this industry type was associated with a greater likelihood of offering in male-dominated organisations compared to neutral or female-dominated specialised services organisations. Job sharing had the clearest discernible patterns between the likelihood of offering and the tested variables with the likelihood of offering generally increasing with organisation size even within the different categories of gender dominance and industry type. Non-service-based organisations also had the lowest likelihood of offering job sharing.

In summary, the patterns in the raw data did not necessarily hold in the results of the models. Unlike the findings for parental leave, as detailed in Chapter 5, larger, specialised services organisations were not consistently associated with greater provision of specific flexible work offerings once interactions between these variables and the statistical and practical significance of findings were considered.

To explain these findings and identify other factors that may affect the provision of flexible work, these quantitative findings are supplemented by an analysis of the qualitative data (as described in section 2.3.3) below.

6.3 Qualitative Results

6.3.1 Availability of Flexible Work in Practice

As detailed in Tables 6.1–6.4, it was relatively uncommon for specific flexible work entitlements, apart from flexible hours, to be offered both formally and informally. In fact, for compressed weeks, telecommuting and TOIL, informal provision was more common than formal provision. The interviews provided important insight into the considerations underpinning a formal versus informal offering and the benefits, challenges, and implications associated with each. For some interviewees, formal offerings were seen to improve the enforceability of the organisation's flexible work arrangements. One interviewee from a large manufacturing organisation had experienced having their own informal flexible work arrangement unilaterally revoked when their manager changed, which contributed to their

belief in the importance of formalised flexible work rights.⁷⁷⁹ However, the interviewee was also wary of onerous formal requirements, saying, ‘I hate the idea that flexibility has to be in a contract’.⁷⁸⁰ The interviewee shared a story of a “star employee” who only wanted to differ their start and end times by half an hour to pick up their special needs child’ but had to go through what she described as an overly formalised procedure citing it as an example of ‘[how] we can over-engineer things’.⁷⁸¹ The interviewee also described helping a family member apply for flexible work at her workplace but found that the process framed the request as ‘such a big deal’.⁷⁸² The interviewee was ultimately conflicted about the utility of formal flexible work arrangements, appreciating their importance for consistency and enforceability but also feeling that formalised processes could negate the normalcy of flexible work.

This was reflected in the interviewee’s experience of attempting to formalise existing informal flexible work arrangements at their workplace by asking employees to input their arrangements into an online software application. However, the interviewee found that only ‘5–10% of people had signed flexible work arrangements into the system’.⁷⁸³ When asked if this could have been because of a fear of how these arrangements would be perceived, the interviewee responded, ‘We’ve still had more redundancies this year ... and we still have more to come ... so actually ... [employees] probably would think maybe [a flexible work arrangement] was a cross against their name’.⁷⁸⁴

An interviewee from a large transportation organisation felt similarly, saying that employees found their formal flexible work procedure to be ‘too legalistic, too much trouble, and like you were causing problems. So, I didn’t see a lot of people putting forward a request, to be honest’.⁷⁸⁵ These experiences demonstrate how formal flexible work arrangements can reinforce the idea that flexible work goes against ideal worker norms, ultimately discouraging employees from accessing these entitlements, even where they are available.

⁷⁷⁹ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁷⁸⁰ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁷⁸¹ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁷⁸² Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁷⁸³ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁷⁸⁴ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁷⁸⁵ Interview 19: Head of diversity, inclusion and talent, transport, postal and warehousing organisation, 1000–4999 employees.

In keeping with the view that formal flexible work procedures could undermine take-up, interviewees reported actively minimising the formality of their flexible work policies. For example, an interviewee from a large education organisation said that they were working on ‘getting rid of that paperwork [surrounding flexible work requests]’ so that ‘there are more informal flexible arrangements, rather than, “Oh, I’ve got to fill out a form”’.⁷⁸⁶ An interviewee from a government department similarly said that they wanted to ‘cut’ their formal flexible work procedures.⁷⁸⁷ This may explain the quantitative finding that it was most common for organisations to offer flexible work types only informally, except for flexible hours.

As for how flexible work was typically offered within organisations, interviewees from organisations of varying sizes and industry types reported that flexible work was generally only made available to employees upon request, with many offerings mirroring key features of the right to request flexible work under the NES. This was found to limit the accessibility of flexible work in several ways. For example, at least two interviewees found that the eligibility criteria to request flexible work under the NES did not accommodate the spectrum of employees who needed flexible work arrangements. A diversity and inclusion consultant described the criteria as ‘exclusionary... particularly if [employees] don’t have children’.⁷⁸⁸ An interviewee from a large manufacturing organisation felt similarly, saying the carer definition under the *FW Act* was ‘just not inclusive enough ... [and] does not cover off most of the requests’ for flexible work that they receive.⁷⁸⁹

Two interviewees reported offering flexible work policies that applied to all their employees. One interviewee was from a professional services organisation that reportedly had introduced a flexible-hours option for all employees on request.⁷⁹⁰ The other was also from a large professional services organisation that had instated an option across the workforce for employees to work from home.⁷⁹¹ However, both interviewees reported these as recent changes and positioned the entitlements as being particularly progressive, implying that such policies are not the norm.

⁷⁸⁶ Interview 11: Diversity and inclusion manager, education and training organisation, 5000+ employees.

⁷⁸⁷ Interview 3: Diversity and inclusion senior adviser, government department, 1000–4999 employees.

⁷⁸⁸ Interview 16: Diversity and inclusion consultant.

⁷⁸⁹ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁷⁹⁰ Interview 13: Diversity and inclusion manager, professional, science and tech services organisation, 1000–4999 employees.

⁷⁹¹ Interview 9: Head of diversity and inclusion, professional, science and tech services organisation, 1000–4999 employees.

Despite the prevalence of request-based flexible work entitlements, interviewees expressed dissatisfaction with these policies and highlighted how having to request a flexible work arrangement could discourage take-up. For example, an interviewee from a large manufacturing organisation found that employees with little knowledge of English, limited work experience, or those in low-wage roles tended to be hesitant to request flexible work arrangements as they perceived themselves as easily replaceable.⁷⁹² The interviewee said such workers were often ‘scared to ask for flexibility, or they’ve seen people get shot down when they asked’.⁷⁹³

An interviewee from a large professional services organisation felt that requesting flexible work perpetuated ‘a master-servant or permission mindset’, which made employees feel ‘apologetic about their particular flexible working arrangement’.⁷⁹⁴ In a similar vein, an interviewee from a public service organisation noted how employees often feel indebted to employers for flexible work arrangements due to the positioning of these arrangements as something to be granted.⁷⁹⁵ The same interviewee highlighted how this feeling of indebtedness was often more keenly felt by women as they were more likely to make flexible work requests.⁷⁹⁶ As an interviewee from a large transportation organisation described, in most organisations ‘flexibility is [positioned as] something that [employees have] got to justify’.⁷⁹⁷ These findings suggest that initiating requests for flexible work can be uncomfortable for employees, given the positioning of these requests as something outside ideal worker norms. As an interviewee from a public sector organisation put it, if ‘employees feel ... that there’s some detriment [to accessing a flexible work arrangement], they’re unlikely to access it’.⁷⁹⁸

These findings stress the importance of flexible work cultures within organisations. However, as seen in Table 6.6 above, mechanisms for facilitating flexible work cultures were rare across the dataset. The interviews revealed that this was not for a lack of need, as biased and gendered attitudes to flexible work were strong themes in the data.

⁷⁹² Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁷⁹³ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁷⁹⁴ Interview 9: Head of diversity and inclusion, professional, science and tech services organisation, 1000–4999 employees.

⁷⁹⁵ Interview 14: Gender equality adviser, public administration and safety organisation, 5000+ employees.

⁷⁹⁶ Interview 14: Gender equality adviser, public administration and safety organisation, 5000+ employees.

⁷⁹⁷ Interview 15: Diversity and inclusion manager, transport, postal and warehousing organisation, 5000+ employees.

⁷⁹⁸ Interview 7: Inclusion and diversity manager, electricity, gas, water, and waste services organisation (public), 1000–4999 employees.

Interviewees from varying organisation sizes and industry types highlighted how senior employees were often expected not to work flexibly due to beliefs that this would compromise their ability to work effectively. For example, in one interviewee's small professional services organisation, senior staff were only allowed a maximum of two days a week to work from home because 'otherwise they're not mentoring and guiding our junior staff'.⁷⁹⁹ Similarly, an interviewee from a large manufacturing organisation found that it was a common expectation 'that you do need to be present for at least four days a week, if not five, if you're in a leadership role or in a managerial role'.⁸⁰⁰ A human resources consultant found that senior staff worked 'longer hours by choice because you're getting paid the big bucks',⁸⁰¹ which echoed the views of another consultant who found that senior employees often faced additional pressures to be 'on 24/7'.⁸⁰² This was explained by an interviewee from a large transportation organisation, who said that, 'the more senior you get the more you're likely to have long work hours and have attendance lionised'.⁸⁰³

The quantitative findings revealed that restricting flexible work by managerial status was relatively rare. However, the interviews reveal how managers may nonetheless face invisible barriers to utilising the offer of flexible work. As an interviewee from a large manufacturing organisation described, 'I think a lot of seniors are really, really afraid to take any kind of part-time [work arrangement] because of that, you know, assumption that they're just not going to get ahead or even keep their roles'.⁸⁰⁴

This perceived incompatibility between flexible working and leadership positions was reinforced by interview findings that flexible workers were often undervalued within organisations. An interviewee from a large professional services organisation had seen how 'the stigma attached to part-time work has those harmful effects of not being selected for certain projects or assumptions made that mobility opportunities or stretch opportunities aren't desired'.⁸⁰⁵ This was in keeping with a human resources consultant's experience of seeing that

⁷⁹⁹ Interview 10: People and culture manager, professional, science and tech services organisation, <100 employees.

⁸⁰⁰ Interview 6: Inclusion and diversity lead, manufacturing organisation, 1000–4999 employees.

⁸⁰¹ Interview 8: Human resources consultant.

⁸⁰² Interview 16: Diversity and inclusion consultant.

⁸⁰³ Interview 15: Diversity and inclusion manager, transport, postal and warehousing organisation, 5000+ employees.

⁸⁰⁴ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁸⁰⁵ Interview 13: Diversity and inclusion manager, professional, science and tech services organisation, 1000–4999 employees.

only 3.1% of an organisation's promoted staff were part-timers despite having a 'really advanced' flexible work policy.⁸⁰⁶ This was explained by an interviewee from a large manufacturing organisation who felt that when:

you ask for part-time work and you get a yes ... you also get a bucket of cement that grounds you in that world forever. Most part-time workers, the vast percentage of whom are mums, will not be promoted. Of about the 10 organisations I've worked in over the last 15 years, I have not seen a part-time person promoted beyond that ... middle manager level with maybe ... two or three staff.⁸⁰⁷

As an interviewee from a large transportation organisation found, 'Your whole credibility as a good worker was questioned if you took [a flexible work arrangement] up'.⁸⁰⁸ An interviewee from a large public sector organisation had seen women leave their jobs after having children because they knew if they tried to return part-time their managers were 'going to give you rubbish work to do or ... not going to give you work at your level because you're only working part-time'.⁸⁰⁹

These findings once again affirm that working flexibly is known to give rise to negative career consequences. The fact that these views were expressed by interviewees from predominantly male-dominated organisations and industries coincided with interview findings that revealed a gendered dimension to flexible work offerings.

Interview findings revealed different levels of acceptance for flexible working between men and women. As an interviewee from a large transportation organisation explained:

I think the workplace flexibility policies tend to apply informally very well to men but formally very badly for men. So, if they want anything too formal, it's harder to get because it's harder to justify and it's the opposite for women in that they're more likely to be ..., in my view, corralled towards formal arrangements and [are] either less confident asking for or less likely to get informal arrangements.⁸¹⁰

⁸⁰⁶ Interview 18: Human resources consultant.

⁸⁰⁷ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁸⁰⁸ Interview 19: Head of diversity, inclusion and talent, transport, postal and warehousing organisation, 1000–4999 employees.

⁸⁰⁹ Interview 12: Diversity, inclusion and development lead, electricity, gas, water, and waste services organisation (public), 1000–4999 employees.

⁸¹⁰ Interview 15: Diversity and inclusion manager, transport, postal and warehousing organisation, 5000+ employees.

This was echoed by another interviewee from a large professional services organisation, who said:

I think men ... are much more likely to take informal flexible work and may often not even discuss it but very few men will take formal flexible work arrangements and again I think there's a double bind there where ... a woman who worked part-time may be seen by some as less ambitious. I think when a man works part-time it's doubly so.⁸¹¹

An interviewee from a large professional services organisation similarly highlighted differences in the acceptance of flexible work across genders, saying: 'I think we actually do treat women more flexibly or maybe it's that mindset of well, women have babies and men don't, so [women] need more flexibility'.⁸¹²

To encourage more flexible work by men and senior staff, leadership role modelling, especially male leadership role modelling, was described by interviewees as essential.⁸¹³ An interviewee from a large professional services organisation described more visible, male flexible workers as 'the most impactful thing' the organisation could do to encourage more men to work flexibly.⁸¹⁴

However, having leaders that role-modelled flexible work was reported in only 18.9% (n = 914) of organisations. The interviews suggest that rates of *male* role-modelling of flexible work are likely to be much rarer. An interviewee from a large manufacturing organisation had been refused by senior male staff when asked to be featured in their employee engagement brochures because they were 'afraid' of being publicly seen as flexible workers.⁸¹⁵ These findings suggest the importance of targeted interventions for improving men's participation in flexible work.

⁸¹¹ Interview 9: Head of diversity and inclusion, professional, science and tech services organisation, 1000–4999 employees.

⁸¹² Interview 20: Human resources manager, professional, science and tech services organisation, 5000+ employees.

⁸¹³ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees; 10: People and culture manager, professional, science and tech services organisation, <100 employees; 12: Diversity, inclusion and development lead, electricity, gas, water, and waste services organisation (public), 1000–4999 employees; 3: Diversity and inclusion senior adviser, government department, 1000–4999 employees; 4: Wellbeing, diversity and inclusion lead, administrative and support services organisation, 500–999 employees; 7: : Inclusion and diversity manager, electricity, gas, water, and waste services organisation (public), 1000–4999 employees; 9: Head of diversity and inclusion, professional, science and tech services organisation, 1000–4999 employees.

⁸¹⁴ Interview 9: Head of diversity and inclusion, professional, science and tech services organisation, 1000–4999 employees.

⁸¹⁵ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

However, setting targets for men's engagement in flexible work was seen in only 0.6% (n = 29) of organisations in the dataset.

Interviewees also reported how employer-oriented flexible work arrangements often resulted in employees being overworked, under-compensated, and undervalued when working flexibly.

As an interviewee from a large manufacturing organisation found:

I have never seen a manager retrofit the role to part-time hours ... So the organisation always wins because somebody is working their guts out for three days still doing a full-time workload. So the organisation is taking two days' worth of money and still getting the output.⁸¹⁶

An interviewee from a larger education organisation similarly found that '[an employee] might drop back to flexible working arrangements or a part-time working arrangement but their workload doesn't necessarily reflect that'.⁸¹⁷ This may explain why part-time work was commonly offered across the dataset (77.9%; n = 3773), but job sharing was far less common (36.5%; n = 1768). A job-sharing arrangement would require employers to adjust work responsibilities as opposed to merely expecting part-time workers to continue to do the work of a full-time employee.

Interviewees also highlighted the challenges for employees to maintain work-life boundaries when working flexibly. For example, an interviewee from a public utilities organisation was concerned that their flexible workers might feel 'obligated to be seen to be adding value through extensive hours'.⁸¹⁸ An interviewee from a transportation organisation similarly found that it was a common expectation that if you work from home 'you must be at your desk 24/7, to be able to prove that you're sitting at your desk'.⁸¹⁹

Interviewees described how these concerns around employer-oriented flexible work arrangements had discouraged unions and employee groups from supporting greater flexible work initiatives. An interviewee from a large education institution found that unions were often resistant to wider work hours as they believed onerous workloads would ultimately

⁸¹⁶ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁸¹⁷ Interview 2: Equity and diversity advisor, education and training organisation, 5000+ employees.

⁸¹⁸ Interview 12: Diversity, inclusion and development lead, electricity, gas, water, and waste services organisation (public), 1000–4999 employees.

⁸¹⁹ Interview 19: Head of diversity, inclusion and talent, transport, postal and warehousing organisation, 1000–4999 employees.

compromise the value of any increased flexibility.⁸²⁰ A consultant similarly found that when they worked with a higher education institution:

[unions] come at [the bargaining process] that if you lengthen the [span of] hours of work in the [enterprise bargaining agreement], some managers will take advantage of that and expect their people to work more as opposed to the direction that I come at it... [which] was that if we increase the hours of work, we're actually allowing people to have more work-life balance and maybe catch later trains and earlier trains and work around their commitments to be more productive.⁸²¹

An interviewee from a large transportation organisation similarly found that unions would often trade off the option for greater flexibility in favour of improved roster certainty.⁸²² These interview findings revealed how flexible work arrangements may ultimately fail to meet employee needs and improve their work experiences. They emphasise the need for an organisational review of flexible work policies against employee satisfaction. However, surveying employees on whether they have sufficient flexibility was only reported by 13.53% (n = 655) of organisations.

The interviews also revealed how the gendered and negative views of flexible work discussed above may also result in employees' requests being unjustly refused. A strong theme in the dataset was differing manager attitudes to flexible work and how this affected flexible work experiences within the organisation. For example, an interviewee from a professional services organisation that had allowed all employees to request flexible hours was 'still working on some' managers to get them on board.⁸²³ Another interviewee from a large mining organisation similarly expressed, 'You would have some managers who are incredible, flexible and give it a go', but this became rarer as managers increased in seniority.⁸²⁴ The interviewee from a large professional services organisation that had implemented an option for all staff to work remotely had also found that managers in practice areas that required greater client interaction had

⁸²⁰ Interview 11: Diversity and inclusion manager, education and training organisation, 5000+ employees.

⁸²¹ Interview 8: Human resources consultant.

⁸²² Interview 15: Diversity and inclusion manager, transport, postal and warehousing organisation, 5000+ employees.

⁸²³ Interview 13: Diversity and inclusion manager, professional, science and tech services organisation, 1000–4999 employees.

⁸²⁴ Interview 20: Human resources manager, professional, science and tech services organisation, 5000+ employees.

proved to be less receptive to the arrangement.⁸²⁵ An interviewee from a large education institution explained these varying attitudes to flexible work within segments of an organisation as being caused by ‘cultures within cultures’.⁸²⁶ In this way, even with overarching organisational commitments to flexible work, the interviews revealed that individual managers may give rise to varied flexible work experiences within an organisation.

Managers’ differing attitudes appeared often to be driven by unsubstantiated personal biases around the viability of flexible work. For example, a consultant explained that leaders who were generally resistant to flexible work tended to believe ‘that productivity would drop off’.⁸²⁷ Another consultant expressed, ‘We still hear a lot of managers not knowing how to manage people and using ... their need for flexibility as getting in the way of good performance management’.⁸²⁸ An interviewee from a large manufacturing organisation similarly found ‘a lot of variation ... based on the flexibility disposition of managers’ such that more hierarchical managers with a greater belief in physical presence in the workplace were less likely to approve a flexible work request.⁸²⁹

Interviewees generally reported that requests for flexible work could only be refused on reasonable business grounds under their workplace policies, as per the NES. However, the vagueness and opacity of these grounds often meant that requests could be refused without legitimate reasons. An interviewee from a large manufacturing organisation, for example, had ‘had so many uncomfortable conversations around’ what genuinely constitutes reasonable business grounds with managers.⁸³⁰ Affirming this experience, an interviewee from another large manufacturing organisation said, ‘In my personal opinion, that’s a pretty rare instance that [requests for flexible work] really would conflict with business goals’.⁸³¹ These interviewees’ comments suggest that requests for flexible work are sometimes flippantly denied.

⁸²⁵ Interview 9: Head of diversity and inclusion, professional, science and tech services organisation, 1000–4999 employees.

⁸²⁶ Interview 11: Diversity and inclusion manager, education and training organisation, 5000+ employees.

⁸²⁷ Interview 16: Diversity and inclusion consultant.

⁸²⁸ Interview 18: Human resources consultant.

⁸²⁹ Interview 15: Diversity and inclusion manager, transport, postal and warehousing organisation, 5000+ employees.

⁸³⁰ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁸³¹ Interview 6: Inclusion and diversity lead, manufacturing organisation, 1000–4999 employees.

Where requests are denied, interviewees reported few avenues of recourse for employees to challenge these decisions. An interviewee from a large manufacturing organisation had an employee come to them in tears saying ‘[for] five years my manager said no [to a flexible work arrangement] every six months when I do my performance management agreement’.⁸³² Some interviewees had policies that allowed employees to escalate their requests, but it was noted that power imbalances could discourage employees from taking further action. For example, an interviewee from a large administrative services organisation said, ‘I think a lot of people wouldn’t [escalate a decision] because they don’t want to create conflict with their leader’.⁸³³ Another consultant highlighted how complaints processes can be ‘quite stressful for the [worker]’.⁸³⁴

Given the central role that managers play in the availability and quality of flexible work within organisations, interviewees stressed the importance of manager training on flexibility. A consultant, for example, felt that workplaces must ‘look at actually upskilling managers to become competent in managing flexibility’.⁸³⁵ An interviewee from a large professional services organisation found that manager training had led to a noticeable ‘capability and awareness uplift’ in how their managers approached flexible work.⁸³⁶ A human resources consultant similarly noticed that managers’ comfort levels with flexibility were ‘tied directly to the level of training that their organisation has delivered for leaders and in particular the level of training’ in managing flexibility.⁸³⁷ However, manager training was offered in only 7.58% (n = 367) of organisations in the dataset. These findings suggest that in many organisations, employees may be refused flexible work arrangements because of biased managerial attitudes cloaked in the vague and opaque ‘business grounds’.

In summary, the interviews revealed that where flexible work was provided it was usually only in response to individual employee requests. These requests depended on employees navigating intimidating power imbalances and choosing to make these requests despite widespread negative, biased, and gendered attitudes surrounding flexible work, which could ultimately lead

⁸³² Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁸³³ Interview 4: Wellbeing, diversity and inclusion lead, administrative and support services organisation, 500–999 employees.

⁸³⁴ Interview 5: Inclusion and diversity manager and consultant.

⁸³⁵ Interview 5: Inclusion and diversity manager and consultant.

⁸³⁶ Interview 13: Diversity and inclusion manager, professional, science and tech services organisation, 1000–4999 employees.

⁸³⁷ Interview 18: Human resources consultant.

to negative career consequences or employer-oriented flexible work arrangements. Requests may also be refused for inappropriate reasons, such as manager bias, with limited practical avenues for recourse.

Having highlighted the difficulties of reactive flexible work policies, interviewees offered examples of policies they admired and considered to be more effective. A consultant commended the ‘if not, why not’ approach to flexible work, popularised by the NSW government.⁸³⁸ This approach was described as transitioning from a reactive, ad hoc, and compliance-focussed approach to flexible-work arrangements ‘not embedded within the organisational systems that shape how we work’.⁸³⁹ Instead, the ‘if not, why not’ approach was intended to position workplace flexibility as the starting point. Under this approach, employers consider how flexibility can be embedded within each role and throughout the organisation by proactively identifying best practice models underpinned by a culture of trust.⁸⁴⁰

Another interviewee referenced return-to-work obligations for employees who suffer occupational injuries or the need to make reasonable accommodations for employees with disabilities. Under these schemes, employers must offer suitable employment arrangements or make reasonable adjustments to suit their employees’ unique needs. This interviewee felt that such obligations could extend to workers who face permanent, ongoing changes to their employment capabilities due to their caregiving responsibilities.⁸⁴¹ These commended schemes by interviewees share the characteristics of placing a positive duty on employers to accommodate flexible work proactively and collaboratively.

Interviewees also mentioned other organisations with broader flexible work policies than their own organisations. For example, an interviewee mentioned a colleague who ‘was one of the first people I knew ... eight years ago, really trying to get All Roles Flex’ and another organisation that the interviewee described as having ‘the best CEO’, who spearheaded introducing widespread flexibility.⁸⁴² Another interviewee referenced an organisation’s ‘work anytime, anywhere’ mandate, which they described as ‘amazing’.⁸⁴³ A third interviewee

⁸³⁸ Interview 5: Inclusion and diversity manager and consultant; NSW Government Public Service Commission, *Make Flexibility Count: Strategic Framework for the NSW Government Sector* (Report, 2017) 8.

⁸³⁹ Ibid.

⁸⁴⁰ Ibid.

⁸⁴¹ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees. See, eg, *Workers Compensation Act 1958* (Vic) s 9 cl 1 (b)(iv); *Disability Discrimination Act 1992* (Cth) s 6 (2).

⁸⁴² Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁸⁴³ Interview 5: Inclusion and diversity manager and consultant.

mentioned that they had noticed organisations advertising ‘all roles flex’ in their job advertisements.⁸⁴⁴ However, by identifying these approaches to flexible work as distinctive or progressive, the interviews imply that such policies are not the norm.

6.3.2 Organisational Factors Affecting the Provision of Flexible Work

Unlike in Chapter 5, the regression models fitted for each flexible work type did not reveal patterns that were as clearly discernible between changes in organisation size, industry type, or gender dominance and the availability of flexible work once interaction terms and statistical significance were considered. The interview results help explain these findings by contextualising the influence of these organisational factors.

The interview data revealed that it was common for the roles of certain employees *within* organisations to influence an employee’s flexible work entitlements. For example, an interviewee from a small professional services organisation did not extend their option for staff to telecommute two days a week to five employees in client-facing roles that ‘need to physically be on-site’.⁸⁴⁵ An interviewee from a large manufacturing organisation similarly found that ‘manual hands-on’ workers were less likely to be offered flexible work.⁸⁴⁶ An interviewee from a large transportation organisation said that the reality was that their flexible work policy ‘only applies to white-collar employees ... we don’t have a flexibility policy that applies to anybody in our operational environment’.⁸⁴⁷ This was in keeping with a human resources consultant’s experience that ‘you generally tend to find that the flexibility for higher-skilled jobs is greater’ than more manual jobs where you ‘physically have to be in a space’.⁸⁴⁸ A consultant similarly found, ‘There are still significant barriers, I would say, between access to flexible work arrangements or defining flexible work arrangements for frontline workers as opposed to knowledge workers’.⁸⁴⁹ This would support the quantitative findings detailed above, which generally found non-service-based organisations had the lowest likelihood of offering flexible work arrangements and specialised services organisations to be more likely to offer flexible work, especially telecommuting. It also highlights how the availability of flexible

⁸⁴⁴ Interview 11: Diversity and inclusion manager, education and training organisation, 5000+ employees

⁸⁴⁵ Interview 10: People and culture manager, professional, science and tech services organisation, <100 employees.

⁸⁴⁶ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁸⁴⁷ Interview 15: Diversity and inclusion manager, transport, postal and warehousing organisation, 5000+ employees.

⁸⁴⁸ Interview 16: Diversity and inclusion consultant.

⁸⁴⁹ Interview 18: Human resources consultant.

work may be restricted by employee roles within organisations as opposed to the industry classification of the organisation overall.

However, employee roles do not necessarily have to limit the availability of *all* types of flexible work. As a human resources consultant explained, employees were often realistic about the limitations of their job, saying:

if you're working in retail and your job is on the shop floor then you do know what your job is, and you do know that it can't be done from home. So, I think that there are some myths we need to bust around what people are asking for and it tends to be more incremental changes to the way that they're performing their roles. It could be that they want to shift the hours by an hour here and there to enable them to care.⁸⁵⁰

Other interviewees similarly highlighted how most roles could be modified to allow some flexibility. For example, an interviewee highlighted how they incorporated staggered start and finish times for the customer services team with their previous employer so the team could have some flexibility in their roles despite having to be on-site to access certain technology.⁸⁵¹ The interviewee described this approach to flexible work as a willingness to be 'flexible about flex' and offer various types of flexible work throughout an organisation — although, as the quantitative data revealed, only flexible hours and TOIL were widely offered. This may be because these are easier to implement and involve relatively few changes to the standard working week, unlike compressed weeks or telecommuting, where changes are often more visible or permanent and, therefore, more keenly felt.

Interviewees also highlighted how sometimes historic practices surrounding certain roles could restrict the availability of flexible work as opposed to genuine practical constraints. For example, an interviewee found that in a factory setting, 'It was just like a no, no, no, no to flexible work practices and they kept saying, "It's because we're shift work", ... but I have got mentors who are ... heads of HR in massive hospitals and 90% of their staff are nurses or support staff [that practice shift work] and they all work flexibly'.⁸⁵² Another interviewee described needing to overcome preconceptions when they worked in sectors with historically minimal flexibility, such as mining and trucking, but ultimately successfully introduced new

⁸⁵⁰ Interview 18: Human resources consultant.

⁸⁵¹ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁸⁵² Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

forms of flexible work.⁸⁵³ Another interviewee had worked for an employer that refused to allow call centre employees to work from home because the job was seen as highly regimented and the employees were relatively junior, but the job was ultimately transitioned to be done remotely during the COVID-19 lockdowns. The interviewee did acknowledge, however, that it was a ‘mindset change for’ leaders, and some were still ‘struggling’ with the arrangement.⁸⁵⁴ This led the interviewee to feel that flexible work arrangements tended to be rarer where you have ‘very much an old school, for want of a better word, blokey mentality, where there are particularly not a lot of women in the workforce’.⁸⁵⁵ As another interviewee put it, ‘If you look at professions like engineering, they were taught to operate a particular way ... if you look at Gen Z and the Baby Boomers ... they were taught to lead in a particular way’ that values workers being physically present in the workplace, in keeping with the masculine ideal worker norm.⁸⁵⁶ These findings suggest that certain roles may have less flexibility because of longstanding gendered or established patterns of work. However, the quantitative findings did reveal that flexible work types were generally more common in very large male-dominated organisations than in female-dominated organisations. This may again be explained by the fact that differences in the availability of flexible work are more keenly felt within segments of an organisation and influenced by individual managers rather than by overarching organisational variables.

Another barrier to flexible work raised in the interviews was the investment and resources that are sometimes required to facilitate flexible work, especially telecommuting. For example, an interviewee stated that their customer service team needed to be physically present in the office because ‘there’s seven different systems on their computer that they need to use that can never be ... transferred to home’.⁸⁵⁷ This was also seen in the interviewee’s previous place of employment, where work-from-home requests were refused because the organisation had ‘run out of laptops’.⁸⁵⁸ The interviewee had found that in their experience, ‘There’s probably ...

⁸⁵³ Interview 7: Inclusion and diversity manager, electricity, gas, water, and waste services organisation (public), 1000–4999 employees.

⁸⁵⁴ Interview 20: Human resources manager, professional, science and tech services organisation, 5000+ employees.

⁸⁵⁵ Interview 20: Human resources manager, professional, science and tech services organisation, 5000+ employees.

⁸⁵⁶ Interview 12: Diversity, inclusion and development lead, electricity, gas, water, and waste services organisation (public), 1000–4999 employees.

⁸⁵⁷ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁸⁵⁸ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

two, three grand worth of output per person to have the flexibility to work from home'.⁸⁵⁹ Another interviewee mentioned how their engineers needed expensive software that was only available on a few laptops, meaning employees had to share the laptops between them to work from home.⁸⁶⁰ An interviewee from a small utilities organisation explained that they were currently working out the additional expenses to fit out their office to enable hybrid working, but initial calculations suggested that these costs would be high.⁸⁶¹ The regression model on telecommuting supports these findings to a degree, revealing that an increase in organisation size did generally lead to an increased likelihood of an offering. This is perhaps because larger organisations are better placed to absorb the capital investments required to enable telecommuting.

6.3.3 Influence of the National Employment Standards

In Chapter 5, it was seen that organisations generally defer to the legislation as the template for their parental leave offerings. This was also the case for organisations' flexible work policies. An interviewee from a large manufacturing organisation found that in their experience, the *FW Act* did not act as a safety net but rather an anchor that ultimately pulled organisations towards performing the bare minimum under the legislation and limited the capacity to influence decision-makers to implement broader flexible work entitlements.⁸⁶² An interviewee from a large transportation organisation similarly felt that although the organisation had 'a slightly larger at least on paper appetite for flexibility than the government's provisions ...', there was 'a nervousness that I can't do [a more expansive flexible work program] without writing down what the government's provisions are'.⁸⁶³ In this way, despite the 'right to request' scheme under the NES having been established to serve as a mere safety net entitlement, it appears from the interviews that organisations often base their flexible work policies on the scheme. This would explain the shared features between many interviewees' flexible work policies and the right to request flexible work under the NES (at the time the interviews were conducted), discussed in section 3.4.3 — for example, making flexible work only available on employee

⁸⁵⁹ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁸⁶⁰ Interview 13: Diversity and inclusion manager, professional, science and tech services organisation, 1000–4999 employees.

⁸⁶¹ Interview 22: People and culture executive, electricity, gas, water, and waste services organisation, <100 employees.

⁸⁶² Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁸⁶³ Interview 15: Diversity and inclusion manager, transport, postal and warehousing organisation, 5000+ employees.

request, limiting these requests to eligible carers, and reserving the right to refuse these requests based on reasonable business grounds without avenues for challenging these decisions.

6.3.4 COVID-19 and the Provision of Flexible Work

Interviewees across organisations of various industry types and sizes also reported how working adjustments to accommodate COVID-19 lockdowns had since affected their organisations' approach to flexible work. As discussed above, most interviewees had offered work-from-home adjustments to accommodate the lockdowns. At the time of the interviews, most interviewees were also considering reforming their flexible work offerings and considering what forms of flexibility introduced in response to the pandemic would remain post-lockdowns.

Interviewees reported managers and employees becoming newly receptive to flexible work arrangements after being forced to work remotely during the lockdowns. An interviewee from a large manufacturing organisation found that several managers had now realised, 'You don't need to be at your desk nine to five all week or longer to produce the same amount of work as you would in a different arrangement'.⁸⁶⁴ An interviewee from a male-dominated public services organisation found that some managers now had a very different outlook on physical presence in the workplace and had seen how technology could facilitate flexibility.⁸⁶⁵ An interviewee from a large professional services organisation described having relaxed their policy against having children at home while working from home during lockdown periods because the organisation became more understanding of the fact that employees could work alongside their caregiving responsibilities.⁸⁶⁶

However, an interviewee from a smaller professional services organisation stated that while they too had 'been a lot more flexible in allowing people to have their children at home [during the pandemic] ... we will be expecting our employees [to] have their children in care, which is kind of what we were pre-COVID'.⁸⁶⁷ Other interviewees seemed to be similarly reinstating many of their pre-COVID work expectations as lockdown restrictions eased. For example, an

⁸⁶⁴ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees; 6: Inclusion and diversity lead, manufacturing organisation, 1000–4999 employees; 8: Human resources consultant.

⁸⁶⁵ Interview 14: Gender equality adviser, public administration and safety organisation, 5000+ employees.

⁸⁶⁶ Interview 20: Human resources manager, professional, science and tech services organisation, 5000+ employees.

⁸⁶⁷ Interview 21: Human resources manager, professional, science and tech services organisation, 500–999 employees.

interviewee from a smaller professional services organisation stated they were taking more office space because they wanted it for when their employees started returning to the office.⁸⁶⁸ An interviewee from a small utilities organisation also stated, ‘When we go back to normal it’ll be ... three days in the office, two from home’.⁸⁶⁹

A human resources consultant explained the desire to retract full-time work-from-home options as being partly caused by managerial fatigue and burnout coming out of the lockdowns.⁸⁷⁰ A similar view was expressed by an interviewee from a large professional services organisation who saw their organisation encourage flexible work throughout the lockdowns but felt that this was ‘wearing a bit thin now... and there are directions ... for people to be back in the office three days a week’.⁸⁷¹ An interviewee from a large transportation organisation described the situation as follows, ‘The concept of snapback [to work in the office] isn’t being driven necessarily by practicalities. There are some practicalities, I guess, but I think mostly they’re bunkum. It’s mostly an emotional response to putting a bad experience behind us’.⁸⁷²

Interviewees were therefore sceptical about whether increased flexible work policies post-pandemic would coincide with a more positive attitude to flexible work and flexible workers. A consultant found that in their experience, the decision to instate more-generous flexible work policies post-lockdowns was largely being driven by strong employee pressures. The interviewee said, ‘[Employers] really wanted people to come back [but] had to get used to the idea that it may not go back to normal’ because they realised that ‘if they weren’t able to offer [working from home] given the climate and how things have changed there’d be a competitor who would’.⁸⁷³ Another interviewee from a large professional services organisation similarly felt that employees would expect the same level of flexibility post-lockdowns, while employers would want a reversion to the status quo.⁸⁷⁴

⁸⁶⁸ Interview 10: People and culture manager, professional, science and tech services organisation, <100 employees.

⁸⁶⁹ Interview 22: People and culture executive, electricity, gas, water, and waste services organisation, <100 employees.

⁸⁷⁰ Interview 18: Human resources consultant.

⁸⁷¹ Interview 20: Human resources manager, professional, science and tech services organisation, 5000+ employees.

⁸⁷² Interview 15: Diversity and inclusion manager, transport, postal and warehousing organisation, 5000+ employees.

⁸⁷³ Interview 16: Diversity and inclusion consultant.

⁸⁷⁴ Interview 20: Human resources manager, professional, science and tech services organisation, 5000+ employees.

This potential tension led to concern among interviewees that there may be an increase in flexible work offerings but with continued biases against flexible workers. For example, an interviewee from a large professional services organisation said that while employees in their organisation could continue to work from home, their policy was worded such that ‘working in the office is the norm or the dominant paradigm’.⁸⁷⁵ The interviewee’s organisation had also launched an ‘all roles flex’ option, where employees are expected to only be in the office 60% of the time, but expressed some concern about potential unintended consequences of the program, saying:

I think there is a risk; it’s two sides to it. On the one hand, I think [COVID]’s mainstreamed and normalised flexible working and exposed many men to it in a way that never would have been the case without COVID. But the dark side of all that is that I think there are a lot of people and in particular men who can’t wait to get back to the office and so they will and then there’ll be more women not in the office... so it’s incumbent upon inclusive leaders to ensure that you address that in teams.⁸⁷⁶

A consultant felt similarly, saying, ‘It’s going to be very challenging to balance flexible working with ensuring ... everything’s inclusive and that there’s no ... unintentional advantages that those who work in the office have as compared to those who work remotely’.⁸⁷⁷ However, this awareness of the need to be mindful of inclusive flexible work practices did not appear to be widespread. An interviewee who specialised in consulting on flexible work found that they were facing a decrease in demand for their services because:

a lot of managers think they know how to sort [flexible working]. They’ve got it sorted. They know how to manage in a flexible world ... but what they don’t know how to do is how to do it really well and make sure that actually they’re ticking the boxes around engagement and collaboration ... we’re not at that point yet. We’re still in survival mode.⁸⁷⁸

Therefore, the interviews revealed that while the events of COVID-19 seemed to result in a greater embrace of flexible working overall on account of necessity and some conversion of

⁸⁷⁵ Interview 9: Head of diversity and inclusion, professional, science and tech services organisation, 1000–4999 employees.

⁸⁷⁶ Interview 9: Head of diversity and inclusion, professional, science and tech services organisation, 1000–4999 employees.

⁸⁷⁷ Interview 17: Human resources consultant (smaller organisations).

⁸⁷⁸ Interview 8: Human resources consultant.

prior flexible work sceptics, the extent to which these practices will become mainstream in a post-pandemic work environment remains to be seen. The data discussed above suggest that the shift to remote working and greater flexibility during the lockdowns may not necessarily be maintained going forward, and where these arrangements are maintained, negative perceptions of flexible work may persist.

6.4 Discussion and Conclusion

The quantitative results revealed that some flexible work entitlements are offered more commonly than others. Flexible hours, TOIL, and part-time work were widely offered across the dataset, but compressed weeks, telecommuting, and job sharing were less common. The data also revealed that across all flexible work types, limiting flexible work by managerial status or gender was rare. However, these general descriptive statistics must be contextualised against the interview findings. The interviews revealed that within many organisations, flexible work is only granted on employee request. In this way, organisations appeared to be heavily influenced by the right to request flexible work under the NES, as discussed in Chapter 3 (section 3.4.3). In interviewees' experiences, most organisations appeared to rely solely on this framework for their flexible work policies. This deference to the 'right to request' framework as the main policy template for offering flexible work raises several challenges.

For example, some organisations only reserve the right to request flexible work for employees who are eligible for this right under the NES, restricting its availability. Beyond these formal constraints, the data also revealed the challenges of requesting flexible work. Gendered and negative attitudes towards flexible working were said to be prevalent and found to discourage employees from making these requests for fear of facing negative professional consequences for accessing these entitlements. This was confirmed by the finding that flexible workers were rarely promoted within their organisations. Senior employees and men were found to be especially pressured not to work flexibly, given their additional pressures to adhere to ideal worker norms. By making flexible work dependent on employee requests, flexible work was automatically positioned as a practice outside the norm of traditional or ideal workers.

The data also revealed few avenues to challenge refusals of flexible work requests. While most organisations in the dataset seemed to adopt the NES 'reasonable business grounds' to refuse requests, the broadness and vagueness of these grounds left employees susceptible to unjustified refusals. The data in this chapter pre-date the amendments to NES's right to request flexible work, discussed in section 3.4.3. As of 6 June 2023, employers must explain why

requests have been refused, citing the specific business ground or proposing alternative solutions. Moreover, employees will now be able to approach the FWC under the NES to resolve disputes surrounding a flexible work request where the parties cannot resolve the matter at the workplace level. Given interviewees' dissatisfaction with how requests for flexible work are currently entertained, these reforms will probably provide an important improvement and ensure that flexible work requests are taken more seriously in the future.

These changes, however, will not necessarily address the cultural disincentives discussed above that discourage employees from making these requests, given widespread negative and gendered attitudes to flexible work. The recent amendments also fail to address the negative professional consequences many flexible workers were reported to face when these requests were granted. To normalise flexible work and increase take-up, interviewees believed that flexible work policies and procedures should be more informal. This was in keeping with their experience that men were more likely to utilise informal flexible work arrangements, while women tended to be expected to take on more formal forms of flexible work. These findings may explain why it was more common for the organisations in the dataset to offer flexible work types informally, given the qualitative data that suggested they were moving towards more informal flexible work options.

However, removing the formality of flexible work arrangements may have adverse consequences for the enforceability, reliability, and visibility of flexible work arrangements. The proposal also overlooks *why* employees may be intimidated or deterred from accessing formalised flexible work rights. Arguably, an ideal solution would involve a simple but formal process for flexible work but within a positive culture where employees do not feel they might be penalised for accessing a formalised flexible work arrangement. However, positive mechanisms for facilitating flexible work cultures were found to be rare in the data.

The data revealed that the availability of flexible work was affected to some extent by organisational characteristics, such as industry type and organisation size, with flexible work generally being more common in large and specialised services organisations. This coincided with interview findings that certain industries were less receptive to flexible work norms and that an organisation's resources and staffing capabilities could affect its capacity to offer flexible work. However, the stronger theme in the data appeared to be factors within organisations such as specific employee roles and manager biases. These perhaps explain the inconsistent model results when interaction terms and statistical significance are considered.

Taken in totality, the findings make clear that workplace flexible work policies have several key deficiencies against the gender justice criteria. The quantitative results reveal that most employees have access to only certain flexible work types — namely, flexible hours, TOIL, and part-time work. Organisations may also limit the right to request flexible work to eligible carers as per the definition under the NES or implement policies that limit flexible work by managerial status or gender (although the quantitative results found such limitations to be rare). The interview results also found that within organisations, specific roles or departments may be precluded from accessing certain flexible work options due to the perceived requirements of the job or working norms. While some interviewees referenced progressive flexible work policies that made flexible working available to all employees, these offerings were positioned as exceptional and therefore rare. These realities make flexible work in the workplace far from **universally available**.

It remains the case that in many organisations, flexible work is only available on request. However, the freedom of employers to refuse flexible work requests without real explanation and the lack of avenues for employees to challenge these decisions, compromised the **enforceability** of flexible work. Where the right to challenge a refusal of a flexible work request is available, interviewees highlighted the challenges employees may face in bringing forward a challenge and disrupting their adherence to ideal worker norms. The amendments to the right to request flexible work under the NES have greatly improved the enforceability of the scheme. As discussed above, interviewees' experiences of flippant refusals would likely be mitigated by the requirement to explain organisations' grounds for refusal and the potential for employer decisions to be challenged and arbitrated by the FWC. These improvements, however, would presumably be restricted to formal flexible work requests. The quantitative data revealed that it was relatively common for flexible work to be offered only informally. The interviews also confirmed that employees tend to choose informal flexible work arrangements to avoid being labelled a flexible worker and face the corresponding career consequences. However, this will necessarily compromise the enforceability of their arrangements as they may be subject to sudden changes or retractions.

As for the **substantiveness** of organisations' flexible work policies in meeting parents' needs, the interviews revealed that flexible work offerings were often employer-oriented. For example, employees may be afforded a formal flexible work arrangement of part-time work but not actually have their workloads adjusted accordingly. Gendered and negative attitudes were also strong themes in the data, suggesting that flexible workers may have negative

employment experiences. The data showed that flexible workers were often overlooked for promotion and were not seen as viable options for senior or leadership positions. In this way, working flexibly was described as something that would necessarily lead to substantial professional sacrifices, compromising the ability of flexible work to meet carers' needs without substantial detriment.

Finally, regarding **gender-neutrality**, the data's revelation that flexible work is viewed by employees and managers alike as incompatible with ideal worker norms has necessary gender implications. Masculine identities face additional pressures to adhere to ideal worker norms. As seen in the interview data, this often results in men opting for informal arrangements, if they use flexible work arrangements at all. The data also suggest that managers would be more receptive towards women working flexibly than they would be towards men. As a result, men may be more likely to have flexible work requests refused or face especially severe career consequences for making their requests. The data also revealed that male-dominated industries and departments were more likely to have poor flexible work cultures and to view their workplaces as inherently inflexible.

The proposed legislative changes to the right to request flexible work under the NES will hopefully result in fewer flippant refusals of flexible work requests and more meaningful adjustments to employees' work arrangements to accommodate their worker-carer needs. These changes may also prompt more proactive flexible work policies in the future to avoid the increased obligations and risk of challenge that employers would now face when responding to individual requests. The data reveal that the events of COVID-19 also drove the introduction of more proactive flexible work policies.

As the interviewees highlighted, proactive offerings of flexible work are incredibly valuable and such policies would result in flexible work being more universally available, enforceable, substantive, and gender-neutral. At the time of the interviews, however, interviewees were already pointing to growing fatigue around flexible work and a trend towards winding back some of their flexible work policies to revert to pre-lockdown norms. While the data suggested that employee pressures were preventing complete reversions to the former status quo, these pressures appeared to already be waning. Such pressures tended to be more potent in industries with high competition for talent. It is dubious whether employee pressure and the legislative amendments would spark more generous flexible work policies in organisations with employee roles or industry norms that have been less accommodating of flexible work in the past or in organisations without the necessary infrastructure, resources, or staff to facilitate such policies.

Even where these policies are adopted, they will have to be offered within a workplace culture that supports and values flexible work. This may not necessarily be the case if flexible work policies are introduced to merely appease employees or avoid disputes.

In conclusion, despite the NES supposedly setting the minimum workplace entitlements in Australia, the right to request flexible work under these standards appears to be most organisations' template for their own flexible work policies. This is consistent with the findings in Chapter 5 that showed workplace parental leave policies were heavily influenced by the government's parental leave payments despite these payments being intended merely to complement and supplement workplace offerings. Also, similarly to Chapter 5, commercial motivations such as retaining and attracting talent appear to be driving the few, proactive flexible work policies in the data. However, without these commercial drivers, many organisations will probably continue to adopt a reactive, ad hoc, and individual approach to flexible work by merely complying with the NES requirements on the right to request flexible work. These findings highlight the importance of the scheme's amendments to import the possibility of external adjudication and clarify employer obligations when responding to these requests. However, flexible work policies that rely on employee requests will always position flexible work as being outside the norms of ideal working life and fail to embody the gender justice criteria of universal availability, enforceability, substantiveness, and gender-neutrality, as discussed above.

CHAPTER SEVEN: OTHER WORK-CARE SUPPORTS IN THE AUSTRALIAN WORKPLACE

7.1 Introduction

This chapter explores the other work-care supports outlined in the WGEA dataset — namely, childcare supports, breastfeeding facilities, return-to-work bonuses, and information, support, or training services for carers. There are some aspects of the regulatory framework, as discussed in Chapters 3 and 4, that relate to these supports. For example, regarding childcare supports, the federal government offers childcare subsidies that taper off depending on carers' incomes.⁸⁷⁹ However, these subsidies often fail to address the overall lack of childcare providers, the rising net costs of childcare, and the financial disincentive for many families who wish to have two full-time income-earning parents.⁸⁸⁰ The regulatory framework also provides a fringe benefits tax exemption to employers for childcare offered on 'business premises'.⁸⁸¹ However, the exemption has been narrowly interpreted and the prevailing tax ruling appears to require that employers are heavily involved in the relevant childcare centre to qualify for the exemption.⁸⁸²

Regarding breastfeeding facilities, Australia's anti-discrimination and general protections frameworks prohibit discrimination on the grounds of breastfeeding.⁸⁸³ The anti-discrimination framework also includes a general prohibition against discrimination on the grounds of caregiving responsibilities.⁸⁸⁴ However, as discussed in Chapter 4, there are no requirements to accommodate employees' caregiving or breastfeeding needs.⁸⁸⁵ Supports such as return-to-work bonuses, providing sufficient information on work-care supports, or training for carers in the workplace are not specifically addressed anywhere in Australia's regulatory framework. Given this context, this chapter examines the extent to which the market is providing these supports despite there being no requirement for employers to do so within the regulatory framework.

⁸⁷⁹ See section 3.3.

⁸⁸⁰ Ibid.

⁸⁸¹ See section 4.3.

⁸⁸² Ibid.

⁸⁸³ See section 4.5.

⁸⁸⁴ Ibid.

⁸⁸⁵ Ibid.

Drawing again on WGEA data (see section 2.3.2.1), this chapter uses descriptive statistics to set out the extent to which organisations covered by the dataset offer childcare supports, breastfeeding facilities, return-to-work bonuses, and information, training and support mechanisms for carers in the Australian market. It then reports on the results of four binary logistic regression models (Models 7A–D, as detailed in section 2.3.2.3). These models test the hypotheses set out in section 2.3.2.2 that larger, female-dominated, and specialised services organisations will be associated with a higher likelihood of offering these work-care supports. This quantitative analysis is followed by the reporting of qualitative findings emerging from the analysis of interview data collected from 22 human resources professionals, as detailed in section 2.3.2 of Chapter 2.

In Chapters 5 and 6, the *PPL Act* and the right to request flexible work under the NES were seen to heavily influence organisations' provisions of paid parental leave and flexible work rights in the workplace. However, the work-care supports discussed in this chapter have no corresponding legislated entitlements. The concluding section of this chapter discusses how this may have influenced the results. The discussion also illuminates the extent to which these other work-care supports are offered in the market, what drives provision, and the extent to which this provision meets the gender justice criteria of universal availability, enforceability, substantiveness, and gender-neutrality.

7.2 Quantitative Results

7.2.1 The Provision of Other Work-Care Supports

The WGEA data captured whether employers offered employer-subsidised childcare, on-site childcare, childcare referral services, or support in securing school holiday care. In the analysis, these were grouped as 'childcare supports'. As shown in Table 7.1, of the 4841 organisations included in the dataset, only 9.36% (n= 453) offered at least one of the four childcare supports mentioned. Of the organisations offering childcare supports, 'on-site childcare' and 'childcare referral services' were most offered and were found in 62.58% (n = 288) of organisations offering at least one childcare support. Breastfeeding facilities were offered by just over a third of organisations in the dataset (38.34%, n = 1856). Return-to-work bonuses were very rare and offered in only 4.03% of organisations (n = 195).

Table 7.1 also details the prevalence of 'information or support services', which collectively refer to the provision of internal support networks for parents, information packs supporting new parents and carers, referral services supporting families and carers, and targeted

communication (eg intranets, forums). In respect of these information or support services, the data showed that at least one type of information or support service was offered in 37.04% (n = 1793) of organisations in the dataset. Referral services to support families and carers were the most offered information and support service and were found in 78.19% (n = 1402) of organisations that offered at least one information or support service.

As also shown in Table 7.1, ‘training mechanisms’, which include coaching for employees returning to work from parental leave, parenting workshops targeting mothers, and parenting workshops targeting fathers, were relatively rare. Only 16.03% (n = 776) of organisations offered at least one of these training mechanisms, with coaching for employees returning from parental leave the most-offered training mechanism (90.85%; n = 705) among those organisations offering one or more training mechanism.

Table 7.1 Offerings of other work-care supports — childcare supports, breastfeeding facilities, return-to-work bonuses, information or support services, and training mechanisms

		N	%
CHILDCARE SUPPORTS	None	4388	86.60
	One or more	453	9.36
	Employer-subsidised childcare	200	44.15
	On-site childcare	288	63.58
	Childcare referral services	288	63.58
	Support in securing school holiday care	265	58.50
BREASTFEEDING FACILITIES	None	2985	61.66
	Yes	1856	38.34
RETURN-TO-WORK BONUSES	None	4646	95.97
	Yes	195	4.03
INFORMATION OR SUPPORT SERVICES	None	3048	62.96
	One or more	1793	37.04
	Internal support networks for parents	556	31.01
	Information packs supporting new parents and carers	536	29.89
	Referral services supporting families and carers	1402	78.19
	Targeted communication (eg intranets, forums)	813	45.34
TRAINING MECHANISMS	None	4065	83.97
	One or more	776	16.03
	Coaching for employees returning to work from parental leave	705	90.85
	Parenting workshops targeting mothers	187	26.52
	Parenting workshops targeting fathers	170	21.90

7.2.2 The Drivers of Other Work-Care Supports

Descriptive statistics were used to determine the extent to which the provision of:

- 1) on-site childcare or childcare subsidies
- 2) breastfeeding facilities
- 3) return-to-work bonuses
- 4) one or more information or support service or training mechanism

differed by organisation size, industry type, and gender dominance.⁸⁸⁶ These statistics revealed a general pattern in which the availability of these offerings generally increased alongside organisational size, as well as being more common among specialised services organisations and female-dominated or neutral organisations. Based on this analysis, regression models were used to explore the strength of and practical impact of any association between the availability of 1–4 above, and organisational size, industry, and gender dominance. The results of these models and corresponding predicted probabilities are set out below.

As set out in Chapter 2 (section 2.3.2.3), Model 7A predicted the offering of on-site childcare and/or childcare subsidies based on organisation size, industry type, and gender dominance and the interaction terms ‘gender dominance*organisation size’, ‘organisation size*industry type’, and ‘industry type*gender dominance’. Model 7B predicted the offering of breastfeeding facilities based on the same main effects and the interaction terms of ‘gender dominance*organisation size’, ‘organisation size*industry type’, and ‘industry type*gender dominance’. Model 7C predicted the offering of return-to-work bonuses based on organisation size, industry type, and gender dominance with no interaction terms. Model 7D predicted the availability of one or more information, support, or training mechanisms (combining the two categories detailed in Table 7.1 above) based on organisation size, industry type, and gender dominance and the interaction terms ‘gender dominance*organisation size’, ‘organisation size*industry type’, and ‘industry type*gender dominance’. Due to insufficient cell counts, it was not possible to include a three-way interaction term between the variables and some two-way interaction terms. However, where it was possible, and doing so improved model fit, two-way interaction terms were included.⁸⁸⁷ The output of these four models is presented together in Table 7.2 below.

⁸⁸⁶ See Table A.9 (appendix).

⁸⁸⁷ See section 2.3.2.3 for an explanation of how the interaction terms were selected for each model.

Table 7.2 Binary logistic regression model predicting the availability of on-site and/or subsidised childcare ('childcare'), breastfeeding facilities, return-to-work bonuses, and at least one information, support or training mechanism based on organisation gender dominance, size, industry type, and all possible two-way interactions

		Childcare ⁸⁸⁸ (Model 7A)	Breastfeeding Facilities ⁸⁸⁹ (Model 7B)	Return-to- Work Bonuses ⁸⁹⁰ (Model 7C)	Information or Training ⁸⁹¹ (Model 7D)
		β (S.E.)	β (S.E.)	β (S.E.)	β (S.E.)
Constant		-4.02 (0.58)***	-0.62 (0.19)***	-4.20 (0.25)***	-1.01 (0.20)***
Gender	Female	0.00 (-)	0.00 (-)	0.00 (-)	0.00 (-)
	Neutral	-0.25 (0.63)	-0.41 (0.23)	0.93 (0.20)***	0.17 (0.23)
	Male	0.27 (0.58)	-0.93 (0.20)***	0.48 (0.22)*	-0.38 (0.20)
Organisation Size	<250	0.00 (-)	0.00 (-)	0.00 (-)	0.00 (-)
	250–499	0.32 (0.56)	0.11 (0.22)	0.15 (0.22)	0.45 (0.22)*
	500–999	-0.36 (0.71)	0.54 (0.24)*	0.66 (0.22)**	0.49 (0.25)*
	1000+	0.98 (0.55)	0.57 (0.25)*	1.23 (0.19)***	0.94 (0.24)***
Industry Type	Non-service- based	0.00 (-)	0.00 (-)	0.00 (-)	0.00 (-)
	General services	1.68 (0.61)**	-0.05 (0.23)	-0.20 (0.22)	0.46 (0.23)*
	Specialised services	2.08 (0.58)***	-0.06 (0.20)	0.32 (0.19)	0.33 (0.20)
Gender Dominance*	Female*<250	0.00 (-)	0.00 (-)	-	0.00 (-)
	Neutral*250– 499	0.09 (0.40)	0.07 (0.21)	-	-0.44 (0.21)*

⁸⁸⁸ Akaike's Information Criterion (AIC) 193.15. $R^2 = 4.54$ (Hosmer and Lemeshow), 0.05 (Cox & Snell), 0.12 (Nagelkerke). Model $\chi^2(23) = 251.44$.

⁸⁸⁹ Akaike's Information Criterion (AIC) 243.97. $R^2 = 2.21$ (Hosmer and Lemeshow), 0.10 (Cox & Snell), 0.13 (Nagelkerke). Model $\chi^2(23) = 497.02$.

⁸⁹⁰ Akaike's Information Criterion (AIC) 181.59. $R^2 = 14.55$ (Hosmer and Lemeshow), 0.02 (Cox & Snell), 0.05 (Nagelkerke). Model $\chi^2(7) = 71.16$.

⁸⁹¹ Akaike's Information Criterion (AIC) 275.23. $R^2 = 4.58$ (Hosmer and Lemeshow), 0.08 (Cox & Snell), 0.11 (Nagelkerke). Model $\chi^2(23) = 411.61$.

Organisation Size	Neutral*500–999	0.44 (0.46)	0.36 (0.25)	-	0.22 (0.25)
	Neutral*1000+	1.06 (0.39)**	0.88 (0.26)***	-	0.50 (0.25)*
	Male*250–499	0.29 (0.47)	0.43 (0.22)*	-	0.03 (0.21)
	Male*500–999	0.40 (0.57)	0.26 (0.24)	-	0.35 (0.24)
	Male*1000+	0.13 (0.52)	1.16 (0.25)***	-	0.72 (0.25)**
Organisation Size* Industry Type	Non-service*<250	0.00 (-)	0.00 (-)	-	0.00 (-)
	General*250–499	-0.09 (0.56)	0.13 (0.24)	-	-0.01 (0.24)
	General*500–999	0.13 (0.72)	0.13 (0.27)	-	0.12 (0.27)
	General*1000+	-1.48 (0.59)**	-0.32 (0.25)	-	-0.45 (0.25)
	Specialised*250–499	0.10 (0.55)	0.51 (0.21)*	-	0.27 (0.21)
	Specialised*500–999	0.69 (0.70)	0.18 (0.24)	-	0.17 (0.24)
	Specialised*1000+	0.24 (0.54)	0.63 (0.25)**	-	0.19 (0.24)
Industry Type* Gender Dominance	Non-service* Female	0.0 (-)	0.0 (-)	-	0.0 (-)
	General* Neutral	-0.55 (0.66)	-0.18 (0.26)	-	-0.65 (0.25)**
	Specialised* Neutral	-0.63 (0.60)	0.69 (0.23)**	-	0.19 (0.23)
	General* Male	-0.65 (0.61)	0.09 (0.25)	-	-0.29 (0.24)
	Specialised* Male	-1.70 (0.57)**	0.94 (0.21)***	-	0.57 (0.21)**

*p<0.05; **p<0.01; ***p<0.001

7.2.2.1 Childcare

Of the three two-way interaction terms in Model 7A, only ‘industry type*gender dominance’ was statistically significant.⁸⁹² As shown in Table 7.2 above, for female-dominated organisations, the likelihood of offering childcare subsidies and/or on-site childcare (‘a

⁸⁹² $\chi^2(4) = 11.63, p = 0.02$.

childcare support’) increased as organisation size reached 250–499, decreased when organisation size reached 500–999, and then increased substantially once organisation size exceeded 1000 employees. This pattern was also seen with neutral and male-dominated organisations. However, as shown by the interaction term ‘neutral*1000’, having 1000 or more employees was associated with a much greater increase in the probability of a childcare support being offered for neutral organisations than for male-dominated or female-dominated organisations of the same size.⁸⁹³

In non-service and specialised services organisations, the largest companies were associated with the greatest likelihood of offering childcare support, but this pattern did not hold for general services organisations where organisation size of more than 1000 employees was associated with a statistically significant decrease in the likelihood of offering childcare subsidies or on-site childcare.⁸⁹⁴

For female-dominated organisations, both general and specialised services organisations were associated with a higher likelihood of offering a childcare support when compared to non-service-based organisations at a statistically significant level, with specialised services organisations associated with the greatest increase.⁸⁹⁵ As shown by the interaction term ‘gender dominance*industry type’, however, this pattern was not preserved for either neutral or male-dominated organisations. For male-dominated organisations, specialised services organisations were associated with a much lower likelihood of offering a childcare support as compared to non-service based or general services organisations and at a statistically significant level.⁸⁹⁶

Figure 7.1 below contextualises these findings by illustrating predicted probabilities from the model, showing that female-dominated organisations were associated with the greatest likelihood of offering a childcare support across the three smallest organisation size categories, while neutral organisations were associated with the highest predicted probabilities once organisation size exceeded 1000 employees. As for industry type, specialised services organisations were associated with the highest predicted probabilities of offering in female-

⁸⁹³ $\beta = 1.06, \chi^2 = 7.48, p = 0.006$.

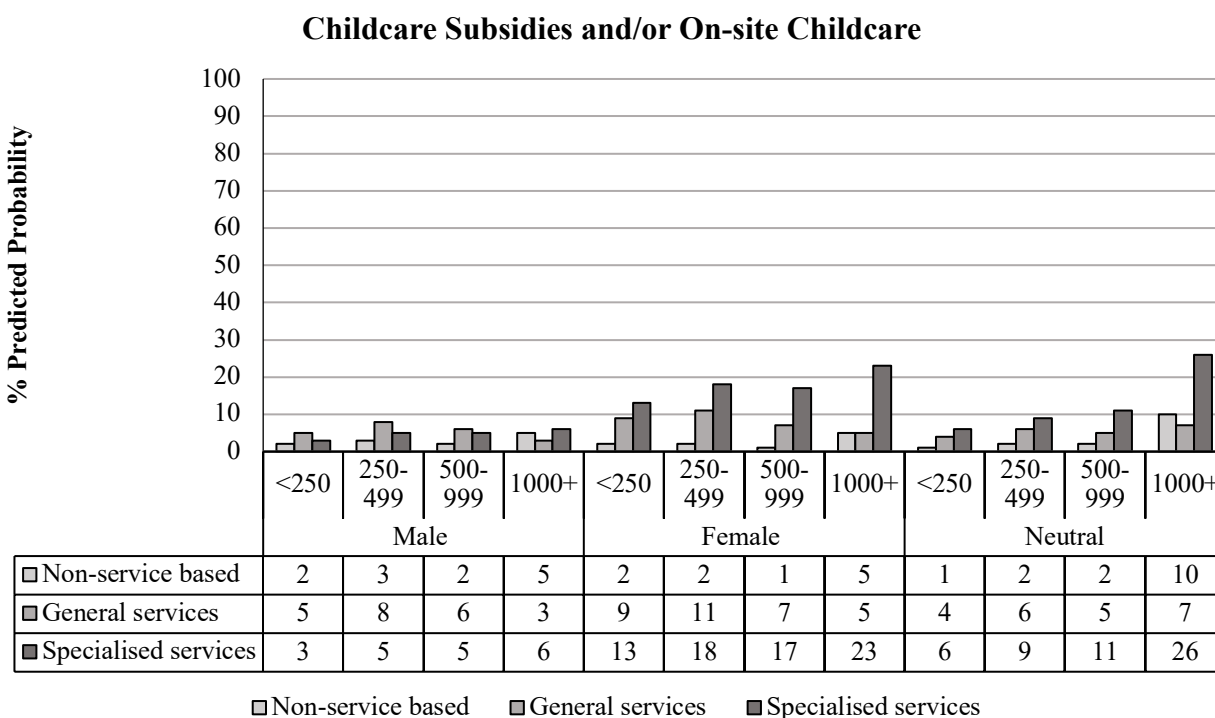
⁸⁹⁴ $\beta = -1.48, \chi^2 = 6.22, p = 0.01$.

⁸⁹⁵ $\beta = -1.68, \chi^2 = 7.55, p = 0.006$ (general services organisations); $\beta = 2.08, \chi^2 = 12.94, p = <0.001$ (specialised services organisations).

⁸⁹⁶ $\beta = -1.70, \chi^2 = 8.79, p = 0.003$.

dominated and neutral organisations; however, this was only true of male-dominated organisations once the organisation size exceeded 1000 employees.

Figure 7.1 Predicted probability (simulated from the model outlined in Table 7.1) of some form of subsidy or on-site childcare being offered based on organisation size, gender dominance, and industry type



7.2.2.2 Breastfeeding Facilities

Regarding Model 7B, all three interaction terms of ‘organisation size*gender dominance’,⁸⁹⁷ ‘organisation size*industry type’,⁸⁹⁸ and ‘industry type*gender dominance’ were statistically significant.⁸⁹⁹

Organisation size led to a consistent increase in the likelihood of offering breastfeeding facilities in female-dominated organisations, with these results being statistically significant for organisations with 500–999 and 1000 or more employees.⁹⁰⁰ However, the difference between the likelihood of offering breastfeeding facilities in organisations with 500–999 employees and organisations with 1000 or more employees was modest. The interaction term ‘organisation size*gender dominance’ showed that this pattern of the likelihood of offering

⁸⁹⁷ $\chi^2(4) = 36.09, p = <0.001$.

⁸⁹⁸ $\chi^2(6) = 17.96, p = 0.006$.

⁸⁹⁹ $\chi^2(6) = 25.43, p = <0.001$.

⁹⁰⁰ $\beta = 0.54, \chi^2 = 4.82, p = 0.028$ (500–999 employees).

breastfeeding facilities increasing alongside organisation size held true in neutral and male-dominated organisations. Organisation size was more influential for male-dominated organisations than female-dominated organisations (as shown by the positive interaction term co-efficient for each ‘male-dominated*organisation size’ category), with these differences reaching statistical significance for the interaction terms ‘male*240–499’⁹⁰¹ and ‘male*1000+employees’.⁹⁰² Having an organisation with 1000 or more employees was also more impactful on the probability of offering breastfeeding facilities in neutral organisations than in female-dominated organisations.⁹⁰³

The pattern in which organisation size increased the likelihood of offering breastfeeding facilities was consistent for both non-service-based and specialised services organisations. While specialised services organisations were associated with higher likelihoods of offering than non-service-based industries once company size exceeded 250 employees, statistically significant findings were only observed in organisations with 250–499 employees and over 1000 employees.⁹⁰⁴ This pattern was not repeated in general services organisations.

Industry type did not appear to influence the likelihood that an organisation would offer breastfeeding facilities in female-dominated organisations; however, specialised services organisations were associated with statistically significant increases in the likelihood of offering breastfeeding facilities for both neutral and male-dominated organisations.⁹⁰⁵ Figure 7.2 below contextualises these findings by illustrating predicted probabilities from the model.

⁹⁰¹ $\beta = 1.16, \chi^2 = 20.92, p = <0.001$ (male-dominated; over 1000 employees).

⁹⁰² $\beta = 0.88, \chi^2 = 11.65, p = <0.001$ (neutral; over 1000 employees).

⁹⁰³ $\beta = 0.43, \chi^2 = 4.03, p = 0.045$ (male-dominated; 250–499 employees); $\beta = 1.16, \chi^2 = 20.92, p = <0.001$ (male-dominated; over 1000 employees); $\beta = 0.88, \chi^2 = 11.65, p = <0.001$ (neutral; over 1000 employees).

⁹⁰⁴ $\beta = 0.51, \chi^2 = 5.90, p = 0.015$ (250–499 employees); $\beta = 0.63, \chi^2 = 6.24, p = 0.013$ (over 1000 employees).

⁹⁰⁵ $\beta = 0.69, \chi^2 = 9.09, p = 0.003$ (neutral); $\beta = 0.94, \chi^2 = 20.18, p = <0.001$ (male-dominated).

Figure 7.2 Predicted probability (simulated from the model outlined in Table 7.1) of breastfeeding facilities being offered based on organisation size, gender dominance, and industry type

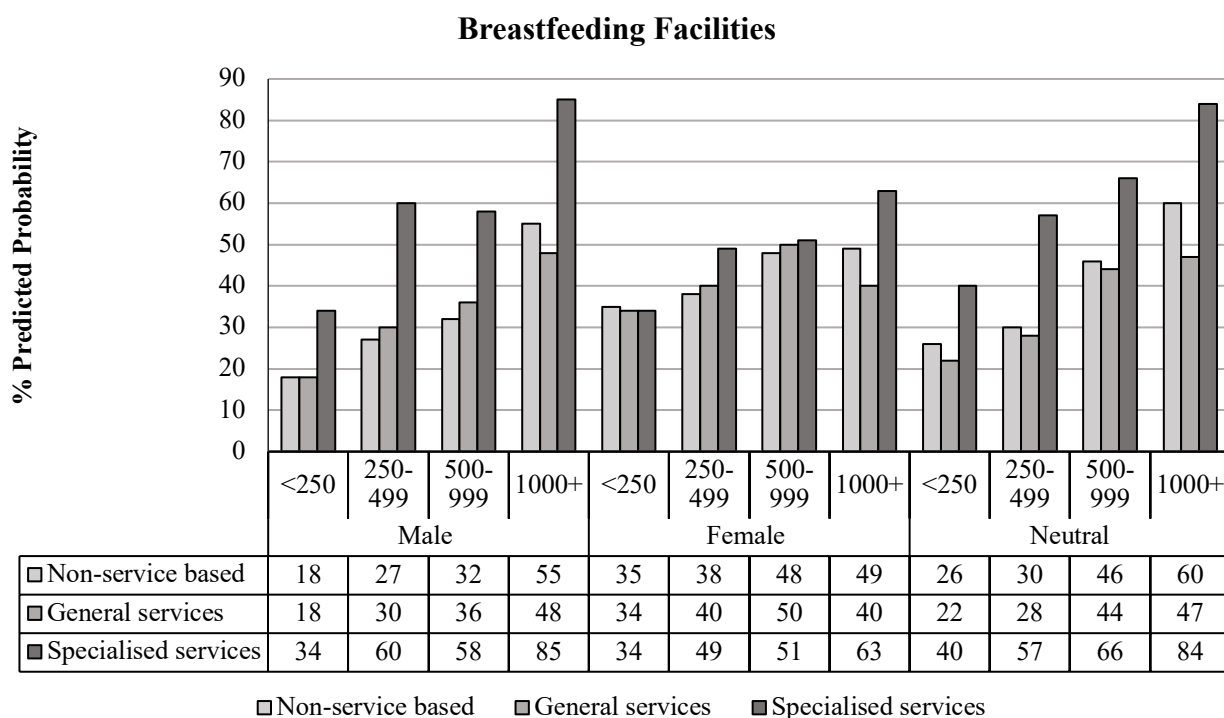


Figure 7.2 reveals that — except for male-dominated, specialised services organisations and female-dominated, general services organisations — the probability of offering breastfeeding facilities increased in line with organisation size. Overall, specialised services organisations were associated with the highest probability of offering breastfeeding facilities when compared to other industry groups across the categories of gender dominance. Increases in the probability of offering were particularly high as organisation size increased from 500–999 to 1000+ in male-dominated and neutral specialised services organisations. Overall industry type produced less variation in the rate at which breastfeeding facilities were offered by female-dominated organisations of different sizes as compared to the impact of industry type for neutral and male-dominated organisations. In neutral and male-dominated organisations, the effect of being a specialised services organisation brought about large increases in probability.

7.2.2.3 Return-to-Work Bonuses

This model contained only the main effects and revealed that organisation size led to an increase in the likelihood of offering return-to-work bonuses in the reference category, with

results reaching statistical significance once organisation size exceeded 500 employees.⁹⁰⁶ This translated into a predicted probability of 2% of organisations with fewer than 250 employees offering return-to-work bonuses, as compared to 8% of organisations with 1000 employees or more. Neutral organisations were found to have the statistically significant highest probability of offering a return-to-work bonus compared to female-dominated and male-dominated organisations.⁹⁰⁷ This translated to a predicted probability of 6% of neutral organisations offering return-to-work bonuses, as compared to 3% for female-dominated organisations and 4% for male-dominated organisations. As for industry type, compared to non-service-based organisations, general organisations were associated with a lower likelihood of offering bonuses, while specialised services had a higher likelihood; however, differences did not reach statistical significance. Controlling for the effect of gender dominance and organisational size, this equates to a predicted probability of 5% of specialised services organisations offering return-to-work bonuses as compared to 4% of non-service-based and 3% of general services organisations.

7.2.2.4 Information, Training, or Other Support Mechanisms

For Model 7D, the interaction terms of ‘organisation size*gender dominance’ and ‘industry type*gender dominance’ were statistically significant in the offering of information, training, or other support mechanisms.⁹⁰⁸

The model revealed that in female-dominated organisations, statistically significant differences were seen in the likelihood of offering information, training, or other support mechanisms, with the likelihood increasing as organisation size increased.⁹⁰⁹ As per the interaction term ‘organisation size*gender dominance’, this pattern held true in neutral and male-dominated organisations. Having 1000 or more employees was more influential in bringing about an increase in the likelihood of offering information, training, or other support mechanisms for male-dominated and neutral organisations than for female-dominated organisations.⁹¹⁰

⁹⁰⁶ $\beta = 0.66$, $\chi^2 = 8.95$, $p = 0.003$ (500–999 employees); $\beta = 1.23$, $\chi^2 = 43.71$, $p = <0.001$ (over 1000 employees).

⁹⁰⁷ $\beta = 0.93$, $\chi^2 = 21.55$, $p = <0.001$ (neutral); $\beta = 0.48$, $\chi^2 = 4.94$, $p = 0.026$ (male-dominated).

⁹⁰⁸ $\chi^2 (6) = 18.88$, $p = 0.004$ (organisation size*gender); $\chi^2 (4) = 28.70$, $p = <0.001$ (industry*gender).

⁹⁰⁹ $\beta = 0.45$, $\chi^2 = 4.09$, $p = 0.043$ (250–499 employees); $\beta = 0.49$, $\chi^2 = 3.96$, $p = 0.047$ (500–999 employees); $\beta = 0.94$, $\chi^2 = 14.74$, $p = <0.001$ (over 1000 employees).

⁹¹⁰ $\beta = 0.72$, $\chi^2 = 8.49$, $p = 0.004$ (male-dominated organisations 1000+ employees); $\beta = 0.50$, $\chi^2 = 4.10$, $p = 0.043$.

Organisation size of 250–499 was less influential for neutral organisations than female-dominated organisations.⁹¹¹

For female-dominated organisations, general services organisations had a higher likelihood of offering information, training, or other support mechanisms compared to non-service organisations, with this finding being statistically significant.⁹¹² For neutral and male-dominated organisations, the opposite effect was seen, with this reaching statistical significance for neutral organisations.⁹¹³ Specialised services organisations were not associated with statistically significant increases in the likelihood of offering information, training, or other support mechanisms for female-dominated organisations. However, this was not the case for male-dominated organisations, where specialised services were associated with a statistically significant greater likelihood of offering information, training, or other support mechanisms compared to non-service-based organisations.⁹¹⁴ Figure 7.3 below contextualises these findings by illustrating predicted probabilities from the model.

Figure 7.3 Predicted probability (simulated from the model outlined in Table 7.1) of some form of other support mechanisms being offered based on organisation size, gender dominance, or industry type

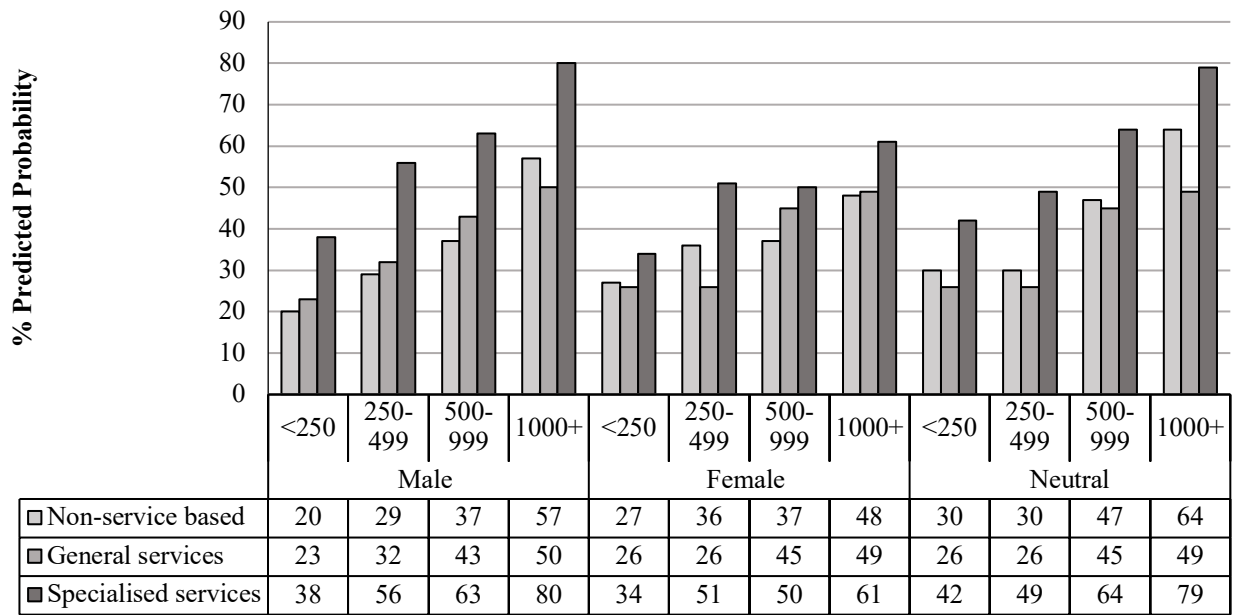
⁹¹¹ $\beta = -0.44$, $\chi^2 = 4.42$, $p = 0.035$.

⁹¹² $\beta = 0.46$, $\chi^2 = 43.96$, $p = 0.035$.

⁹¹³ $\beta = -0.65$, $\chi^2 = 6.52$, $p = 0.011$.

⁹¹⁴ $\beta = 0.57$, $\chi^2 = 7.39$, $p = 0.007$.

Information and/or training mechanisms



Non-service based
 General services
 Specialised services

Figure 7.3 above reveals that the likelihood of offering information, training, or other support mechanisms generally increased with organisation size across all categories of gender dominance and industry type. The only exceptions to this were female-dominated and neutral general services organisations, where the predicted probability did not increase between organisations with fewer than 250 employees and those with 250–499 employees. There was also a slight decrease of 1 percentage point in female-dominated specialised services organisations between organisations with 250–499 employees and those with 500–999 employees. Overall, specialised services organisations were associated with the highest probability of offering information, training, or other support mechanisms when compared to other industry groups across organisations of varying gender dominance and size.

7.2.3 Summary

In general, the quantitative results revealed that offering any of the work-care supports in the dataset was rare. Most organisations in the dataset offered no childcare supports, breastfeeding facilities, return-to-work bonuses, information or support services, or training mechanisms of any kind. The regression analyses suggested that some organisational characteristics had a statistically significant influence on the organisations' offerings.

Regarding childcare supports, having over 1000 employees was associated with the highest likelihood of offering childcare in comparison with smaller organisations. This was especially so with neutral organisations. The exception to this was general services organisations, where having over 1000 employees resulted in a decreased likelihood of offering childcare services. Of specialised services organisations, female-dominated organisations had the highest likelihood of offerings. For female-dominated organisations, specialised and general services organisations were associated with a much higher likelihood of offering a childcare support than non-service-based organisations. However, for male-dominated organisations, specialised services organisations were associated with a much lower likelihood of offering a childcare support as compared to non-service or general services organisations. These findings perhaps suggest that childcare is only likely to be offered by very large organisations with over 1000 employees and in organisations that are perceived to have the highest demand for such services such as female-dominated, specialised services organisations.

With breastfeeding facilities, increases in organisation size generally led to an increased likelihood of offering, with organisation size being especially impactful in male-dominated and neutral organisations compared to female-dominated organisations. This may be because only

very large male-dominated and neutral organisations will be seen to have sufficient demand to justify such facilities, while in female-dominated organisations, demand may be more palpable regardless of the organisation's size. Male-dominated and neutral organisations in specialised services organisations were also associated with a higher likelihood of offering than female-dominated organisations.

The generally low rates of offering return-to-work bonuses reflected insignificant differences (practically speaking) between variables in organisations' likelihood of offering these bonuses. The predicted likelihood never exceeded 10%, and differences between variables accounted for changes of only a few percentage points. As for information, training, or support mechanisms, organisation size once again contributed to increases in the likelihood of offering across organisations of varying gender dominance. In female-dominated organisations, general services organisations were associated with an increased likelihood of offering compared to non-service-based and specialised services organisations. For male-dominated organisations, it was specialised services organisations that had the highest likelihood of offering.

In this way, the quantitative results demonstrate that organisational variables had differing impacts on each offering of work-care supports. However, in general, organisations with over 1000 employees and specialised services organisations, particularly male-dominated or neutral organisations, had a higher likelihood of offering these work-care supports. To understand the factors influencing the provision of these supports in a more nuanced manner and obtain more data as to how these supports are offered in practice, interviews were undertaken with human resources professionals, as described in Chapter 2 (section 2.3.3). The analysis of the interview data that follows examines the nature of these offerings of work-care supports in organisations and the factors that have influenced their introduction or acted as a barrier. It should be noted that in keeping with the rarity of these work-care supports in the dataset, interviewees had little experience across all types of work-care supports, meaning that some supports were the subject of more discussion than others. The lack of data on certain supports, however, is itself an important finding, affirming the rarity of certain work-care supports. Moreover, interviewees with no experience offering certain work-care supports often still had valuable insights into the barriers to offering such supports more widely.

7.3 Qualitative Results

7.3.1 Childcare

Consistent with the quantitative findings, which demonstrated the relative rarity of childcare supports among organisations within the WGEA dataset, most interviewees had no experience contemplating or implementing childcare supports. As one consultant observed, workplaces offering childcare supports were not ‘common enough to even be a trend’.⁹¹⁵ Where interviewees did have experience in considering the introduction of childcare offerings, this was for the provision of childcare on ‘business premises’ to qualify for the fringe benefits tax exemption (discussed in section 4.3). Some interviewees had never heard of the fringe benefits tax exemption for childcare on ‘business premises’.

Of those interviewees who spoke about the provision of childcare on ‘business premises’, none worked for an organisation that offered this support, although some expressed a favourable view as to its benefits. For example, a consultant fondly described their former workplace’s on-site childcare centre, which they had personally used, as making it ‘much easier in terms of access and less travel time’ and allowed them ‘to actually take home more money’ because their organisation allowed them to salary sacrifice the childcare centre’s fees.⁹¹⁶ An interviewee from a large manufacturing organisation recounted a story she heard on the news about a female politician who said she would have stayed in politics if Parliament had offered childcare facilities while she was there.⁹¹⁷ A consultant also highlighted how employer-provided childcare offered a valuable networking opportunity, which they believed was ‘really crucial for the parents who are working full-time to know that they have people ... in their organisation that are in the same situation as them’.⁹¹⁸

However, these positive views of childcare on ‘business premises’ were outweighed by the factors that ultimately discouraged organisations from offering or continuing to offer this support. In general, interviewees described the process of establishing childcare on ‘business premises’ as labour-intensive with insufficient corresponding benefits. A human resources consultant described the process as requiring ‘a lot of rigmarole’.⁹¹⁹ An interviewee from a

⁹¹⁵ Interview 17: Human resources consultant (smaller organisations).

⁹¹⁶ Interview 5: Inclusion and diversity manager and consultant.

⁹¹⁷ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁹¹⁸ Interview 8: Human resources consultant.

⁹¹⁹ Interview 8: Human resources consultant.

large public utilities organisation disbanded their offering because it became ‘extremely challenging in terms of the amount of finance that it required’, especially when ‘it only provided access for people at that particular location’.⁹²⁰ The interviewee had found that ‘it wasn’t financially possible to provide [a childcare centre] at every location’, which created ‘them and us’ resentment among the staff and led to the offering of this support not having been pursued since.

The inability of employer-provided childcare to satisfy the needs of *all* parents was a strong theme in the data. For example, a consultant explained:

[i]t’s really beneficial to have your child on campus but that also means that you have to travel with your child to the campus. So ... a lot of women, maybe start with their children [in the workplace’s childcare centre in the city] for the first year and then they’ll move them to a more local Childcare Centre because actually taking a toddler on a packed train in peak hour is no fun for anyone.⁹²¹

The preference for parents to have their childcare centre closer to their homes rather than their workplaces was expressed by another interviewee from a large higher education institution who found that ‘more staff have chosen to go with child care closer to home... during working from home, rather than ... driving and dropping their children at [work] and then returning home to work’.⁹²² Another interviewee from a similarly sized higher education institution said, ‘We got..., pre-COVID, a lot of requests from children wanting to be on-site [but COVID-19] has completely changed that need’ now that more of their parents worked from home.⁹²³ Interviewees also found that expecting all parents in an organisation to use a single childcare centre raised issues of availability. The same interviewee, for example, said their childcare centre was ‘very competitive ... so we sometimes find staff saying there’s not enough spaces or there’s not enough availability’.⁹²⁴

Interviewees also pointed out that employers’ childcare offerings might not be suitable because of the quality or nature of childcare being offered. For example, an interviewee from a large government department described how their kids had simply not liked their employer’s

⁹²⁰ Interview 7: Inclusion and diversity manager, electricity, gas, water, and waste services organisation (public), 1000–4999 employees.

⁹²¹ Interview 8: Human resources consultant.

⁹²² Interview 2: Equity and diversity advisor, education and training organisation, 5000+ employees.

⁹²³ Interview 11: Diversity and inclusion manager, education and training organisation, 5000+ employees.

⁹²⁴ Interview 11: Diversity and inclusion manager, education and training organisation, 5000+ employees.

childcare centre, which has since been disbanded.⁹²⁵ Interviewees sensed that parents also wanted more choice and control over their children's childcare arrangements. An interviewee from a large professional services organisation said, 'There are fewer people looking to the workplace to sort of point [them] in the direction of childcare' and said that this had been the case for 'some years'.⁹²⁶ This sentiment was echoed by an interviewee from a large transportation organisation, who said, 'I think parents are really anxious about what level of support their toddlers, babies, young children are getting in the childcare environment'.⁹²⁷ Another interviewee from a large professional services organisation appeared to lend credence to parents' concerns about the quality of their employers' childcare centres by saying this about their organisation's own childcare offering: 'I don't think they were great arrangements to be quite honest'.⁹²⁸

Another strong theme in the data was that interviewees were generally hesitant to offer childcare supports when this was not within their expertise. For example, an interviewee from a large transportation organisation justified their lack of childcare on 'business premises' by saying, 'In every instance, it's been a case of there's nothing we could do that would be as efficient as letting the [childcare] sector do what it has to do itself'.⁹²⁹ A human resources consultant similarly described their discussions with clients on the establishment of a childcare centre on 'business premises' as follows:

the onus that ends up being put on an organisation whose core business is not childcare is cause for concern amongst many directors who don't see it as the kind of work that they should be delivering or taking the risk for. So, I think there are fundamental barriers in that regard that prevent organisations from providing more support from a childcare perspective, even though I would say there is a willingness to do so, particularly in the current environment where the competitive nature of talent is so significant.⁹³⁰

⁹²⁵ Interview 3: Diversity and inclusion senior adviser, government department, 1000–4999 employees.

⁹²⁶ Interview 9: Head of diversity and inclusion, professional, science and tech services organisation, 1000–4999 employees.

⁹²⁷ Interview 19: Head of diversity, inclusion and talent, transport, postal and warehousing organisation, 1000–4999 employees.

⁹²⁸ Interview 20: Human resources manager, professional, science and tech services organisation, 5000+ employees.

⁹²⁹ Interview 15: Diversity and inclusion manager, transport, postal and warehousing organisation, 5000+ employees.

⁹³⁰ Interview 18: Human resources consultant.

In a similar vein, an interviewee from a small utilities organisation said, '[childcare is] not our core business so it doesn't make any sense to have an on-site childcare facility'.⁹³¹ The tax ruling on the fringe benefits tax exemption does permit organisations to subcontract their childcare services to external providers and still qualify for the fringe benefits tax exemption, provided they have an appropriate service agreement. This was, however, not raised as a possibility by any of the interviewees, perhaps reflecting a misunderstanding about what the exemption requires.

Interviewees also raised practical barriers to establishing childcare on 'business premises'. This included the difficulty of justifying and anticipating demand. An interviewee from a large manufacturing organisation said that the decision-makers in their organisation had felt that a childcare centre was unnecessary because their staff was 'only 10% female', even though the interviewee had 'never known so many people having kids than in this workplace'.⁹³² This interviewee's experience suggests that childcare may be seen as a gendered entitlement and may explain the higher predicted probability in the quantitative data of childcare supports in female-dominated organisations than in male-dominated and neutral organisations (unless the organisations were very large).

Interviewees also highlighted how their primary places of business were often inappropriate places to have children around. For example, an interviewee described working for a utilities organisation that had been listed as a potential terrorist target because of its government contracts, resulting in the company deciding not to offer childcare on the premises for security reasons.⁹³³ An interviewee from a large education institution similarly described how their organisation had allowed employees to bring their children to work and it 'was quite a norm' until 'OHS [occupational health and safety]... came in and said no'.⁹³⁴ Another interviewee from a large professional services organisation said that they couldn't operate a childcare centre at their place of business because they leased their buildings, which they believed precluded them from qualifying for the fringe benefits tax exemption.⁹³⁵

⁹³¹ Interview 22: People and culture executive, electricity, gas, water, and waste services organisation, <100 employees.

⁹³² Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁹³³ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁹³⁴ Interview 11: Diversity and inclusion manager, education and training organisation, 5000+ employees.

⁹³⁵ Interview 13: Diversity and inclusion manager, professional, science and tech services organisation, 1000–4999 employees.

The tax ruling on the fringe benefits tax exemption does permit employers to operate childcare centres in locations separate from their main places of business if the employer has sufficient proprietary rights, including a lease agreement. However, this possibility was not mentioned by any of the interviewees, suggesting further misunderstanding surrounding the requirements of the fringe benefits tax exemption. It is also possible that obtaining a separate property to offer a childcare centre may have been considered too onerous or impractical for most organisations. This may explain why the quantitative data only asked respondents if they offered ‘on-site childcare’, either due to a WGEA misunderstanding about the nature of the exemption or because an employer securing an external childcare site was seen as too unlikely to warrant exploration.

Finally, the costs involved were also raised as an issue for organisations. An interviewee from a large manufacturing organisation felt that banks had always been ‘miles ahead of everybody else [in their childcare offerings]’ because they were better resourced.⁹³⁶ That being said, this interviewee was also from a large, well-resourced organisation. This was also the same interviewee who struggled to convince their leadership of the value of a childcare centre because the organisation had a small female workforce. Perhaps then, for many organisations, the issue is not necessarily the cost itself but a perception that the cost is difficult to justify given the perceived minimal value, the investment required, and the inability of employer-provided childcare services to meet the needs of all employees, as discussed above.

Interviewees also discussed other forms of childcare supports. An interviewee from a large transportation organisation, for example, said they had never heard of anyone ‘being offered a subsidy for childcare from their employer’.⁹³⁷ This aligns with the quantitative results that found employer-subsidised childcare to be the least common childcare support (4.13%; n = 200). Two interviewees from large male-dominated industries and a human resources consultant attempted to explain the rarity of childcare subsidies by highlighting the potential fringe benefits tax of 47% that employers could incur for offering childcare subsidies for

⁹³⁶ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁹³⁷ Interview 19: Head of diversity, inclusion and talent, transport, postal and warehousing organisation, 1000–4999 employees.

childcare not offered on ‘business premises’ as required under the fringe benefits tax exemption.⁹³⁸

One of these interviewees, who worked for a large manufacturing organisation, also highlighted how any employer-sponsored childcare subsidies could ‘impact the amount of [childcare subsidies] parents receive from the government as well’.⁹³⁹ As discussed in section 3.3, childcare subsidies taper off as parents’ income increases. If employer-sponsored childcare subsidies were considered part of a parent’s income, that would affect the parent’s entitlements for government subsidies. Of course, employers’ subsidies could be offered at a rate to offset any losses in government subsidies. However, the rising net costs of childcare and the potential for an onerous fringe benefits tax liability would probably make generous and widespread employer-sponsored childcare subsidies a costly endeavour.

The one interviewee who did report offering employer-subsidised, on-site childcare was from a large professional services organisation; they acknowledged that despite the organisation’s subsidies, their offering was ‘still really expensive’.⁹⁴⁰ Consistent with the views presented by others and detailed above, they also went on to say that they did not think employees were allowed to salary sacrifice the costs of their childcare fees because the employer did not want to pay too much fringe benefits tax as their relevant childcare centre was run independently by a third-party organisation and therefore could not be considered childcare on ‘business premises’.⁹⁴¹

Two interviewees also mentioned having contemplated establishing school holiday programs. However, they both ultimately scrapped the idea because of resourcing limitations. One of the interviewees, from a large professional services organisation, said that ‘the space that was required and the insurance’ meant that they ‘just couldn’t get that to really work’.⁹⁴² The other interviewee worked at a utilities organisation with fewer than 100 employees and had considered offering school holiday programs or even on-site childcare but similarly concluded

⁹³⁸ Interview 6: Inclusion and diversity lead, manufacturing organisation, 1000–4999 employees; 12: Diversity, inclusion and development lead, electricity, gas, water, and waste services organisation (public), 1000–4999 employees; 18: Human resources consultant.

⁹³⁹ Interview 6: Inclusion and diversity lead, manufacturing organisation, 1000–4999 employee.

⁹⁴⁰ Interview 20: Human resources manager, professional, science and tech services organisation, 5000+ employees.

⁹⁴¹ Interview 20: Human resources manager, professional, science and tech services organisation, 5000+ employees.

⁹⁴² Interview 13: Diversity and inclusion manager, professional, science and tech services organisation, 1000–4999 employees.

that they would not have ‘enough space to do that as well’.⁹⁴³ Such views may well explain the broader pattern seen in the WGEA dataset, which documented only 5.47% (n = 265) of organisations providing support in securing school holiday care.

Only two interviewees mentioned offering referral services. The first interviewee was the same interviewee from the small utilities organisations who had felt they had insufficient space for a school holiday program. Instead, they decided to provide a list of childcare centres with available spaces and their respective costs to their employees to ‘help [parents] with that filtering process’.⁹⁴⁴ The other interviewee was from a large manufacturing organisation who described their referral service as ‘just some links on the [web]page ... but for some people, I think it can be pretty helpful’.⁹⁴⁵ The interviewees’ descriptions of these services suggest that this support required little cost or effort. It is interesting, therefore, that childcare referral services were offered in only 5.95% (n = 288) of organisations. Perhaps the absence of referral services is less a matter of cost and more reflective of the observations that employees were no longer looking for workplaces to point them in the direction of childcare.

Interviewees also mentioned other childcare supports not addressed in the quantitative data. For example, two interviewees reported holding spaces in childcare centres on behalf of employees, but both struggled with demand. One of the interviewees, who was from a large professional services organisation, ultimately withdrew from the program because ‘there wasn’t the uptake and we ended up having to pay a lot more for places that weren’t used’.⁹⁴⁶ Two interviewees, one from a small and the other from a large professional services organisation, described including children’s activities on their intranet to help parents occupy their children during lockdowns.⁹⁴⁷ These supports, however, seemed confined to the COVID lockdown period. The interviewee from the larger professional services organisation also reported offering emergency firm-funded childcare when an employee needed emergency childcare to work.⁹⁴⁸ These findings suggest that there may be other childcare supports by

⁹⁴³ Interview 22: People and culture executive, electricity, gas, water, and waste services organisation, <100 employees.

⁹⁴⁴ Interview 22: People and culture executive, electricity, gas, water, and waste services organisation, <100 employees.

⁹⁴⁵ Interview 6: Inclusion and diversity lead, manufacturing organisation, 1000–4999 employees.

⁹⁴⁶ Ibid.

⁹⁴⁷ Interview 10: People and culture manager, professional, science and tech services organisation, <100 employees; 9: Head of diversity and inclusion, professional, science and tech services organisation, 1000–4999 employees.

⁹⁴⁸ Interview 9: Head of diversity and inclusion, professional, science and tech services organisation, 1000–4999 employees.

employers that aren't captured by WGEA's questions in the dataset — although, again, these comments represented a minority of interviewees' experiences. Childcare supports of any kind were generally considered rare, exceptional, and too difficult to implement, especially given the limited perceived benefits.

7.3.2 Breastfeeding Facilities

As per the quantitative findings, only 38.34% of organisations (n = 1856) reported offering breastfeeding facilities. The absence of these facilities was observed by some interviewees, with one recalling the lack of breastfeeding facilities during their time working at a national beverage company.⁹⁴⁹ As one interviewee from a large transportation organisation put it, they had seen 'too many times women using a bathroom and it's really uncomfortable and awkward and doesn't really work'.⁹⁵⁰ The rarity of breastfeeding facilities was explained by an interviewee from a large administrative organisation, who said breastfeeding facilities were often considered a less 'high profile' entitlement and were therefore not prioritised.⁹⁵¹

Where breastfeeding facilities were provided, interviewees often described them as ill-suited to a comfortable nursing experience. Interviewees from a range of industry types and sizes reported that their breastfeeding facilities were often shared spaces. Breastfeeding rooms were described as also being first-aid rooms, sick bays, wellness rooms, reflection rooms, meeting rooms, and unused offices. As a human resources consultant explained, 'We do often hear that [breastfeeding facilities] are shared spaces so all of a sudden the prayer room is also the breastfeeding room, which if you think about the cultural overlay of such a decision it is just the perfect storm'.⁹⁵² This same interviewee recounted her experience working for an organisation with hundreds of employees and one breastfeeding room that was also the first-aid room, with four breastfeeding employees who often had to express milk at the same time.⁹⁵³ This experience ultimately led her to stop breastfeeding on the basis that it was 'all just too hard'.⁹⁵⁴ Another interviewee recounted her experience joining a large higher education organisation where, 'They had a chair set up and you had a big grey urinal and that was where

⁹⁴⁹ Interview 17: Human resources consultant (smaller organisations).

⁹⁵⁰ Interview 19: Head of diversity, inclusion and talent, transport, postal and warehousing organisation, 1000–4999 employees.

⁹⁵¹ Interview 4: Wellbeing, diversity and inclusion lead, administrative and support services organisation, 500–999 employees.

⁹⁵² Interview 18: Human resources consultant.

⁹⁵³ Interview 18: Human resources consultant.

⁹⁵⁴ Interview 18: Human resources consultant.

they expected people to be breastfeeding’, although the interviewee acknowledged that this experience was from early on in her career over 10 years ago.⁹⁵⁵ An interviewee from a large manufacturing organisation, however, recounted a recent story in which an employee was expressing milk and ‘because it’s a sick bay two guys came in, one had a cut on his arm and ... [she was asked], “How long will you be?”’.⁹⁵⁶

Given the often-shared nature of these facilities, interviewees reported a lack of necessary amenities for breastfeeding employees in these spaces. For example, the breastfeeding employee in the shared sick bay story above had to formally request a fridge to store her breast milk upon returning to work from parental leave — and only after an incident was a lock put on the door.⁹⁵⁷ Other interviewees from organisations of varying sizes and industry types also noted that it was common for breastfeeding facilities not to have a fridge, sink, or microwave. Where such amenities were lacking, a human resources consultant found that remedying the situation was often difficult, saying, ‘The number of times over the years working in different facilities, where getting something as simple as a microwave oven in the parents’ room meant that you had to write like a budget proposal and had to jump through so many hoops to get things done’.⁹⁵⁸

Interviewees also reported having breastfeeding facilities that would be established upon request. For example, an interviewee from a large education organisation stated that they offered employees the option of creating ‘their own facility’. They said, ‘People can identify an office at their level and set up a private space for the fridge and those kinds of facilities’ so they did not have to travel far distances across campus.⁹⁵⁹ An interviewee from a large transportation organisation said that when employees were stationed at on-site construction projects away from their headquarters, they ‘would make sure that [the employee] could return to a workplace that had those facilities’.⁹⁶⁰ In a small utilities organisation, the interviewee said a room could be converted into a breastfeeding room on request, but there was currently no need for it.⁹⁶¹ These interviewees’ experiences highlight the practical challenges in establishing

⁹⁵⁵ Interview 5: Inclusion and diversity manager and consultant.

⁹⁵⁶ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁹⁵⁷ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁹⁵⁸ Interview 5: Inclusion and diversity manager and consultant.

⁹⁵⁹ Interview 11: Diversity and inclusion manager, education and training organisation, 5000+ employees.

⁹⁶⁰ Interview 15: Diversity and inclusion manager, transport, postal and warehousing organisation, 5000+ employees.

⁹⁶¹ Interview 22: People and culture executive, electricity, gas, water, and waste services organisation, <100 employees.

permanent and distinct breastfeeding facilities, such as in very large workplaces, workplaces with employees stationed across multiple sites, or small organisations. As an interviewee from a large education organisation pointed out, though, the success of these responsive arrangements ‘relies on communication’ and having an atmosphere where employees feel comfortable enough to discuss their breastfeeding requirements with their employer.⁹⁶²

Another interviewee, a human resources consultant, believed that breastfeeding is often ‘not actually supported — it’s probably tolerated rather than supported’.⁹⁶³ Where this attitude is amplified by other aspects of industry or organisational culture, it may be very difficult for employees to initiate conversations around their breastfeeding needs. This was expressed by an interviewee from a large transportation organisation as follows:

I still think women, in particular, are very anxious about asking for anything in the workplace. They still struggle to negotiate so as to actually provide or give feedback on the breastfeeding facility that may or may not be offered — particularly in trade roles. Forget about it. There may not even be a women’s toilet or shower... If you work in a rostered environment and operational field getting time off your roster to have time to go and breastfeed or pump is nearly impossible ... to accommodate those requests and to have the conversation of a female employee to generally a male manager to whom it will be a foreign, very awkward conversation in some cases, it’s going to be quite difficult.⁹⁶⁴

Interviewees also highlighted how certain workplaces and roles raised challenges in accommodating breastfeeding. An interviewee from a large technology services organisation said that their office workers had a separate breastfeeding facility, but things were ‘a little bit more tricky... across the retail network’.⁹⁶⁵ An interviewee from a large utilities organisation also highlighted how appropriate facilities could be particularly challenging to find in ‘operational environments’ where harmful chemicals are widely used.⁹⁶⁶

⁹⁶² Interview 2: Equity and diversity advisor, education and training organisation, 5000+ employees.

⁹⁶³ Interview 18: Human resources consultant.

⁹⁶⁴ Interview 19: Head of diversity, inclusion and talent, transport, postal and warehousing organisation, 1000–4999 employees.

⁹⁶⁵ Interview 20: Human resources manager, professional, science and tech services organisation, 5000+ employees.

⁹⁶⁶ Interview 7: Inclusion and diversity manager, electricity, gas, water, and waste services organisation (public), 1000–4999 employees.

Taken as a whole, the interviewees revealed that suitable breastfeeding facilities were rare. Adding to this, only one interviewee, who was currently working in the public sector, mentioned offering breastfeeding breaks, suggesting that most employees had to carve out time to accommodate their breastfeeding around their usual workload.⁹⁶⁷

7.3.3 Returning to Work after Parental Leave

Interviewees were also asked about the mechanisms they offered to facilitate employees' return to work after parental leave. Organisations that offered return-to-work bonuses were generally enthusiastic about the support, seeing it as helpful for employees to meet new expenses. An interviewee from a large manufacturing organisation found that implementing a 'baby bonus' in their organisation had led to conversations with staff, who said, 'We really needed that'.⁹⁶⁸ An interviewee from a large education institution explained how their three-month bonus helped their employees 'to buy out their time, so they might return to work three days a week [while] paid an additional two days during the course of the year'.⁹⁶⁹ A similar approach was described by an interviewee from a large manufacturing organisation where their bonus could be offered as a lump sum or paid overtime to supplement a new part-time arrangement.⁹⁷⁰ An interviewee from a large professional services organisation stated that their return-to-work bonus was intended to subsidise childcare arrangements at least in the first few months of employees' return to work.⁹⁷¹ Another interviewee described a unique bonus program where if an employee's partner had not had access to paid parental leave, the organisation would pay the employee 150% of their salary for the first 14 weeks after their return to work from parental leave to reduce the family's financial burden,⁹⁷² although she acknowledged that 'that was quite a different provision'.⁹⁷³ Despite interviewees' experiences with offering bonuses, the quantitative findings reveal that across the market, return-to-work bonuses are rare (4.03%; n = 195). It is also worth noting that the few examples from the interviews all came from large

⁹⁶⁷ Interview 14: Gender equality adviser, public administration and safety organisation, 5000+ employees.

⁹⁶⁸ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁹⁶⁹ Interview 11: Diversity and inclusion manager, education and training organisation, 5000+ employees.

⁹⁷⁰ Interview 6: Inclusion and diversity lead, manufacturing organisation, 1000–4999 employees.

⁹⁷¹ Interview 20: Human resources manager, professional, science and tech services organisation, 5000+ employees.

⁹⁷² Interview 13: Diversity and inclusion manager, professional, science and tech services organisation, 1000–4999 employees.

⁹⁷³ Interview 13: Diversity and inclusion manager, professional, science and tech services organisation, 1000–4999 employees.

male-dominated or specialised services organisations where the desire to retain women in the workforce after their return from parental leave may be especially strong.

In addition to bonuses, interviewees discussed non-financial incentives to assist employees' return from parental leave. Some interviewees suggested programs they felt would be beneficial — for example, an interviewee from a large manufacturing organisation suggested writing a return-to-work plan in collaboration with the parent returning from parental leave; the plan would be periodically reviewed and updated as needed.⁹⁷⁴ A human resources consultant also proposed holding employees' jobs for an extended period after parental leave to avoid forcing women back into the workforce too soon only to have them face a 'rough psychological ride for three to five years' and leave.⁹⁷⁵ This consultant also suggested implementing a program whereby employees could automatically negotiate part-time hours that would not affect their contract for the first twelve months after they returned from parental leave with the option to revert to a full-time role.⁹⁷⁶ While this policy had not been introduced in that interviewee's organisation, an interviewee from a large professional services organisation did report having such a program.⁹⁷⁷ This interviewee also mentioned that their employees had access to paid 'keep in touch days' during their parental leave periods so they could attend firm events or team days and remain connected to their workplace while on leave.⁹⁷⁸

Interviewees also suggested interventions to ensure that parents' careers did not stagnate upon returning to the workplace. For example, an interviewee from a large utilities organisation said they were looking to implement a career transition program for those returning from parental leave, including 'career coaching, mentoring, buddying, guidance and support to ensure that we are actually able to transition particularly women in ... non-traditional roles back into the workplace to make sure that they're supported and they actually feel like work is flexible'.⁹⁷⁹ Another interviewee from a large professional services organisation suggested 'something formal around return to work in terms of career acceleration', which she felt could help

⁹⁷⁴ Interview 14: Gender equality adviser, public administration and safety organisation, 5000+ employees.

⁹⁷⁵ Interview 8: Human resources consultant.

⁹⁷⁶ Interview 8: Human resources consultant.

⁹⁷⁷ Interview 21: Human resources manager, professional, science and tech services organisation, 500–999 employees.

⁹⁷⁸ Interview 21: Human resources manager, professional, science and tech services organisation, 500–999 employees.

⁹⁷⁹ Interview 12: Diversity, inclusion and development lead, electricity, gas, water, and waste services organisation (public), 1000–4999 employees.

ameliorate employee concerns that their careers would stagnate upon returning from parental leave, a concern she found to be particularly strong among men.⁹⁸⁰ This interviewee had been particularly inspired by a program they had seen from another organisation where if parents returned to work from parental leave they would be offered a ‘work acceleration or a shadowing type program as a bonus’.⁹⁸¹ However, while these interviewees appreciated the value of these programs, they had not implemented or even proposed them in their own workplaces.

This lack of proactive measures to support parents returning from parental leave is particularly concerning, given interviewees’ views that discrimination in the workplace upon returning from parental leave is prevalent. A human resources consultant said, ‘I still meet women in particular who are scared to go on parental leave because they are scared that their job won’t exist when they get back’.⁹⁸² This interviewee went on to say that they had seen women come back from parental leave and be ‘put in a role far less than what they’re capable of and really [had] to fight for either their old role back or an equivalent role commensurate with their skills and abilities’.⁹⁸³ They also described having seen a co-worker made redundant while on parental leave and described the story as one that is ‘very typical’ and ‘so incredibly common’.⁹⁸⁴ Another interviewee recounted her own experience where she was made redundant while on parental leave for her second child because they said they needed someone who could travel overseas regularly and decided that she would not be able to meet that requirement despite never having discussed it with her.⁹⁸⁵

One consultant offered insight into how such situations occur, observing that ‘we know many leaders have biases [and] still continue to hold true to myths around motherhood that women are going to fall so in love with their children that they won’t want to return to work, or they’ll only want to return part-time, or they’ll lose all of their ambition’.⁹⁸⁶ Although these experiences were highlighted by only three interviewees, it is worth noting that interviewees were not explicitly asked about their experiences with pregnancy or parental leave

⁹⁸⁰ Interview 13: Diversity and inclusion manager, professional, science and tech services organisation, 1000–4999 employees.

⁹⁸¹ Interview 13: Diversity and inclusion manager, professional, science and tech services organisation, 1000–4999 employees.

⁹⁸² Interview 16: Diversity and inclusion consultant.

⁹⁸³ Interview 16: Diversity and inclusion consultant.

⁹⁸⁴ Interview 16: Diversity and inclusion consultant.

⁹⁸⁵ Interview 19: Head of diversity, inclusion and talent, transport, postal and warehousing organisation, 1000–4999 employees.

⁹⁸⁶ Interview 18: Human resources consultant.

discrimination as the questions were focussed on offerings of work-care supports. Had there been scope within the interview to probe further, there may have been more to discover on this issue.

7.3.4 Information, Support, or Other Training Mechanisms

As for information on work-care supports, the quantitative data found that only 37.04% (n = 1793) of organisations in the dataset offered one or more information or support services. Most interviewees reported providing information on their supports for caregivers in an internal policy or intranet. Targeted communication by way of intranets or forums was the second most common information service in the dataset, offered in 16.79% (n = 813) of organisations. In keeping with this finding, a human resources consultant said they ‘rarely saw lots around benefits in a contract. It would largely be in internal policies but as you know, you wouldn’t be able to see those or really have clear visibility of that until you join potentially’.⁹⁸⁷ Interviewees defended this practice as allowing employers to be more adaptable and generous over time. For example, an interviewee from a public utilities organisation stated that their internal policy offered a more generous parental leave than the organisation’s enterprise agreement.⁹⁸⁸ This does, however, suggest that employees may at times be required to navigate conflicting information surrounding their entitlements.

Interviewees also described these policies as often being in obscure places on their intranet. An interviewee from a large manufacturing organisation, for example, said that they found that work-care supports were usually ‘hidden somewhere in the HR intranet site for the person to go looking for at a time of a life change’.⁹⁸⁹ This may lead to important entitlements being missed or misinterpreted. For example, an interviewee from a large professional services organisation admitted that they themselves had been unaware of the return-to-work bonus in their organisation until a colleague mentioned it to them, and she had ‘worked in HR for a very long time’.⁹⁹⁰ An interviewee from a large professional services organisation explained that their parental leave policies were not actively communicated to employees because they only

⁹⁸⁷ Interview 17: Human resources consultant (smaller organisations).

⁹⁸⁸ Interview 7: Inclusion and diversity manager, electricity, gas, water, and waste services organisation (public), 1000–4999 employees.

⁹⁸⁹ Interview 1: Culture and development specialist, manufacturing organisation, 1000–4999 employees.

⁹⁹⁰ Interview 20: Human resources manager, professional, science and tech services organisation, 5000+ employees.

‘become interesting’ to employees when they were expecting.⁹⁹¹ However, interviewees may also feel uncomfortable enquiring about these entitlements before it is necessary. As discussed above, interviewees suggested that employees may be discriminated against when taking parental leave. An employee may, therefore, not wish to be seen as a person who is interested in or anticipating parenthood or pregnancy.

Interviewees also highlighted that those policies on work-care supports are often difficult to understand, especially as the eligibility and nature of certain supports often vary depending on the employee. For example, an interviewee from a large education organisation said their parental leave policy led to many questions from employees such as, ‘I’ve been here for a certain amount of time, I’m on this type of contract, can I get this type of leave? Is this relevant to me or am I eligible for this?’⁹⁹² An interviewee from a large manufacturing organisation also highlighted how differentiated offerings can complicate the ability to promote certain work-care supports ‘because they do not apply to everyone’.⁹⁹³

Interviewees highlighted efforts to communicate their work-care supports more proactively. For example, a consultant offered carers the opportunity to have video interviews with human resources to facilitate ‘direct communication’ on available work-care supports to relevant workers instead of leaving employees ‘to figure out everything for themselves’.⁹⁹⁴ An interviewee from a large professional services organisation said their work-care supports were introduced to workers during their onboarding process and that upon learning that someone is expecting a child, an HR representative talks to them about their relevant policies and refers them to a parents’ portal.⁹⁹⁵ Interviewees from three large public sector organisations also mentioned that they tried to communicate regularly to employees and about the supports available to them through newsletters or impromptu posts to keep these entitlements front of mind. A consultant mentioned having encountered forums for parents with useful information that ‘a lot of the time [were] set up by the parents themselves’ but also found that these often tended to ‘die off because no one actually wants to monitor what’s going on in those rooms’.⁹⁹⁶

⁹⁹¹ Interview 13: Diversity and inclusion manager, professional, science and tech services organisation, 1000–4999 employees.

⁹⁹² Interview 2: Equity and diversity advisor, education and training organisation, 5000+ employees.

⁹⁹³ Interview 6: Inclusion and diversity lead, manufacturing organisation, 1000–4999 employees.

⁹⁹⁴ Interview 18: Human resources consultant.

⁹⁹⁵ Interview 21: Human resources manager, professional, science and tech services organisation, 500–999 employees.

⁹⁹⁶ Interview 8: Human resources consultant.

A gender equality adviser was of the view, however, that the most effective form of proactive communication would be for leaders to deliver information on work-care supports directly to their staff:

I would really like to see a structured set of capability development for the leaders so that your manager is equipped with that information rather than sending it ... I think effective organisations realise that their *leaders* need to be equipped with this knowledge ... to help steward their people through this transition.⁹⁹⁷

This view was shared by a diversity and inclusion consultant, who said, ‘Policy is one thing, but ... unless people have an inclusive leader that’s going to enable that, policies are only really worth the paper they’re written on. It really kind of ignores that human element’.⁹⁹⁸ However, no interviewees reported equipping leaders to have these conversations with their staff.

Finally, regarding coaching for parents, the interviewees who offered this support all relied on third-party providers. An interviewee from a large professional services organisation, for example, commissioned an online coaching platform where employees and managers could log in details about impending carer’s leave and the platform would generate content with 24/7 coaches for employees and managers to ask questions and receive curated information.⁹⁹⁹ An interviewee from a large public sector organisation enlisted a service where parents could get one-on-one coaching or attend online sessions that were also recorded so parents could watch them in their own time.¹⁰⁰⁰ Another interviewee from a large support services organisation hired an external provider to help ‘new parents or parents-to-be plan for how they’re going to balance everything, how they’re going to balance work and leave, what the roles of each of the partners [will be], who is going to take time off when the child is sick’ as well as how to negotiate needs with your leaders. The interviewee said that they received ‘really great feedback’ on this offering.¹⁰⁰¹ An interviewee from a large education institution similarly found that their parenting workshops were ‘popular and often [had] a waitlist’.¹⁰⁰²

⁹⁹⁷ Interview 14: Gender equality adviser, public administration and safety organisation, 5000+ employees.

⁹⁹⁸ Interview 16: Diversity and inclusion consultant.

⁹⁹⁹ Interview 13: Diversity and inclusion manager, professional, science and tech services organisation, 1000–4999 employees, referring to Talking Talent.

¹⁰⁰⁰ Interview 3: Diversity and inclusion senior adviser, government department, 1000–4999 employees, referring to Grace Papers.

¹⁰⁰¹ Interview 4: Wellbeing, diversity and inclusion lead, administrative and support services organisation, 500–999 employees.

¹⁰⁰² Interview 2: Equity and diversity advisor, education and training organisation, 5000+ employees.

This same interviewee and another from a large manufacturing organisation, however, did say that they would be moving away from workshops designed exclusively for fathers or mothers, as it reflected binary language that was exclusionary to rainbow families. Nonetheless, one of these interviewees was disappointed to lose the dad's program in particular as they had seen how beneficial dads' programs had been for fathers who struggled to navigate their roles as primary carers and had not attended previous initiatives because 'a lot of the supports ... weren't catered to dads [and so they] didn't feel welcome joining'.¹⁰⁰³ The interviewee had found that when their coaching sessions were gender-neutral, 'a lot of [the dads] felt ... apologetic for taking up space that they thought should be assigned to women'.¹⁰⁰⁴ This interviewee ultimately faced a lot of pushback to call it a parents' workshop. In general, however, coaching for parents was rarely mentioned by interviewees, corresponding to the overall rarity within the WGEA dataset with coaching for parents having been reported by 14.56% of respondents (n = 705), whereas separate coaching for mothers and fathers was reported in approximately 3% of organisations in the dataset (n = 187; n = 170).

7.4 Discussion and Conclusion

Taken as a whole, the work-care supports discussed in this chapter were rarely offered. Most organisations did not offer any childcare supports (86.6%; n = 4388). The two most common forms of childcare offerings, according to the dataset, were on-site childcare and childcare referral services and were each found in 5.95% (n = 288) of organisations, respectively. Childcare referral services seemed to involve merely preparing a list of nearby childcare centres for parents. Interviewees described considering or offering 'on-site childcare' to meet the requirements of the fringe benefits tax exemption discussed in section 4.3 for childcare on 'business premises'. However, some interviewees had never heard of the exemption.

Where interviewees had heard of the exemption, they seemed unclear as to the relevant requirements. For example, interviewees appeared to believe that they needed to run their childcare centres personally, own their buildings, or operate the centre in their main place of business to qualify for the exemption. As discussed in Chapter 4, this is not necessarily required, but the tax ruling on the exemption has been very ambiguously and narrowly interpreted. This perhaps has resulted in these interviewees receiving advice to construct their

¹⁰⁰³ Interview 6: Inclusion and diversity lead, manufacturing organisation, 1000–4999 employees.

¹⁰⁰⁴ Interview 6: Inclusion and diversity lead, manufacturing organisation, 1000–4999 employees.

childcare centres in a manner that would definitively meet the exemption's requirements, given the large investment required and the financial risk of having also to pay an unanticipated, large amount of fringe benefits tax. None of the interviewees continued to offer on-site childcare, having found the costs and effort involved too much, especially as businesses considered themselves ill-equipped to offer a childcare service and offerings often failed to meet parents' needs. Availability was often an issue, and interviewees reported that parents usually wanted choice in their children's childcare arrangements, such as centres closer to their homes or of a better quality.

In general, childcare supports of any kind were far from **universally available** and where they were available, as per the WGEA data, this was more likely to be among very large organisations with over 1000 employees. Childcare supports were also rarely **substantive** enough to meet parents' diverse wants and needs and address issues of affordability and availability. Childcare was also seen as a gendered entitlement, with childcare supports being rarer in male-dominated organisations and especially difficult to justify in these organisations, failing the criterion of **gender-neutrality**.

As discussed in Chapter 3, the government's childcare subsidies have failed to address these issues, leaving a workforce disincentive for many secondary earners, who are usually women, to return to the workforce. The fact that complementary childcare supports in the market are so rare is concerning. The data suggest that the fringe benefits tax exemption for childcare on 'business premises' has largely failed to encourage greater provision of childcare supports, confirming the identified limitations of the exemption in being too narrow and ambiguous, as discussed in section 4.3. Even if the exemption resulted in more organisations offering childcare on 'business premises', the data reveal how this offering can restrict parents' ability to choose the most appropriate childcare arrangement for their needs.

Turning to breastfeeding facilities, despite an explicit prohibition against discrimination on the grounds of breastfeeding, only 38.34% (n = 1856) of organisations offered breastfeeding facilities, usually very large, specialised services organisations. This clearly compromises the **universal availability** of the offering. The qualitative data suggest that some facilities were also only available upon request, a request that many employees may feel uncomfortable making, compromising the **enforceability** of this provision. Where offered, issues of **substantiveness** were raised, with facilities often being shared spaces that may lack all the requisite features to meet the needs of breastfeeding employees. There was also a lack of data on the provision of paid breastfeeding breaks, which makes it difficult to assess whether the

needs of breastfeeding employees are being met. The inadequacy of the supports offered to breastfeeding workers within organisations reinforces the idea that the ideal worker is a male body without the need to breastfeed, failing the criterion of **gender-neutrality**.

Regarding return-to-work bonuses, the few interviewees who offered them supported their utility, generally positioning the payment as an important means for families to mitigate additional costs. For example, a bonus provides additional income while parents initially work fewer hours as they reacclimatise themselves to working life following parental leave, or it is used to ameliorate additional childcare expenses. However, this support was the rarest offered in the market, provided by only 4.03% (n = 195) of organisations in the dataset.

The data also highlight how parents could benefit from broader proactive and non-financial measures to accommodate parents' returning to work. Returning from parental leave could be an extreme transition for employees, especially birth parents. Having incentives for career promotion after returning from parental leave was also seen as a useful way to encourage men to access parental leave, as career stagnation was described as a particular concern among male workers. The data also reveal instances of employees being made redundant or demoted upon returning from parental leave and new parents facing many challenges in acclimatising themselves to the workplace. Although this was only highlighted by a few interviewees, it does coincide with the findings of the available research in this area.¹⁰⁰⁵ Initiatives to help ease parents back into the workplace were, therefore, seen as important in signalling a true commitment within organisations to retain and respect working parents after parental leave. However, most of the initiatives discussed had not been implemented and were mere proposals or suggestions. This suggests a lack of **universally available** and implemented **substantive** policies for parents returning to work. These policies are necessary to overcome the present **gendered** disadvantages that mothers particularly tend to face upon returning to the workplace from what is usually a longer period of parental leave than the leave taken by men and to encourage increased parental leave use by men.

Finally, regarding information and training supports, the provision of such supports could go a long way to normalising the worker-carer experience and signalling to employees that their organisations are awake to the challenges of balancing work and care. However, the offering

¹⁰⁰⁵ Dominique Allen and Adriana Orifici, *Understanding Pregnancy Discrimination: A Pilot Study of Women's Experiences at Work* (Monash Business School, 2022) 13; Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review — Community Guide 2014* (2014) 12–14.

of such supports was limited to 37.04% (n = 1793) of organisations offering at least one form of information or support service and only 16.03% (n = 776) of organisations offering at least one training support, compromising the criterion of **universal availability**. These supports were again more popular in larger organisations. Interviewees highlighted how information on work-care supports was usually complex and difficult to find, with employees often left to navigate complicated intranets during periods of extreme personal transition. Interviewees also highlighted that information on work-care supports was often not in legally binding employment contracts or enterprise agreements. Instead, work-care supports tended to be outlined in internal policies subject to change or revocation at any time and only made available to employees after they had been hired, compromising the criterion of **enforceability** for effectively all the work-care supports discussed thus far, including PPL and flexible work policies, as discussed in Chapters 5 and 6. As for **substantiveness**, the lack of proactiveness and personalisation in how entitlements are communicated suggests a failure to truly accommodate the diverse and individual needs of working carers. Therefore, in most organisations where the status quo is allowed to persist it is likely that women will continue to shoulder the burden of accessing information and services, compromising the criterion of **gender-neutrality**. The few interviewees who offered coaching of some kind had outsourced these services but received positive feedback. However, the data also suggest that fathers especially feel uncomfortable utilising these services without explicit efforts to include them in these initiatives. Rates of offering were also exceedingly low in the dataset.

The work-care supports discussed in this chapter had the lowest rates of offering across all the work-care supports discussed so far. Unlike the supports discussed in Chapters 5 and 6, there were no clear legislated entitlements for organisations to model their own offerings. Also, it seemed that organisations saw little incentive to offer these supports. In Chapters 5 and 6, organisations viewed relatively generous PPL and flexible work provisions as being important in remaining an employer of choice in competitive talent markets. The supports in this chapter, however, were seen as niche, expensive, difficult to provide, or unimportant. Childcare supports, for example, were described as not being a trend; breastfeeding facilities were described as not being ‘high profile’; and return-to-work bonuses were exceedingly rare. Merely providing information on intranets seemed the most efficient method for certain organisations to communicate their supports. The few organisations that offered coaching reported that these initiatives were positively received but did not appear to be driven by employee demand or expectation. In short, the data reveal that without the market incentives

or legislative templates that were so influential in driving workplace offerings of the work-care supports discussed in Chapters 5 and 6, organisations generally failed to offer supports of their own accord that met the gender justice criteria.

CHAPTER EIGHT: CONCLUSION

8.1 Thesis Findings

For much of Australian history, paid employment and caregiving have been firmly delineated along gender lines. Over the years, work-care supports have been introduced to rectify this segmentation of labour. These included parental leave entitlements and payments,¹⁰⁰⁶ minimum standards relating to balancing work and caregiving,¹⁰⁰⁷ and childcare subsidies.¹⁰⁰⁸ Alongside these legislated offerings were mechanisms designed to influence workplaces to provide further work-care supports. These included anti-discrimination protections for carers,¹⁰⁰⁹ the Employer of Choice citation to recognise organisations that offered certain work-care supports,¹⁰¹⁰ and certain fringe benefits tax exemptions for employer-sponsored childcare offerings.¹⁰¹¹

Work-care supports continue to be an area of acute policy focus. Australia established a Senate Select Committee on Work and Care on 3 August 2022 to investigate the impact on worker-carers of balancing work and caregiving and to assess the adequacy of current support systems.¹⁰¹² On 1 July 2023, changes to Australia's federal parental leave payments and expanded federal childcare subsidy rates took effect.¹⁰¹³ Legislation was also passed to increase employer obligations when responding to flexible work requests and requests to extend unpaid parental leave, which took effect on 6 June 2023.¹⁰¹⁴

This ongoing policy focus on the regulation of work-care supports as the central means by which the worker-carer identity may be expressly accommodated within Australia's employment landscape is well-deserved. However, despite mechanisms for balancing work and

¹⁰⁰⁶ See, eg, *Maternity Leave (Commonwealth Employees) Act 1973* (Cth); *PPL Act* (n 162).

¹⁰⁰⁷ *FW Act* (n 20) pt 2-2-2-3.

¹⁰⁰⁸ *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017* (Cth) pt 4A.

¹⁰⁰⁹ See, eg, *Equal Opportunity Act 1984* (SA); *Anti-Discrimination Act 1977* (NSW); *Equal Opportunity Act 1984* (WA); *Anti-Discrimination Act 1991* (Qld); *Discrimination Act 1991* (ACT); *Anti-Discrimination Act 1992* (NT); *Anti-Discrimination Act 1998* (Tas) s 16; *Equal Opportunity Act 2010* (Vic); *Sex Discrimination Act 1984* (Cth).

¹⁰¹⁰ *WGE Act* (n 124).

¹⁰¹¹ *Fringe Benefits Tax Assessment Act 1986* (Cth) s 47(2), (8).

¹⁰¹² Parliament of Australia, 'Select Committee on Work and Care' (n 16).

¹⁰¹³ *Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Act 2022* (Cth); Commonwealth of Australia, 'Budget October 2022-23: Cheaper Child Care, *Budget Australia* (Web Page) <https://budget.gov.au/2022-23-october/content/factsheets/download/factsheet_child_care.pdf>; *Family Assistance Legislation Amendment (Cheaper Child Care) Act 2022* (Cth).

¹⁰¹⁴ *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) pts 11, 25B.

caregiving being in place for quite some time, caregiving responsibilities continue to be disproportionately shouldered by women. Women spend more time than their male counterparts in unpaid domestic labour, and women's comparatively greater caregiving responsibilities serve as one of the largest contributors to the gender wage gap in Australia.¹⁰¹⁵ This discrepancy in men's and women's division of paid and unpaid labour was both highlighted and exacerbated by the events of the COVID-19 pandemic when women's domestic labour increased further.¹⁰¹⁶

Work-care supports have, therefore, failed to achieve a gender equal division of work and caregiving to date. Feminist scholars have sought to explain this with reference to the fact that policy reforms for work-care supports have often focussed on helping *women* balance their work and caregiving responsibilities.¹⁰¹⁷ This framing has led to work-care supports that continue to expect women to predominantly undertake unpaid care labour, rather than producing supports that encourage men and women to participate equally in the realms of work and caregiving.

Nancy Fraser, who was among these feminist scholars, called for policy reforms to focus on achieving a universal caregiving society in which everyone was supported in engaging equally in work and care.¹⁰¹⁸ Fraser argued that to achieve such a society, policy reforms would have to expressly consider the potential barriers and incentives that reinforce or perpetuate gender norms. She described the principle of addressing potential economic barriers and incentives as 'redistribution', and the principle of addressing potential social and cultural barriers and incentives as 'recognition'.¹⁰¹⁹ Fraser's explicit acknowledgment that gendered legacies have created barriers and incentives that may perpetuate gender norms makes her philosophy a particularly useful theoretical framework in which to ground an analysis of work-care supports.

A neoliberal approach would argue that making work-care supports available to all genders is sufficient to facilitate equal utilisation along gender lines and that any gendered patterns of use are merely coincidental and the result of individual choice.¹⁰²⁰ Fraser, however, rightly identifies that as a historically feminine endeavour, caregiving is a task that is financially and

¹⁰¹⁵ KPMG (n 29) 9; Roger Wilkins et al (n 32) 89.

¹⁰¹⁶ Craig (n 34) 687; Craig and Churchill (n 35) 73.

¹⁰¹⁷ See, eg, Fraser (n 41) 594; Lewis and Giullari (n 37) 96; Pocock (n 3) 608.

¹⁰¹⁸ Fraser (n 41) 611.

¹⁰¹⁹ Fraser (n 46) 25–6.

¹⁰²⁰ Craig (n 39) 5–6, 136–7.

socially costly to perform.¹⁰²¹ Correcting the persistent gendered division of work and care requires an examination of the extent to which these costs persist and how they can be minimised. In this way, Fraser's principles of redistribution and recognition impose an active responsibility on policymakers to consider these costs and eliminate them as far as possible to achieve true gender parity in work and caregiving.

Using these principles of redistribution and recognition as the basis for this thesis's theoretical framework, the principles were translated into four key criteria. The criteria were intended to reflect the features of work-care supports that would *redistribute* the gendered division of labour and provide the necessary social and cultural *recognition* for gender equal caregiving. These criteria, referred to throughout the thesis as the gender justice criteria, are universal availability, enforceability, substantiveness, and gender-neutrality. Having established these criteria, this thesis sought to explore the extent to which Australia's work-care supports reflect these criteria through empirical and doctrinal methods, outlined in Chapter 2. This required an exploration of Australia's legislative framework on work-care supports and the work-care supports offered by employers. The main findings from this analysis are summarised below.

8.1.1 Deficiencies in the Legislative Framework of Work-Care Supports

Chapter 3 analysed the work-care supports provided by legislation in Australia's employment framework. The findings reveal key deficiencies when assessing each mechanism against the gender justice criteria. For example, supports are often subject to eligibility criteria, which typically limit their **universal availability**, conditioning access based on an employee's workplace attachment.

Other legislative supports, such as flexible work arrangements and extensions to unpaid parental leave, only guarantee the right to request these work-care supports (not to access those supports), undermining their **enforceability**.

Several of the supports are restrictive in their conditions of use, limiting their capacity to accommodate a wide spectrum of worker-carers. For example, parental leave payments maintain inflexible conditions that require a beneficiary to utilise most payments to the exclusion of the other parent.¹⁰²² Supports are also often insufficient to meet diverse carers' needs. For example, percentage-based childcare subsidies fail to address the rising net costs of

¹⁰²¹ Fraser (n 46) 27; Gheaus (n 46) 16.

¹⁰²² *PPL Act* (n 162) s 31AB.

childcare and availability issues for many families.¹⁰²³ Setting federal parental leave payments at the national minimum wage leaves many parents without their ordinary levels of income while on parental leave, diminishing the **substantiveness** of these supports.

Finally, most supports fail to overcome longstanding incentives to default to gender norms, undermining **gender-neutrality**. For example, present childcare subsidy rates fail to overcome the reality that in some two-parent households it makes more financial sense for a secondary earner, usually a woman, not to work full-time. This is because having two working parents in a household may decrease the family's eligibility for benefits while increasing their overall tax liabilities and childcare costs.¹⁰²⁴ This comes in addition to the fact that the government's parental leave payments were introduced with gendered language that designated secondary carer payments as 'dad and partner pay' and assumed that primary carers would be 'birth mothers'.¹⁰²⁵

In short, the analysis in Chapter 3 reveals that legislated work-care supports have key deficiencies against the gender justice criteria. Recent policy reforms suggest that there has been some progress towards better aligning Australia's work-care supports with the gender justice criteria. For example, in relation to the right to request flexible work, from 6 June 2023 onwards, the NES provides that the FWC may review refusals, improving the right's enforceability.¹⁰²⁶ Amendments to the government's federal parental leave payments have also improved the substantiveness of this support since all payments may now be accessed flexibly (not in a consecutive block), which may better suit parents' needs. These amendments have also removed explicitly gendered language from the legislation, moving it towards gender-neutrality.

Yet these reforms still fall short of meeting the gender justice criteria. For example, employers remain free to refuse requests for flexible work on reasonable business grounds, and employees remain responsible for raising these requests in the face of potentially uncomfortable power dynamics, compromising the substantiveness and enforceability of the right. In the case of the amendments to the parental leave payments, there is still no distinct payment entitlement for non-birth parents and the payments continue to be set at the national minimum wage. This is

¹⁰²³ Wilkins et al (n 263); Hurley et al (n 264).

¹⁰²⁴ Emslie (n 261).

¹⁰²⁵ *PPL Act* (n 162) ss 54, 115DD, as at 25 March 2023.

¹⁰²⁶ *FW Act* (n 20) s 65A, amended by *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) pt 11, div 3.

despite established evidence that distinct parental leave periods for non-birth parents, as well as high levels of wage replacement, are essential for improving take-up among men. These limitations mean that the parental leave scheme fails to meet the criterion of gender-neutrality.¹⁰²⁷

These findings must, however, be contextualised against the professed policy intention of these supports. Legislated work-care supports were intended to be a mere complement to workplace offerings of work-care supports. In this way, Australia's regulation of work-care supports relies largely on a neo-liberal philosophy, where minimum entitlements are legislated, but the free market and enterprise bargaining system are expected to offer employees more than these statutory minimums. This is evidenced by the description of entitlements in the NES and modern award system as a 'safety net' of entitlements and the objectives of the *PPL Act*, which state that federal parental leave payments are to complement and supplement market-based parental leave offerings.¹⁰²⁸

Despite this reliance on the market to provide work-care supports, Australia's regulatory framework features few systemic measures to influence organisations' behaviour to that end. As discussed in Chapter 4, the mechanisms that have been introduced are largely light-handed and ill-suited to achieving an even and widespread distribution of work-care supports that meet the gender justice criteria. For example, feminist research has long found that the enterprise bargaining system, Australia's main mechanism for workers to bargain for improved workplace entitlements, is ill-suited to accommodating non-commercial interests, such as work-care supports, in the bargaining process.¹⁰²⁹

Australia has fringe benefits tax exemptions for certain childcare offerings.¹⁰³⁰ By exempting what would otherwise be a fringe benefits tax liability for the employer of 47%, the government presumably signals a desire to encourage workplaces to provide these supports. However, these exemptions have been so narrowly construed that employers can only be confident of their

¹⁰²⁷ See, eg, Amy Raub et al, 'Paid Parental Leave: A Detailed Look at Approaches across OECD Countries' (Research Report, World Policy Analysis Center, 2018) 7; Workplace Gender Equality Agency (n 28) 3 <<https://www.wgea.gov.au/sites/default/files/documents/Parental-leave-and-gender-equality.pdf>>; Haas and Rostgaard (n 230) 182; Koslowski and O'Brien (n 230) 143; Grau and Bowles (n 224) 7; Mayer and Le Bourdais (n 224) 236; Duvander and Johansson (n 224) 324–5; Haas and Rostgaard (n 224) 188; Patnaik (n 224) 1053.

¹⁰²⁸ *FW Act* (n 20) s 3(b); Sharp et al (n 115) 7; *PPL Act* (n 162) s 3A(3).

¹⁰²⁹ See, eg, Williamson (n 142) 161, citing Kirsten S Wever (n 438) 245; Williamson (n 439); Hantrais and Ackers (n 438) 211; Blackett and Sheppard (n 438) 432.

¹⁰³⁰ *Fringe Benefits Tax Assessment Act 1986* (Cth) s 47(2).

eligibility where they control a childcare centre themselves,¹⁰³¹ a prohibitive requirement for most workplaces.

The *WGE Act* is arguably the most targeted of Australia's mechanisms for securing better work-care supports as it is designed to encourage workplaces to improve their performance across a series of gender equality indicators, including their support for caregivers. However, this scheme applies only to private organisations, higher education providers, and Commonwealth employers with over 100 employees.¹⁰³² Further, the legislation imposes no actual requirements for employers to offer work-care supports. Instead, employer action is incentivised by way of an Employee of Choice citation for employers that offer certain work-care supports, which comes with no tangible benefits aside from the recognition itself.¹⁰³³

Australia's regulatory framework has also prohibited discrimination on the grounds of caregiving responsibilities under its anti-discrimination and adverse action frameworks.¹⁰³⁴ This could theoretically encourage organisations to implement robust work-care supports. However, research has shown that the negative prohibition under these schemes and their reliance on individual enforcement and remedies have resulted in significant barriers to bringing claims.¹⁰³⁵ Employer responses to these claims also tend to be ad hoc remedies as opposed to robust, proactive improvements to work-care supports within organisations.¹⁰³⁶ In summary, none of Australia's legislated mechanisms intended to influence workplace behaviour seem likely to achieve the widespread provision of work-care supports that meet the gender justice criteria.

8.1.2 Deficiencies in the Market-Provision of Work-Care Supports

Despite these deficiencies in the legislative framework, it may be that many organisations provide work-care supports aligned with the gender justice criteria. To explore this, empirical methods as set out in Chapter 2 were used to identify the substance of work-care supports

¹⁰³¹ Thiagarajah and Selvarajah (n 494) 521.

¹⁰³² *WGE Act* (n 124) s 4(1): A relevant employer means a registered higher education provider; an employer of 100 or more employees in Australia; or a Commonwealth company/entity that is an employer of 100 or more employees in Australia.

¹⁰³³ Workplace Gender Equality Agency (n 519).

¹⁰³⁴ See, eg, *Equal Opportunity Act 1984* (SA); *Anti-Discrimination Act 1977* (NSW); *Equal Opportunity Act 1984* (WA); *Anti-Discrimination Act 1991* (Qld); *Discrimination Act 1991* (ACT); *Anti-Discrimination Act 1992* (NT); *Anti-Discrimination Act 1998* (Tas) s 16; *Equal Opportunity Act 2010* (Vic); *Sex Discrimination Act 1984* (Cth); *Fair Work Act 2009* (Cth) s 351(1).

¹⁰³⁵ See, eg, Smith, 'It's About Time' (n 86) citing Charlesworth (n 86) 93; Smith and Dilsy (n 534) 402; Allen and Blackham (n 109) 389–90; Thornton (n 109) 37–8.

¹⁰³⁶ Adams (n 48) 18; Smith, 'Australian Anti-Discrimination Laws' (n 535) 7; Pocock et al (n 3) 603.

offered in the market, including employer-funded PPL (Chapter 5), flexible work entitlements in the workplace (Chapter 6), and other work-care supports (Chapter 7). These chapters also explored the factors that drove the provision of these supports within organisations to explore the feasibility of relying on the free market to realise a universal caregiving society with widespread provision of work-care supports that meet the gender justice criteria.

In terms of the extent to which market-provided work-care supports align with the gender justice criteria, Chapters 5–7 revealed several key deficiencies. Regarding employer-funded PPL, Chapter 5 revealed that many employees do not receive such entitlements and therefore receive only the government’s minimum wage payments while on parental leave. Where employer-funded PPL is offered, it is far from **universally available**. The regression models found that employer-funded PPL was more likely to be offered in larger, male-dominated specialised services organisations. Offerings were also usually conditional on employees meeting internal eligibility requirements, such as having to satisfy minimum length-of-service requirements or prove that their partner had returned to work.

Workplace policies on employer-funded PPL were also generally subject to several stringent use conditions such as having to access the leave to the exclusion of partners, in a consecutive period, and within the first few months of the child’s arrival. These limitations fail the criterion of **substantiveness** by not accommodating diverse parenting needs and preferences. The data also revealed how fathers especially were often disincentivised from accessing parental leave because of gendered assumptions, fear of negative career consequences, and administrative hurdles, failing the criterion of **gender-neutrality**.

Chapter 6 focussed on flexible work in the Australian workplace. In terms of **universal availability**, certain types of flexible work were found to be more common than others. Within organisations, certain roles and departments were also found to be less likely to have access to flexible work entitlements because of either explicit prohibitions or workplace norms. The data also found that most organisations had mirrored the NES’s right to request flexible work in designing their own workplace’s flexible work policy. This necessarily limits the **enforceability** of any flexible work entitlement as the availability of a flexible work arrangement is subject to employer discretion and can be refused on reasonable business grounds.

As mentioned above, recent reforms now allow employees to challenge refusals at the FWC under the NES and require employers to enumerate their reasons for refusing a request and

propose alternative arrangements. This is likely to improve the enforceability of this entitlement. However, even where requests are approved, flexible work arrangements were found to rarely be **substantive** enough to meet carers' needs. For example, employer-oriented work arrangements were described as common, and flexible workers were seen by their managers as lesser employees. This reality was found to especially discourage men from accessing flexible work, given their pressures to adhere to ideal worker norms. Male-dominated organisations and industries were also found to be more resistant to facilitating flexible work, compromising the **gender-neutrality** of this entitlement.

Chapter 7 examined the remaining work-care supports in the dataset and those that emerged within the qualitative interviews. These were broadly categorised as childcare entitlements, return-to-work bonuses and programs to support workers returning from parental leave, breastfeeding facilities, and information, support and training services. In terms of **universal availability**, the quantitative results revealed that these supports were comparatively much rarer than parental leave and flexible work rights. As for the **enforceability** of these entitlements, some breastfeeding facilities and return-to-work bonuses were revealed to be offered only upon request or on a case-by-case basis. Also, most work-care supports, including parental leave and flexible work rights, were confined to policies instead of being contained within explicitly enforceable documents protected from unilateral alterations such as contracts, modern awards, or enterprise agreements. This necessarily affects the enforceability of all work-care supports offered by way of workplace policies.

These offerings were rarely **substantive** enough to meet diverse carer needs. On-site childcare centres often had limited availability and failed to meet the needs of families who struggled to bring their children to work or preferred other childcare options. Breastfeeding facilities were often shared spaces without appropriate amenities such as sinks, microwaves, or fridges. Information about work-care supports was often confusing or hidden without appropriate proactive and supportive communication from management. Coaching for parents was also often outsourced to experts and targeted only at affected employees rather than management, ultimately having little impact on managers' attitudes to parents and their capacity to support them. Finally, in terms of **gender-neutrality**, interviewees noted that men were rarely included in communications around work-care supports, contributing to a sense among men that these supports were not for them and that their utilisation of these supports would take something away from mothers, who they believed to be more deserving.

In general, Chapters 5 to 7 revealed that market-provided work-care supports were rare. Where offered, these supports often had several key deficiencies against the gender justice criteria. It became clear in exploring the factors that drove the provision of work-care supports in the market that widespread changes to these provisions would be unlikely without legislative intervention.

In the case of employer-funded PPL, organisations were generally driven to offer this entitlement by the commercial interest of attracting and retaining (female) talent. This was especially the case for organisations in competitive talent markets and large male-dominated organisations that felt societal pressure to diversify their workforce. However, these findings suggest that in the foreseeable future, employer-funded PPL offerings are unlikely to align with the gender justice criteria, given that most organisations are designing their work-care supports to satisfy minimum expectations, as opposed to advancing broader social benefits, such as improving gender equal utilisation.

Moreover, when employer-funded PPL was offered, organisations generally deferred to the government's parental leave payments in structuring their own offerings. This suggests that amendments to the government's parental leave payments may prompt organisations already offering employer-funded PPL to improve their entitlements. However, where organisations did not offer employer-funded PPL, the most reported reason in the quantitative data was that the employer believed the government's parental leave payments to be sufficient. So for these organisations, expansions to government entitlements could further confirm their view that they do not need to offer employer-funded PPL entitlements of their own. In essence, organisations rarely saw themselves as being responsible for providing PPL, let alone entitlements that would meet the gender justice criteria. Instead, the few organisations offering any such supports were generally adapting the government's offerings to outdo competitors where market pressures warranted it, with very little critical reflection on broader social aims or employee needs.

In the case of the provision of flexible work rights by employers, the model results revealed some patterns between the likelihood of offering certain flexible work types and the model's independent variables of organisation size, gender dominance, and industry type. In general, the model suggested that larger, specialised services organisations were more likely to offer flexible work. However, these patterns were not necessarily consistent, especially when interaction terms and the statistical significance of these findings were considered. This was explained in part by the finding that most flexible work policies mirrored the legislated

approach of offering flexible work on an individual, reactive, and ad hoc basis. The factors influencing the provision of flexible work were therefore more internal than organisational. Managerial prerogative, the requirements of certain employee roles, and departmental cultures were all found to influence the availability of flexible work within organisations.

Ultimately, the biggest driver in offering flexible work policies appeared to be compliance, as most organisations merely adhered to the right to request flexible work granted under the NES. This was a similar finding to that described in Chapter 5 where most organisations modelled their entitlements on the government's payments. Where organisations offered more generous, proactive flexible work entitlements, this was generally driven by employee pressure. Such pressures were heightened by the COVID-19 lockdowns when employees enjoyed greater flexibility and expected this to continue. However, interviewees reported that some of these entitlements were now being offered begrudgingly by employers and without genuine recognition of the value of flexible work. Therefore, these entitlements may be offered in workplaces but alongside negative and gendered attitudes towards flexible work, ultimately compromising workers' experiences of flexible working. Also, at the time of the interviews, employers appeared to be retracting much of the flexibility offered during the lockdowns, suggesting that these offerings could wane over time.

Unlike Chapters 5 and 6, none of the supports discussed in Chapter 7 had a corresponding legislated entitlement. This may explain the comparatively lower rates of offering of these entitlements, given how influential legislated offerings were in designing PPL and flexible work policies within workplaces. This may have also contributed to interviewees' views that these supports were more niche and therefore less important. The lack of visibility around these entitlements and general low rates of offering across the market seemed to limit the incentive for organisations to offer these supports. There did not appear to be the same amount of employee advocacy and competition in the market around these supports as was seen in Chapters 5 and 6.

Taken together, these findings suggest that the market's proactiveness in offering work-care supports is largely limited. In general, employers with the market incentive and capital to set themselves apart as an employer of choice will adapt legislated entitlements to that end. However, many organisations offer no work-care supports of their own volition, presumably because they lack these market incentives or do not view the provision of these supports as their responsibility. Where work-care supports were offered, these were rarely innovative or designed to meet employee needs or improve gender equal take-up, resulting in a fragmented

offering of work-care supports within workplaces across Australia that rarely meets the gender justice criteria.

8.1.3 Thesis's Main Findings

In answering this thesis's research question, the findings confirm that Australia's regulatory framework has largely failed to facilitate the provision of work-care supports that meet the gender justice criteria and enable the realisation of a universal caregiving society. Australia's regulatory framework of work-care supports was predicated on the assumption that employers would supplement legislated minimum entitlements with their own workplace offerings. The empirical evidence proved the weakness of this assumption. Offerings of work-care supports by workplaces beyond legislated minimums were generally rare and congregated in large, male-dominated specialised services organisations. Moreover, these offerings, where available, often failed to embody the gender justice criteria.

Chapters 5 to 7 also confirmed that most employers do not see themselves as policy leaders in the provision of work-care supports and are generally deferring to legislation for guidance. Most workplace offerings mirrored corresponding legislative entitlements with slight adjustments. Offerings were also driven predominantly by market interests, such as outdoing competitors and placating employee pressure. Organisations did not appear to be taking into consideration genuine employee needs or broader policy motivations, such as improving the gender equal utilisation of these supports. Therefore, if a universal caregiving society is to be achieved, Australia's regulatory framework must take on a greater leadership role in providing Australian workers with work-care supports that align with the gender justice criteria.

Recent changes and proposals for reform in the realm of work-care supports are promising. Many of these amendments have resulted in improvements to Australia's work-care supports that better reflect the gender justice criteria. However, an explicit gender equality objective continues to be notably absent in present policy discussions surrounding work-care supports. It is hoped that the original theoretical framework created for this thesis may support the evaluation of future proposals and inspire the introduction of work-care supports that meet the criteria of universal availability, enforceability, substantiveness, and gender-neutrality, thereby advancing a gender just vision. The next section of this chapter highlights some potential areas for reform that would move us closer to meeting this standard.

8.2 Potential Areas for Reform

This section canvasses the main work-care supports that have been examined in the thesis — parental leave, flexible work, childcare, breastfeeding facilities, and return-to-work policies — and how these may be improved to better reflect the gender justice criteria. Proposals to improve the mechanisms discussed in Chapter 4 are discussed too. This includes strengthening and diversifying the enterprise bargaining process and increasing the powers and obligations for employers under Australia’s federal gender equality reporting framework.

In the case of parental leave, even with the most recent reforms to Australia’s parental leave payments, the scheme only reserves a 10-day non-transferable period of payments in coupled families. If non-birth parents (usually fathers) are not designated their own distinct periods of leave, longstanding gender norms and cultural and practical disincentives for non-birth parents to take extended periods of parental leave will persist.

The need for a non-transferable and distinct entitlement to leave for each parent has become undeniable in international policy considerations. The latest European Union (‘EU’) directive on work-life balance, for example, has mandated that, as a minimum, EU countries should have four months of parental leave with at least two out of the four being non-transferrable between parents.¹⁰³⁷ Iceland has long been an international leader in providing distinct leave entitlements for parents. In 2000, it became one of the first countries to introduce nine months of parental leave with a non-transferrable leave period of three months between parents.¹⁰³⁸ This led to an immediate increase in fathers’ use of parental leave and helped reframe fathers’ involvement with their children as a necessary and natural component of their role as caregivers.¹⁰³⁹ In 2021, this non-transferrable period was expanded to six months, providing public recognition of the value of extended parental leave for both parents in two-parent households. This leave period is compensated at 80% of parents’ salaries.¹⁰⁴⁰

¹⁰³⁷ Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on Work-Life Balance for Parents and Carers and Repealing Council Directive 2010/18/EU [2019] OJ L 188, art 31.

¹⁰³⁸ Ásdís Arnalds, Guðný Björk Eydal, and Ingólfur V Gíslason, ‘Paid Parental Leave in Iceland: Increasing Gender Equality at Home and on the Labour Market’ in Caroline de la Porte et al (eds), *Successful Public Policy in the Nordic Countries: Cases, Lessons, Challenges* (Oxford, 2022) 370, 376; Ingólfur V Gíslason, ‘Fathers on Leave Alone in Iceland: Normal Paternal Behaviour’ in Margaret O’Brien and Karin Wall (eds), *Comparative Perspectives on Work-Life Balance and Gender Equality: Fathers on Leave Alone* (Springer, 2017) 147, 153.

¹⁰³⁹ Ibid.

¹⁰⁴⁰ Government of Iceland, ‘Maternity and Paternity Leave in Iceland’, *Work in Iceland* (Web Page) <<https://work.iceland.is/living/maternity-and-paternity-leave/>>.

This rate of payment is in keeping with research that suggests that a wage replacement rate of at least 80% is necessary to promote gender equality in parental leave use, reflecting the approach to parental leave observed in at least 25 of the 34 countries in the Organisation for Economic Co-operation and Development ('OECD').¹⁰⁴¹ However, the recent reforms to Australia's parental leave payments feature no increases in the value of the payments from the national minimum wage rate and no discussions on guaranteeing continued superannuation payments for employees while on parental leave.¹⁰⁴² It is recommended that further reforms ensure that Australia's parental leave scheme reserves an equal, non-transferrable and distinct leave period for non-birth parents. This leave should be compensated with high levels of wage replacement and as much flexibility as possible in the use and eligibility conditions of this leave.

With flexible work entitlements, the enforceability of the legislated right to request flexible work has been strengthened to allow employers' decisions to be externally reviewed under the NES, as discussed above. However, having to request flexibility necessarily positions flexible work outside the norms of an ideal working life. Future reforms surrounding flexible work rights should focus on importing more positive duties on employers. An interviewee, for example, suggested mirroring return-to-work obligations for employees who suffer occupational injuries or the obligations on employers to make reasonable workplace adjustments for disabled employees. These obligations require employers to collaborate with employees to devise suitable work plans. Similar obligations could be extended to employees with new caregiving responsibilities and lead to more flexible work adjustments. This would be in keeping with the interviewees' recommendations, given in Chapter 6, to encourage more proactive flexible work offerings.

Interviewees, however, also recognised that normalising flexible work would require flexible work policies that were available to *all* employees and embedded throughout the organisation. An interviewee highlighted the proactive organisation-wide flexible work approach of 'if not, why not' already implemented by the NSW State Government, which took on a positive duty to incorporate flexible work options into job descriptions. Interviewees also highlighted internal mechanisms, such as manager training, employee surveys on flexible work needs, and

¹⁰⁴¹ Amy Raub et al (n 1027) 7.

¹⁰⁴² Commonwealth of Australia, 'Budget October 2022–23: Expanding Paid Parental Leave', *Budget Australia* (Web Page) <https://budget.gov.au/2022-23-october/content/factsheets/download/factsheet_parental_leave.pdf>.

(male) role modelling as being essential in fostering a positive and flexible work culture. Such supports could be incentivised through stronger influencing mechanisms, as discussed further below.

The thesis has highlighted how childcare continues to disincentivise having two parents work full-time in certain two-income families. Percentage-based subsidies have also been criticised for failing to address rising net costs of childcare. A universal caregiving society would recognise the need for universal childcare. Promisingly, the Australian Government has signalled that further reforms to this end are planned. To quote the current Minister for Early Childhood Education when introducing the government's expansion of existing childcare subsidies, 'You can't do it holus-bolus in one go, but in transitioning to the aspiration of universal childcare this is the first steps of what we've promised to do'.¹⁰⁴³

In addition, the Australian Government has committed to a Productivity Commission review and the Australian Competition and Consumer Commission price inquiry to conduct a comprehensive review of the early childhood education sector and investigate the drivers of cost in the sector.¹⁰⁴⁴ The federal government has also assembled an advisory panel to establish an 'Early Years Strategy' that will 'shape its vision for the future of Australia's children and their families'.¹⁰⁴⁵ These commitments are positive and demonstrate a rightful focus on addressing childcare needs.

In the interim, however, further initiatives could prove useful in improving childcare affordability. For example, one of the major contributors to the workforce disincentive in dual-income households is the increased tax liability for the family.¹⁰⁴⁶ Making childcare expenses deductible while retaining subsidies could help reduce this disincentive.¹⁰⁴⁷ This is important to ensure that women are not pressured to stay home for short-term financial reasons, given the potential long-term negative consequences for their professional success and advancement.

¹⁰⁴³ Josh Butler, "'The Aspiration of Universal Childcare': Anne Aly on What Drives Labor's Ambitious Plans", *Guardian* (online, 14 June 2022) <<https://www.theguardian.com/australia-news/2022/jun/14/the-aspiration-of-universal-childcare-anne-aly-on-what-drives-labors-ambitious-plans>>.

¹⁰⁴⁴ Australian Competition and Consumer Commission (n 266); Commonwealth of Australia, 'Budget October 2022–23: Cheaper Child Care', *Budget Australia* (Web Page) <https://budget.gov.au/2022-23-october/content/factsheets/download/factsheet_child_care.pdf>.

¹⁰⁴⁵ Department of Social Services, 'Early Years Strategy' (Web Page, 20 January 2023) <<https://www.dss.gov.au/families-and-children-programs-services/early-years-strategy>>.

¹⁰⁴⁶ Wood et al (n 257) 29.

¹⁰⁴⁷ Thiagarajah and Selvarajah (n 494) 51.

Employers may also be encouraged to provide more childcare assistance if the existing fringe benefits tax exemption is interpreted more broadly. This was supported by the findings that employers found the current interpretation of these exemptions to be confusing and prohibitive. The current exemption effectively requires employers to exercise a substantial degree of control over any childcare offerings provided to employees for it to be considered exempt from a fringe benefits tax of 47%. If the exemption applied to any form of employer-sponsored childcare assistance, employers may be more likely to engage in less onerous offerings, such as subsidising the costs of an employee's chosen childcare provider.¹⁰⁴⁸ These initiatives would also allow employees to have more choice over their childcare providers, which the interviewees found to be important to parents.

The thesis also found breastfeeding facilities to be surprisingly rare across the market and rarely adequate, where offered. Under Australian law, employers are not allowed to discriminate against their employees for breastfeeding. However, as discussed in Chapter 4, this negative prohibition is limited in its capacity to influence positive steps by workplaces to offer suitable work-care supports such as appropriate breastfeeding facilities. The World Health Organisation recommends exclusively breastfeeding children during the first six months of their life to benefit both the child's and mother's health.¹⁰⁴⁹ This is in keeping with the Australian Government's National Health and Medical Research Council advice.¹⁰⁵⁰

A universal caregiving society would offer specific provisions to enable breastfeeding after returning to work. In the Philippines, workplaces are required to provide a lactation station and lactation breaks. A 40-minute lactation break for every eight hours of work, which may be broken up throughout the day, is required as a minimum.¹⁰⁵¹ Such policies would be in keeping with the ILO Maternity Protection Convention 2000 (No 183), which requires 'one or more daily breaks or a daily reduction of hours of work to breastfeed' with these breaks or reductions being 'counted as working time and remunerated accordingly'.¹⁰⁵² Having lactation facilities and paid breaks has been shown to be essential in facilitating longer periods of breastfeeding

¹⁰⁴⁸ Ibid.

¹⁰⁴⁹ World Health Organization, 'Infant and Young Child Feeding', *World Health Organization* (Fact Sheet, 9 June 2021) <<https://www.who.int/en/news-room/fact-sheets/detail/infant-and-young-child-feeding>>.

¹⁰⁵⁰ Amanda Lee, 'Supporting Women to Breastfeed', *NHMRC* (Article, 3 August 2018) <<https://www.nhmrc.gov.au/about-us/news-centre/supporting-women-breastfeed>>.

¹⁰⁵¹ *Republic Act No 10028: An Act Expanding Breastfeeding Promotion Act of 2009* (Philippines) ch 3.

¹⁰⁵² <<https://www.unicef.org/media/73206/file/Breastfeeding-room-guide.pdf>>.

for mothers.¹⁰⁵³ More explicit legislation on this matter would provide breastfeeding parents with more choices in their worker-carer practices.

The thesis also highlighted the many challenges that parents face when reintegrating into the workforce after a period of parental leave. The only question that addressed supports around parents' return to work in the quantitative data was the provision of bonuses. This may be an important lever to mitigate the additional costs of having a new child; however, it seemed clear from the interviews that returning parents also required cultural support from their workplaces to facilitate their long-term retention and progression within their organisations.

Pregnancy discrimination and discrimination against parents returning from parental leave were highlighted by interviewees. Interviewees recommended several interventions to ensure returning parents felt supported in the workplace and were not left behind in terms of career progression after they had a child. This included the recommendation to require a return-to-work plan for parents returning from parental leave, highlighted above. Under this requirement, employers and employees would be required to collaborate in creating a return-to-work strategy that could be revised and reviewed at intervals. This would allow parents to return to their roles with a sustainable work plan that would allow for their long-term, fruitful participation within the organisation. The needs of breastfeeding parents could also be accommodated through this process of accommodating each parent's unique circumstances.

These are a few possible amendments that would strengthen the regulatory framework of legislated work-care supports in Australia. Such amendments would advance this thesis's contention that the regulatory framework must play a greater role in providing work-care supports that meet the gender justice criteria, given the market's failure to do so thus far. However, this thesis's findings also highlight the importance of positive workplace cultures that encourage the gender equal utilisation of these work-care supports. The vital role that managers play in supporting men to embrace a worker-carer lifestyle and the importance of culture-building initiatives within workplaces, such as leaders role modelling the use of work-care supports and manager training, were strong themes in the data. Such cultural initiatives cannot be guaranteed through policy reforms or amendments. Workplace culture requires cultivation over time. However, strengthening the mechanisms in the regulatory framework designed to influence workplace behaviour could be a means of facilitating these cultural shifts.

¹⁰⁵³ *Convention Concerning the Revision of the Maternity Protection Convention (Revised) 1952*, ILO/C183 art 10.

Unions, for instance, could be diversified and upskilled to ensure that work-care supports receive more attention during the enterprise bargaining process. In the UK, a union modernisation fund was established in 2006 to fund training initiatives for 500 union equality representatives, creating bargaining toolkits and offering awareness courses.¹⁰⁵⁴ These supports were found to be useful in mainstreaming equality issues in the bargaining agenda, although they had limited impact on increasing women's leadership within unions.¹⁰⁵⁵ However, the latter could be addressed through representative quota requirements.

The *WGE Act* and its reporting requirements may also include stronger incentives or penalties to better influence the implementation of robust work-care supports and internal organisational mechanisms that may improve workplace culture. Effective April 2024, recent amendments will require reporting organisations to have a policy for each gender equality indicator, including the availability of entitlements for supporting family and caring responsibilities. Nevertheless, the substance or required impact of those policies or strategies remains undefined. A 2021 review recommended stronger obligations than this, including requiring employers with over 500 employees to achieve and report on measurable targets for improving gender equality under the *WGE Act*.¹⁰⁵⁶ However, the consequences for failing to do so were left ambiguous, and this recommendation was not implemented in the recent suite of amendments.¹⁰⁵⁷

Other countries have been firmer in the penalties and obligations of their gender equality reporting schemes. For example, France implemented an equal pay index for companies with over 50 employees with each index comprising four to five indicators depending on company size and points allocated to each indicator for a total of 100 points. Companies must score at least 75 or risk facing financial penalties. The indicators under the French scheme are limited to the gender pay gap, which tends to be the focus of most other international gender equality reporting schemes.¹⁰⁵⁸ Iceland, for example, similarly requires that organisations with over 25 employees have an Equal Pay Standard to receive three-year certification, and failure to renew

¹⁰⁵⁴ Susan Milner and Abigail Gregory, 'Gender Equality Bargaining in France and the UK: An Uphill Struggle?' (2014) 56 *Journal of Industrial Relations* 246, 250.

¹⁰⁵⁵ *Ibid.*

¹⁰⁵⁶ Department of the Prime Minister and Cabinet, *WGEA Review Report: Review of the Workplace Gender Equality Act 2012, December 2021* (Commonwealth of Australia, 2021) 4.

¹⁰⁵⁷ *Ibid.*

¹⁰⁵⁸ Workplace Gender Equality Agency, 'International Gender Equality Reporting Schemes' (Web Page, 8 April 2019) <<https://www.wgea.gov.au/publications/international-gender-equality-reporting-schemes>>.

and achieve this certificate may result in financial fines. Australia has also recently demonstrated a particular interest in eliminating the gender wage gap by agreeing to publish gender wage gap data from reporting organisations starting in early 2024,¹⁰⁵⁹ although this requirement will again include no sanctions for having a gender wage gap within the organisation or failing to address it.

In some ways, Australia's gender equality reporting requirements are more expansive than international gender equality reporting schemes by collecting gender equality data beyond the gender wage gap, which is then aggregated by an independent body and disseminated to the public.¹⁰⁶⁰ However, borrowing some of the stronger consequences and obligations from international schemes could further strengthen the effectiveness of the *WGE Act* and increase the prevalence of generous work-care supports and policies that support their use — for example, introducing the possibility of financial penalties or incentives when organisations provide work-care supports of a certain standard or take meaningful steps to shift workplace culture to be more accommodating of caregivers.

8.3 Future Research

Each of the above proposed areas for reform will require further research to determine their efficacy and applicability in the Australian context. It is hoped that this thesis will serve as a starting point for this research as well as several other avenues of inquiry. For example, further empirical research could more closely explore the provision of work-care supports (or lack thereof) in workplaces that were underexplored in this thesis, such as in the public sector or among smaller organisations. These organisations were not required to report to the WGEA at the time the data were collected and were therefore underrepresented in this thesis's quantitative data.

Further research could also consider parents' and carers' views about the efficacy of work-care supports and the gender equality implications of these offerings. The interviewees in the thesis were able to illuminate this to some extent by relaying their experiences with employees. However, future research could consult parents and carers directly on how work-care supports may best meet their needs.

¹⁰⁵⁹ *Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Act 2023*; Workplace Gender Equality Agency, 'WGEA Reforms: A Roadmap to Closing the Gender Pay Gap' (Web Page) <<https://www.wgea.gov.au/about/our-legislation/Closing-the-gender-pay-gap-bill-2023>>.

¹⁰⁶⁰ *Ibid.*

Also, while the 2018–19 quantitative dataset was selected to avoid any conflation in the results with the events of COVID-19, more recent WGEA datasets include more detailed questions about organisational offerings of work-care supports and address some of the gaps in the data that were raised in this thesis’s empirical chapters. Quantitative research using this more recent data will allow a more detailed analysis of work-care support offerings in the future. This will also allow further exploration of the effects of the COVID-19 pandemic on workplace cultures for balancing work and caregiving. This was briefly discussed in Chapter 6. Preliminary findings suggest that workplace attitudes to work and caregiving were influenced by the events of COVID-19 but that these attitudes were already evolving and waning. Future research could explicitly consider the impact of the pandemic on the support offered to worker-carers in the workplace.

This thesis has also highlighted recent legislative changes to key work-care supports, such as the right to request flexible work and federal parental leave payments. At the time of this thesis’s empirical data collection, these supports had not yet been introduced and so the likely impact of these amendments on workplace practices could only be hypothesised. Future research should evaluate the impact of these legislative changes on worker-carers and workplace policies.

8.4 Conclusion

This research sought to make a valuable contribution to the rich and growing body of literature on work-care supports and the role of these supports in achieving a gender equal division of work and care. This aim was achieved by answering the main research question — *To what extent does Australia’s regulatory framework facilitate the provision of gender just work-care supports that enable the realisation of a universal caregiving society?* This involved answering a series of subsidiary research questions (‘SRQs’).

Aspects of Australia’s regulatory framework that were relevant to the provision of work-care supports were first categorised into legislated supports and mechanisms to influence organisations’ provision of these supports (SRQ1). The thesis revealed that legislated work-care supports rarely met the gender justice criteria despite recent reforms that demonstrate some progress towards these standards (SRQ 2 and 3). These supports were intended as minimum entitlements; Australia’s regulatory framework of work-care supports was designed with the expectation that workplaces would offer supports beyond legislated offerings and requirements. The empirical findings of the thesis, however, found that work-care supports

offered by workplaces were also often lacking when measured against the gender justice criteria (SRQ5). In general, organisations mirrored key features of corresponding legislated entitlements, where these existed, and offerings were driven mostly by compliance obligations or market pressures organisations face when attempting to meet employee expectations or differentiate themselves in competitive talent markets (SRQ4).

The findings demonstrate how and why gender just work-care supports that go beyond the legislated minimum are unlikely to emerge under the present regulatory framework. This underscores the urgency of proactive regulatory reform that transcends market-driven solutions in supporting worker-carers. To achieve a universal caregiving society, policymakers must assume a leadership role in crafting work-care supports that have an explicit focus on redressing the longstanding gendered division of labour (SRQ6). Recent policy reforms and conversations reflect a positive step in this direction. However, many of these reforms still fall short of interventionist and proactive policies that would rectify the presently gendered distribution of paid and unpaid labour. Future reforms must acknowledge the visible and invisible barriers and incentives that shape the gendered division of work and care in Australia and actively address these factors. This study's analysis against a defined gender justice objective identified key areas of deficiency to carve a pathway for reform. It is hoped that these findings inspire a reimagining of Australia's regulatory framework of work-care supports; one that positions worker-carers as the norm to progress us towards a universal caregiving society.

APPENDIX

Table A.1 Table of variables from the WGEA’s 2018–19 dataset used in the analysis of employer-funded parental leave

Variable	Employer-funded parental leave Label
Q5_PPL_EmpFund_PRM_Y	Q5_Paid parental leave employer-funded for PRIMARY Carers – YES, provided to primary carer (both women & men)
Q5_PPL_EmpFund_PRM_PAID_GAP	Q5_How is employer-funded paid parental leave paid to PRIMARY carer? – Gap between govt pay and salary
Q5_PPL_EmpFund_PRM_PAID_FULSAL	Q5_How is employer-funded paid parental leave paid to PRIMARY carer? – Full salary in addition to govt pay
Q5_PPL_EmpFund_PRM_PAID_LUMP	Q5_How is employer-funded paid parental leave paid to PRIMARY carer? – Lump sum pre or post leave
Q5_PPL_EmpFund_PRM_N_Women	Q5_Paid parental leave employer-funded for PRIMARY Carers – NO, Provided to women ONLY (e.g. maternity leave)
Q5_PPL_EmpFund_PRM_PAID_GAP_Women	Q5_How is employer-funded paid parental leave paid to PRIMARY carer? – Gap between govt pay and salary
Q5_PPL_EmpFund_PRM_PAID_FULSAL_Women	Q5_How is employer-funded paid parental leave paid to PRIMARY carer? – Full salary in addition to govt pay
Q5_PPL_EmpFund_PRM_PAID_LUMP_Women	Q5_How is employer-funded paid parental leave paid to PRIMARY carer? – Lump sum pre or post leave
Q5_PPL_EmpFund_PRM_N_Men	Q5_Paid parental leave employer-funded for PRIMARY Carers – NO, Provided to men ONLY
Q5_PPL_EmpFund_PRM_PAID_GAP_Men	Q5_How is employer-funded paid parental leave paid to PRIMARY carer? – Gap between govt pay and salary
Q5_PPL_EmpFund_PRM_PAID_FULSAL_Men	Q5_How is employer-funded paid parental leave paid to PRIMARY carer? – Full salary in addition to govt pay
Q5_PPL_EmpFund_PRM_PAID_LUMP_Men	Q5_How is employer-funded paid parental leave paid to PRIMARY carer? – Lump sum pre or post leave

Q5_PPL_EmpFund_PRM_N	Q5_Paid parental leave employer-funded for PRIMARY Carers – NO
Q5_PPL_EmpFund_PRM_NCUD	Q5_Paid parental leave employer-funded for PRIMARY Carers – NO, currently under development
Q5_PPL_EmpFund_PRM_NIHRSE	Q5_Paid parental leave employer-funded for PRIMARY Carers – NO, Insufficient resources/expertise
Q5_PPL_EmpFund_PRM_NGSS	Q5_Paid parental leave employer-funded for PRIMARY Carers – NO, government scheme sufficient
Q5_PPL_EmpFund_PRM_NNAP	Q5_Paid parental leave employer-funded for PRIMARY Carers – NO, not a priority
Q5_PPL_EmpFund_PRM_N_Othr_Detail	Q5_Paid parental leave employer-funded for PRIMARY Carers – NO, other reason - details
Q5_1_PPL_EmpFund_PRM_WEEKS_Both	Q5_1_How many weeks of employer-funded paid parental leave for PRIMARY carers? (available to both women AND men)
Q5_1_PPL_EmpFund_PRM_WEEKS_Women	Q5_1_How many weeks of employer-funded paid parental leave for PRIMARY carers is available for WOMEN ONLY (e.g. maternity leave)?
Q5_1_PPL_EmpFund_PRM_WEEKS_Men	Q5_1_How many weeks of employer-funded paid parental leave for PRIMARY carers is available for MEN ONLY?
Q5_PPL_EmpFund_PRM_Adoption	Q5_Please indicate whether your employer-funded paid parental leave for primary carers covers: Adoption
Q5_PPL_EmpFund_PRM_Surrogacy	Q5_Please indicate whether your employer-funded paid parental leave for primary carers covers: Surrogacy
Q5_PPL_EmpFund_PRM_Stillbirth	Q5_Please indicate whether your employer-funded paid parental leave for primary carers covers: Stillbirth
Q6_PPL_EmpFund_SEC_Y	Q6_Paid parental leave employer-funded for SECONDARY carers – YES, provided to secondary carers (both women & men)
Q6_PPL_EmpFund_SEC_N_Men	Q6_Paid parental leave employer-funded for SECONDARY carers – NO, Provided to men ONLY
Q6_PPL_EmpFund_SEC_N_Women	Q5_Paid parental leave employer-funded for SECONDARY carers – NO, Provided to women ONLY
Q6_PPL_EmpFund_SEC_N	Q6_Paid parental leave employer-funded for SECONDARY carers – NO (reason not provided)
Q6_PPL_EmpFund_SEC_NCUD	Q6_Paid parental leave employer-funded for SECONDARY carers – NO, currently under development

Q6_PPL_EmpFund_SEC_NIHRSE	Q6_Paid parental leave employer-funded for SECONDARY carers – NO, Insufficient resources/expertise
Q6_PPL_EmpFund_SEC_NGSS	Q6_Paid parental leave employer-funded for SECONDARY carers – NO, government scheme sufficient
Q6_PPL_EmpFund_SEC_NNAP	Q6_Paid parental leave employer-funded for SECONDARY carers – NO, not a priority
Q6_PPL_EmpFund_SEC_N_OTHR_Detail	Q6_Paid parental leave employer-funded for SECONDARY carers – NO, other reason, give details
Q6_1_PPL_EmpFund_SE C_DAYS_Both	Q6_1_How many days employer-funded paid parental leave for SECONDARY carers? (available to both women AND men)
Q6_1_PPL_EmpFund_SE C_DAYS_Women	Q6_1_How many days employer-funded paid parental leave for SECONDARY carers is available for WOMEN ONLY?
Q6_1_PPL_EmpFund_SE C_DAYS_Men	Q6_1_How many days employer-funded paid parental leave for SECONDARY carers is available for MEN ONLY?
Q6_PPL_EmpFund_SEC_Adoption	Q6_Please indicate whether your employer-funded paid parental leave for SECONDARY carers covers: Adoption
Q6_PPL_EmpFund_SEC_Surrogacy	Q6_Please indicate whether your employer-funded paid parental leave for SECONDARY carers covers: Surrogacy
Q6_PPL_EmpFund_SEC_Stillbirth	Q6_Please indicate whether your employer-funded paid parental leave for SECONDARY carers covers: Stillbirth

Table A.2 Table of variables from the WGEA’s 2018–19 dataset used in the analysis of flexible work

Flexible work	
Q14_CARER_FEM_MGR_FOR	Q14_Employment terms, conditions, or practices available for female managers – FORMAL – carer's leave
Q14_CARER_FEM_MGR_INF	Q14_Employment terms, conditions, or practices available for female managers – INFORMAL – carer's leave
Q14_CARER_FEM_NON_FOR	Q14_Employment terms, conditions, or practices available for female non-managers – FORMAL – carer's leave
Q14_CARER_FEM_NON_INF	Q14_Employment terms, conditions, or practices available for female non-managers – INFORMAL – carer's leave
Q14_CARER_MAL_MGR_FOR	Q14_Employment terms, conditions, or practices available for male managers – FORMAL – carer's leave
Q14_CARER_MAL_MGR_INF	Q14_Employment terms, conditions, or practices available for male managers – INFORMAL – carer's leave
Q14_CARER_MAL_NON_FOR	Q14_Employment terms, conditions, or practices available for male non-managers – FORMAL – carer's leave
Q14_CARER_MAL_NON_INF	Q14_Employment terms, conditions, or practices available for male non-managers – INFORMAL – carer's leave
Q14_COMPWW_FEM_MGR_FOR	Q14_Employment terms, conditions, or practices available for female managers – FORMAL – compressed weeks
Q14_COMPWW_FEM_MGR_INF	Q14_Employment terms, conditions, or practices available for female managers – INFORMAL – compressed weeks
Q14_COMPWW_FEM_NON_FOR	Q14_Employment terms, conditions, or practices available for female non-managers – FORMAL – compressed weeks

Q14_COMPWW_FEM_NON_INF	Q14_Employment terms, conditions, or practices available for female non-managers – INFORMAL – compressed weeks
Q14_COMPWW_MAL_MGR_FOR	Q14_Employment terms, conditions, or practices available for male managers – FORMAL – compressed weeks
Q14_COMPWW_MAL_MGR_INF	Q14_Employment terms, conditions, or practices available for male managers – INFORMAL – compressed weeks
Q14_COMPWW_MAL_NON_FOR	Q14_Employment terms, conditions, or practices available for male non-managers – FORMAL – compressed weeks
Q14_COMPWW_MAL_NON_INF	Q14_Employment terms, conditions, or practices available for male non-managers – INFORMAL – compressed weeks
Q14_FLEXHRS_FEM_MGR_FOR	Q14_Employment terms, conditions, or practices available for female managers – FORMAL – flexible hours
Q14_FLEXHRS_FEM_MGR_INF	Q14_Employment terms, conditions, or practices available for female managers – INFORMAL – flexible hours
Q14_FLEXHRS_FEM_NON_FOR	Q14_Employment terms, conditions or practices available for female non-managers - FORMAL - flexible hours
Q14_FLEXHRS_FEM_NON_INF	Q14_Employment terms, conditions or practices available for female non-managers - INFORMAL - flexible hours
Q14_FLEXHRS_MAL_MGR_FOR	Q14_Employment terms, conditions or practices available for male managers – FORMAL – flexible hours
Q14_FLEXHRS_MAL_MGR_INF	Q14_Employment terms, conditions or practices available for male managers – INFORMAL – flexible hours
Q14_FLEXHRS_MAL_NON_FOR	Q14_Employment terms, conditions or practices available for male non-managers – FORMAL – flexible hours
Q14_FLEXHRS_MAL_NON_INF	Q14_Employment terms, conditions or practices available for male non-managers – INFORMAL – flexible hours
Q14_JOBESH_FEM_MGR_FOR	Q14_Employment terms, conditions or practices available for female managers – FORMAL – job sharing
Q14_JOBESH_FEM_MGR_INF	Q14_Employment terms, conditions or practices available for female managers – INFORMAL – job sharing
Q14_JOBESH_FEM_NON_FOR	Q14_Employment terms, conditions or practices available for female non-managers – FORMAL – job sharing
Q14_JOBESH_FEM_NON_INF	Q14_Employment terms, conditions or practices available for female non-managers – INFORMAL – job sharing
Q14_JOBESH_MAL_MGR_FOR	Q14_Employment terms, conditions, or practices available for male managers – FORMAL – job sharing
Q14_JOBESH_MAL_MGR_INF	Q14_Employment terms, conditions, or practices available for male managers – INFORMAL – job sharing
Q14_JOBESH_MAL_NON_FOR	Q14_Employment terms, conditions, or practices available for male non-managers – FORMAL – job sharing
Q14_JOBESH_MAL_NON_INF	Q14_Employment terms, conditions, or practices available for male non-managers – INFORMAL – job sharing
Q14_PTWORK_FEM_MGR_FOR	Q14_Employment terms, conditions, or practices available for female managers – FORMAL – part-time work
Q14_PTWORK_FEM_MGR_INF	Q14_Employment terms, conditions, or practices available for female managers – INFORMAL – part-time work

Q14_PTWORK_FEM_NON_FOR	Q14_Employment terms, conditions, or practices available for female non-managers – FORMAL – part-time work
Q14_PTWORK_FEM_NON_INF	Q14_Employment terms, conditions, or practices available for female non-managers – INFORMAL – part-time work
Q14_PTWORK_MAL_MGR_FOR	Q14_Employment terms, conditions or practices available for male managers – FORMAL – part-time work
Q14_PTWORK_MAL_MGR_INF	Q14_Employment terms, conditions, or practices available for male managers – INFORMAL – part-time work
Q14_PTWORK_MAL_NON_FOR	Q14_Employment terms, conditions, or practices available for male non-managers – FORMAL – part-time work
Q14_PTWORK_MAL_NON_INF	Q14_Employment terms, conditions, or practices available for male non-managers – INFORMAL – part-time work
Q14_PURCHL_FEM_MGR_FOR	Q14_Employment terms, conditions, or practices available for female managers – FORMAL - purchased leave
Q14_PURCHL_FEM_MGR_INF	Q14_Employment terms, conditions or practices available for female managers – INFORMAL – purchased leave
Q14_PURCHL_FEM_NON_FOR	Q14_Employment terms, conditions or practices available for female non-managers – FORMAL – purchased leave
Q14_PURCHL_FEM_NON_INF	Q14_Employment terms, conditions, or practices available for female non-managers – INFORMAL – purchased leave
Q14_PURCHL_MAL_MGR_FOR	Q14_Employment terms, conditions, or practices available for male managers – FORMAL – purchased leave
Q14_PURCHL_MAL_MGR_INF	Q14_Employment terms, conditions, or practices available for male managers – INFORMAL – purchased leave
Q14_PURCHL_MAL_NON_FOR	Q14_Employment terms, conditions, or practices available for male non-managers – FORMAL - purchased leave
Q14_PURCHL_MAL_NON_INF	Q14_Employment terms, conditions, or practices available for male non-managers – INFORMAL – purchased leave
Q14_TELE_FEM_MGR_FOR	Q14_Employment terms, conditions, or practices available for female managers – FORMAL – telecommuting
Q14_TELE_FEM_MGR_INF	Q14_Employment terms, conditions or practices available for female managers – INFORMAL – telecommuting
Q14_TELE_FEM_NON_FOR	Q14_Employment terms, conditions or practices available for female non-managers – FORMAL – telecommuting
Q14_TELE_FEM_NON_INF	Q14_Employment terms, conditions, or practices available for female non-managers – INFORMAL – telecommuting
Q14_TELE_MAL_MGR_FOR	Q14_Employment terms, conditions, or practices available for male managers – FORMAL – telecommuting
Q14_TELE_MAL_MGR_INF	Q14_Employment terms, conditions, or practices available for male managers – INFORMAL – telecommuting
Q14_TELE_MAL_NON_FOR	Q14_Employment terms, conditions, or practices available for male non-managers – FORMAL – telecommuting
Q14_TELE_MAL_NON_INF	Q14_Employment terms, conditions, or practices available for male non-managers – INFORMAL – telecommuting
Q14_TOIL_FEM_MGR_FOR	Q14_Employment terms, conditions, or practices available for female managers – FORMAL – time-in-lieu

Q14_TOIL_FEM_MGR_INF	Q14_Employment terms, conditions, or practices available for female managers – INFORMAL – time-in-lieu
Q14_TOIL_FEM_NON_FOR	Q14_Employment terms, conditions, or practices available for female non-managers – FORMAL – time-in-lieu
Q14_TOIL_FEM_NON_INF	Q14_Employment terms, conditions, or practices available for female non-managers – INFORMAL – time-in-lieu
Q14_TOIL_MAL_MGR_FOR	Q14_Employment terms, conditions, or practices available for male managers – FORMAL – time-in-lieu
Q14_TOIL_MAL_MGR_INF	Q14_Employment terms, conditions, or practices available for male managers – INFORMAL – time-in-lieu
Q14_TOIL_MAL_NON_FOR	Q14_Employment terms, conditions, or practices available for male non-managers – FORMAL – time-in-lieu
Q14_TOIL_MAL_NON_INF	Q14_Employment terms, conditions, or practices available for male non-managers – INFORMAL – time-in-lieu
Q14_UNPDLV_FEM_MGR_FOR	Q14_Employment terms, conditions, or practices available for female managers – FORMAL – unpaid leave
Q14_UNPDLV_FEM_MGR_INF	Q14_Employment terms, conditions, or practices available for female managers – INFORMAL – unpaid leave
Q14_UNPDLV_FEM_NON_FOR	Q14_Employment terms, conditions, or practices available for female non-managers – FORMAL – unpaid leave
Q14_UNPDLV_FEM_NON_INF	Q14_Employment terms, conditions, or practices available for female non-managers – INFORMAL – unpaid leave
Q14_UNPDLV_MAL_MGR_FOR	Q14_Employment terms, conditions, or practices available for male managers – FORMAL – unpaid leave
Q14_UNPDLV_MAL_MGR_INF	Q14_Employment terms, conditions, or practices available for male managers – INFORMAL – unpaid leave
Q14_UNPDLV_MAL_NON_FOR	Q14_Employment terms, conditions, or practices available for male non-managers – FORMAL – unpaid leave
Q14_UNPDLV_MAL_NON_INF	Q14_Employment terms, conditions or practices available for male non-managers – INFORMAL – unpaid leave
Q9_1_Flex_Business_case	Q9_1_A business case for flexibility has been established and endorsed at the leadership level
Q9_1_Flex_employee	Q9_1_Employees are surveyed on whether they have sufficient flexibility
Q9_1_Flex_client_conversation	Q9_1_The organisation's approach to flexibility is integrated into client conversations
Q9_1_Flex_impact_evaluation	Q9_1_The impact of flexibility is evaluated (eg reduced absenteeism, increased employee engagement)
Q9_1_Flex_metrics_key_management_personnel	Q9_1_Metrics on the use of, or the impact of, flexibility measures are reported to key management personnel
Q9_1_Flex_metrics_governing_body_board	Q9_1_Metrics on the use of, or the impact of, flexibility measures are reported to the governing body/board
Q9_1_Flex_role_models	Q9_1_Leaders are visible role models of flexible working
Q9_1_Flex_promoted	Q9_1_Flexible working is promoted throughout the organisation

Q9_1_Flex_tar_engage	Q9_1_Targets have been set for engagement in flexible work
Q9_1_Flex_men_engage	Q9_1_Targets have been set for men's engagement in flexible work
Q9_1_Flex_leaders	Q9_1_Leaders are held accountable for improving workplace flexibility
Q9_1_Flex_manager_training	Q9_1_Manager training on flexible working is provided throughout the organisation
Q9_1_Flex_emp_training	Q9_1_Employee training is provided throughout the organisation
Q9_1_Flex_team_training	Q9_1_Team-based training is provided throughout the organisation

Table A.3 Table of variables from the WGEA's 2018–19 dataset used in the analysis of other work-care supports

Other work-care supports

Q11_1_nonleave_EmpSub_Childcare	Q11_1_Do you offer employer-subsidised childcare?
Q11_1_nonleave_onsite_Childcare	Q11_1_Do you offer on-site childcare?
Q11_1_nonleave_breastfeeding	Q11_1_Do you offer breastfeeding facilities?
Q11_1_nonleave_ChildC_Referral	Q11_1_Do you offer childcare referral services?
Q11_1_nonleave_parents_int_support	Q11_1_Do you offer internal support networks for parents?
Q11_1_nonleave_RTW_bonus	Q11_1_Do you offer return-to-work bonuses?
Q11_1_nonleave_info_packs	Q11_1_Do you offer information packs supporting new parents and carers?
Q11_1_nonleave_referral_care_FAM	Q11_1_Do you offer referral services supporting families and carers?
Q11_1_nonleave_communication	Q11_1_Do you offer targeted communication (e.g. intranet, forums)?
Q11_1_nonleave_none_of_the_above	Q11_1_None of the above
Q11_1_supp_secure_school_care	Q11_1_Support in securing school holiday care
Q11_1_coach_emp_return_ppl	Q11_1_Coaching for employees on returning to work from parental leave
Q11_1_parent_workshop_mothers	Q11_1_Parenting workshops targeting mothers
Q11_1_parent_workshop_fathers	Q11_1_Parenting workshops targeting fathers

Table A.4 Cross tab of some offerings of primary or secondary carer’s leave by industry type, organisation size, and gender dominance

		No offering of primary or secondary carer’s leave		Some offerings of primary or secondary carer’s leave	
		N	Row %	N	Row %
Industry Type	Non-service based	1077	59.97	719	40.03
	General services	600	57.75	439	42.25
	Specialised services	515	25.67	1491	74.33
Organisation Size	<250	1080	50.54	1057	49.46
	250–499	546	47.15	612	52.85
	500–999	307	42.88	406	56.70
	1000–4999	230	33.24	462	66.76
	5000+	29	20.57	112	79.43
Gender Dominance	Male	1084	55.25	878	44.75
	Neutral	543	44.77	670	55.23
	Female	565	33.91	1101	66.09

Table A.5 Cross tab of no primary carer's leave, fewer than 12 weeks of primary carer' leave, and 12 weeks or more of primary carer's leave by industry type, organisation size, and gender dominance

		No offering of primary carer's leave		>0 to <12 weeks of primary carer's leave		≥12 weeks of primary carer's leave	
		N	Row %	N	Row %	N	Row %
Industry Type	Non-service based	1092	60.80	323	17.98	381	21.21
	General services	609	58.61	221	21.27	209	20.12
	Specialised services	525	26.17	647	32.25	834	41.58
Organisation Size	<250	1098	51.38	481	22.51	558	26.11
	250–499	553	47.75	271	23.40	334	28.84
	500–999	313	43.90	182	25.53	218	30.58
	1000–4999	233	33.67	205	29.62	254	36.71
	5000+	29	20.57	52	36.88	60	42.55
Gender Dominance	Male	1240	63.20	401	20.44	321	16.36
	Neutral	634	52.27	266	21.93	313	25.80
	Female	744	44.66	442	26.53	480	28.81

Table A.6 Cross tab of no secondary carer’s leave, fewer than 10 days of secondary carer’s leave, and 10 days or more of secondary carer’s leave by industry type, organisation size, and gender dominance

		No offering of secondary carer’s leave		>0 to <10 days of secondary carer’s leave		≥10 of secondary carer’s leave	
		N	Row %	N	Row %	N	Row %
Industry Type	Non-service based	1219	67.87	336	18.71	241	13.42
	General services	689	66.31	162	15.59	188	18.09
	Specialised services	710	35.94	611	30.46	685	34.15
Organisation Size	<250	1254	58.68	458	21.43	425	19.89
	250–499	638	55.09	250	21.59	270	23.32
	500–999	375	52.59	162	22.72	176	24.68
	1000–4999	299	43.21	194	28.03	199	28.76
	5000+	52	36.88	45	31.91	44	31.21
Gender Dominance	Male	1099	56.01	397	20.23	466	23.75
	Neutral	549	45.26	260	21.43	404	33.31
	Female	578	34.69	534	32.05	554	33.25

Table A.7 Proximity matrix of flexible work/employment offerings (Jaccard Measure)

	Compressed weeks	Flexible hours	Telecommuting	TOIL	Part-time work	Job sharing
Compressed weeks	1.00	0.57	0.60	0.58	0.57	0.58
Flexible hours	0.57	1.00	0.71	0.93	0.95	0.66
Telecommuting	0.60	0.71	1.00	0.71	0.70	0.63
TOIL	0.58	0.93	0.71	1.00	0.92	0.66
Part-time work	0.57	0.95	0.70	0.92	1.00	0.67
Job sharing	0.58	0.66	0.63	0.66	0.67	1.00

Table A.8 Cross tab of some form of flexible work by industry type, organisation size, and gender dominance

		Compressed Weeks		Telecommuting		Flexible Hours		Time-in-Lieu		Part-Time Work		Job Sharing	
		N	Row %	N	Row %	N	Row %	N	Row %	N	Row %	N	Row %
Industry Type	Non-service based	899	50.06	1184	65.92	1708	95.10	1617	90.03	1653	92.04	1027	57.18
	General services	591	56.88	689	66.31	994	95.67	946	91.05	977	94.03	620	59.67
	Specialised services	1158	57.73	1446	72.08	1917	95.56	1875	93.47	1956	97.51	1462	72.88
Organisation Size	<250	1015	47.50	1344	62.89	2011	94.10	1924	90.03	1985	92.89	1187	55.55
	250–499	635	54.84	776	67.01	1099	94.91	1066	92.06	1100	94.99	737	63.64
	500–999	416	58.35	520	72.93	694	97.34	660	92.57	687	96.35	504	70.69
	1000–4999	474	68.50	551	79.62	675	97.54	652	94.22	673	97.25	551	79.62
	5000+	108	76.60	128	90.78	140	99.29	136	96.45	141	100.00	130	92.20
Gender Dominance	Male	1017	51.83	1362	69.42	1870	95.31	1176	90.52	1810	92.25	1118	56.98
	Neutral	717	59.11	858	70.73	1174	96.78	1127	92.91	1165	96.04	814	67.10
	Female	914	54.86	1099	65.97	1575	94.54	1535	92.14	1611	96.70	1177	70.64

Table A.9 Cross tab of on-site or subsidised childcare ('childcare'), breastfeeding facilities, return-to-work bonuses, and at least one information, support or training mechanism ('information or training') by industry type, organisation size, and gender dominance

		Childcare		Breastfeeding Facilities		Return-to-Work Bonuses		Information or Training	
		N	Row %	N	Row %	N	Row %	N	Row %
Industry Type	Non-service based	50	2.78	559	31.12	70	3.90	587	32.68
	General services	64	6.16	339	32.63	37	3.56	369	35.51
	Specialised services	257	12.81	958	47.76	88	4.39	952	47.46
Organisation Size	<250	123	5.76	591	27.66	56	2.62	631	29.90
	250–499	97	8.38	450	38.86	35	3.02	453	39.12
	500–999	50	7.01	323	45.30	35	4.91	331	46.42
	1000–4999	70	10.12	384	55.49	53	7.66	389	56.21
	5000+	31	21.98	108	76.60	16	11.35	104	73.76
Gender Dominance	Male	66	3.36	630	32.11	74	3.77	679	34.60
	Neutral	82	6.76	503	41.47	73	6.02	507	41.80
	Female	223	13.39	723	43.39	48	2.88	722	43.34

BIBLIOGRAPHY

A Articles/Books/Reports

- Adams, K Lee, 'Indirect Discrimination and the Worker-Carer: It's Just Not Working' (2005) 23 *Law in Context* 18
- Ailwood, Jo, 'Mothers, Teachers, Maternalism and Early Childhood Education and Care: Some Historical Connections' (2007) 8 *Contemporary Issues in Early Childhood* 157
- Akter, Kohinur, Muhammad Ali and Artemis Chang, 'Work–Life Programs and Performance in Australian Organisations: The Role of Organisation Size and Industry Type' (2021) 59 *Asia Pacific Journal of Human Resources* 227
- Albiston, Catherine, 'Bargaining in the Shadow of Social Institutions: Competing Discourses and Social Change in Workplace Mobilization of Civil Rights' (2005) 39 *Law & Society Review* 11
- Ali, Muhammad, Isabel Metz and Carol T Kulik, 'Impact of Work-Family Programs on the Relationship between Gender Diversity and Performance' (2015) 54 *Human Resource Management* 553
- Allen, Dominique, 'Thou Shalt Not Discriminate: Moving from a Negative Prohibition to a Positive Obligation on Business to Tackle Discrimination' (2020) 26 *Australian Journal of Human Rights* 110
- Allen, Dominique, 'Adverse Effects: Can the Fair Work Act Address Workplace Discrimination for Employees with a Disability?' (2018) 41 *University of New South Wales Law Journal* 41
- Allen, Dominique, 'In Defence of Settlement: Resolving Discrimination Complaints by Agreement' (2014) 14 *International Journal of Discrimination and the Law* (2014) 200
- Allen, Dominique, 'Strategic Enforcement of Anti-Discrimination Law: A New Role for Australia's Equality Commissions' (2010) 36 *Monash University Law Review* 103
- Allen, Dominique and Adriana Orifici, *Understanding Pregnancy Discrimination: A Pilot Study of Women's Experiences at Work* (Monash Business School, 2022)
- Allen, Dominique and Adriana Orifici, 'Home Truths: What Did COVID-19 Reveal about Workplace Flexibility?' (2021) 34 *Australian Journal of Labour Law* 77
- Allen, Dominique and Alysia Blackham, 'Under Wraps: Secrecy, Confidentiality and the Enforcement of Equality Law in Australia and the United Kingdom' (2019) 43 *Melbourne University Law Review* 385
- Andrades, Carol, 'Intersections between "General Protections" under the *Fair Work Act 2009* (Cth) and Anti-Discrimination Law: Questions, Quirks and Quandaries' (Working Paper No 47, Centre for Employment and Labour Relations Law, University of Melbourne, December 2009)
- Archibald, Mandy M et al, 'Using Zoom Videoconferencing for Qualitative Data Collection: Perceptions and Experiences of Researchers and Participants' (2019) 18 *International Journal of Qualitative Methods* 1
- Arnalds, Ásdís, Guðný Björk Eydal and Ingólfur V Gíslason, 'Paid Parental Leave in Iceland: Increasing Gender Equality at Home and on the Labour Market' in Caroline de la Porte et al (eds), *Successful Public Policy in the Nordic Countries: Cases, Lessons, Challenges* (Oxford, 2022)
- Attorney-General's Department, 'Trends in Federal Enterprise Bargaining Report: December Quarter 2020'
- Australian Department of Family and Community Services, Department of Employment and Workplace Relations, Work and Family Life Consortium, *OECD Review of Family Friendly Policies: The Reconciliation of Work and Family Life: Australia's Background Report* (Commonwealth of Australia, 2002)
- Australian Government, *Towards 2025: An Australian Government Strategy to Boost Women's Workforce Participation* (Commonwealth of Australia, 2017)

- Australian Government, 'Paid Parental Leave Guide', *Guide to Social Policy Law* (Guide, 8 May 2023) <<https://guides.dss.gov.au/paid-parental-leave-guide/1/1/p/190>>
- Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review — Community Guide 2014* (2014)
- Australian Small Business and Family Enterprise Ombudsman, *Small Business Counts: Small Business in the Australian Economy* (Commonwealth of Australia, 2019)
- Bahar, Elif et al, 'Children and the Gender Earnings Gap' (Treasury Roundup, Department of Treasury, October 2022)
- Baird, Marian, Myra Hamilton and Andreea Constantin, 'Gender Equality and Paid Parental Leave in Australia: A Decade of Giant Leaps or Baby Steps?' (2021) 63 *Journal of Industrial Relations* 546
- Baird, Marian, 'The Use of Data in the Making and Monitoring of Parental Leave in Australia' (2021) 37 *Law in Context* 62
- Baird, Marian and Margaret O'Brien, 'Dynamics of Parental Leave in Anglophone Countries: The Paradox of State Expansion in Liberal Welfare Regimes' (2015) 18 *Community, Work & Family* 198
- Bamberry, Larissa, 'Restructuring Women's Work: Labour Market and Household Gender Regimes in the Greater Latrobe Valley, Australia' (2016) 23 *Gender, Place & Culture* 1135
- Batliwala, Srilatha, *Women's Empowerment in South Asia: Concepts and Practices* (Asian South Pacific Bureau of Adult Education, 1994)
- Bernard, H Russell, *Research Methods in Anthropology: Qualitative and Quantitative Approaches* (AltaMira Press, 4th ed, 2006)
- Beutler, Danica and Marianne French, 'An Analysis of the Australian Government's Jobs for Families Child Care Package: The Utility of Bacchi's WPR Methodology to Identify Potential Influences on Parents' Childcare Choices' (2018) 43 *Australasian Journal of Early Childhood* 16
- Blackett, Adelle and Colleen Sheppard, 'Collective Bargaining and Equality: Making Connections' (2003) 142 *International Labour Review*
- Blofield, Merike and Juliana Martínez Franzoni, 'Maternalism, Co-Responsibility, and Social Equity: A Typology of Work-Family Policies' (2015) 22 *Social Politics* 38
- Borgkvist, Ashlee et al, "'I Might Be a Bit of a Front Runner" — An Analysis of Men's Uptake of Flexible Work Arrangements and Masculine Identity' (2018) 25 *Gender, Work Organization* 703
- Braun, Virginia and Victoria Clarke, 'To Saturate or Not to Saturate? Questioning Data Saturation as a Useful Concept for Thematic Analysis and Sample-Size Rationale' (2021) 13 *Qualitative Research in Sport, Exercise and Health* 201
- Braun, Virginia and Victoria Clarke, 'One Size Fits All? What Counts as Quality Practice in (Reflexive) Thematic Analysis?' (2020) 18 *Qualitative Research in Psychology* 328
- Braun, Virginia and Victoria Clarke, 'Reflecting on Reflexive Thematic Analysis' (2019) *Qualitative Research in Sport, Exercise and Health* 589
- Braun, Virginia and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3 *Qualitative Research in Psychology* 77
- Bray, Mark, Johanna Macneil and Leslee Spiess, 'Unions and Collective Bargaining in Australia in 2018' (2019) 61 *Journal of Industrial Relations* 357
- Broomhill, Ray and Rhonda Sharp, *Australia's Parental Leave Policy and Gender Equality: An International Comparison* (University of Adelaide, 2012)
- Broomhill, Ray and Rhonda Sharp, 'The Changing Male Breadwinner Model in Australia: A New Gender Order?' (2005) 16(1) *Labour & Industry: A Journal of the Social and Economic Relations of Work* 103
- Busby, Nicole, *A Right to Care? Unpaid Work in European Employment Law* (Oxford University Press, 2011)

- Business Council of Australia, 'The State of Enterprise Bargaining in Australia' (Research Paper, August 2019)
- Josh Butler, "'The Aspiration of Universal Childcare": Anne Aly on What Drives Labor's Ambitious Plans', *Guardian* (online, 14 June 2022) <<https://www.theguardian.com/australia-news/2022/jun/14/the-aspiration-of-universal-childcare-anne-aly-on-what-drives-labors-ambitious-plans>>
- Byrne, David, 'A Worked Example of Braun and Clarke's Approach to Reflexive Thematic Analysis' (2021) *Quality & Quantity* 1
- Cameron, Craig, 'Oxymoronic or Employer Logic? Preferred Hours under the Fair Work Act' (2012) 25 *Australian Journal of Labour Law* 43
- Campbell, Iain and Jenny Chalmers, 'Job Quality and Part-Time Work in the Retail Industry: An Australian Case Study' (2008) 19 *International Journal of Human Resource Management* 487
- Chapman, Anna, 'The Continuing Resonance of Breadwinner Norms: The Australian Labour Law Experience' (2018) 34 *International Journal of Comparative Labour Law and Industrial Relations* 351
- Chapman, Anna, 'Is the Right to Request Flexibility under the Fair Work Act Enforceable?' (2013) 26 *Australian Journal of Labour Law* 118
- Chapman, Anna, 'Australian Anti-Discrimination Law, Work, Care and Family' (Working Paper No 51, Centre for Employment and Labour Relations Law, University of Melbourne, January 2012)
- Chapman, Anna, 'Industrial Law, Working Hours, and Work, Care and Family' (2010) 36 *Monash University Law Review* 190, 207, citing *Fairview Orchards* [2010] FWA 2139 (16 March 2010)
- Chapman, Anna, 'Employment Entitlements to Carer's Leave: Domesticating Diverse Subjectivities' (2009) 18 *Griffith Law Review* 453
- Chapman, Anna, 'Care Responsibilities and Discrimination in Victoria: The *Equal Opportunity Amendment (Family Responsibilities) Act 2008* (Vic)' (2008) 21 *Australian Journal of Labour Law* 200
- Chapman, Anna, 'Challenging the Constitution of the (White and Straight) Family in Work and Family Scholarship' in Jill Murray (ed), *Work, Family and the Law* (Federation Press, 2005)
- Chapman, Anna, Beth Gaze and Kathleen Love, 'Adverse Action, Discrimination and the Reverse Onus of Proof' (Conference Paper, Centre for Employment and Labour Relations Law, 2012)
- Charlesworth, Sara, 'Law's Response to the Reconciliation of Work and Care: The Australian Case' in Nicole Busby and Grace James (eds), *Families, Care-giving and Paid Work: Challenging Labour Law in the 21st Century* (Edward Elgar Publishing, 2011)
- Charlesworth, Sara, 'Managing Work and Family in the "Shadow" of Anti-Discrimination Law' (2005) 23 *Law in Context* 88
- Charlesworth, Sara, 'Stretching Flexibility: Enterprise Bargaining, Women Workers and Changes to Working Hours' (1997, Human Rights and Equal Opportunity Commission)
- Charlesworth, Sara and Alexandra Heron, 'New Australian Working Time Minimum Standards: Reproducing the Same Old Gendered Architecture?' (2012) 54 *Journal of Industrial Relations* 164
- Charlesworth, Sara and Iain Campbell, 'Right to Request Regulation: Two New Australian Models' (2008) 21 *Australian Journal of Labour Law* 116
- Charlesworth, Sara et al, 'Parents' Jobs in Australia: Work Hours Polarisation and the Consequences for Job Quality and Gender Equality' (2011) 14 *Australian Journal of Labour Economics* 35
- Charlesworth, Sara and Fiona Macdonald, 'Employment Regulation and Worker-Carers: Reproducing Gender Inequality in the Domestic and Market Spheres?' in David Peetz and Georgina Murray (eds), *Women, Labor Segmentation and Regulation: Varieties of Gender Gaps* (Springer, 2017)
- Chung, Heejung, "'Women's Work Penalty" in the Access to Flexible Work Working Arrangements Across Europe' (2018) 25 *European Journal of Industrial Relations* 23

- Chung, Heejung and Tanja van der Lippe, 'Flexible Working, Work-Life Balance, and Gender Equality: Introduction' (2020) 151 *Social Indicators Research* 365
- Ciccia, Rossella, 'A Two-Step Approach for the Analysis of Hybrids in Comparative Social Policy Analysis: A Nuanced Typology of Childcare between Policies and Regimes' 51 *Quality and Quantity* 2761
- Ciccia, Rossella and Inge Bleijenbergh, 'After the Male Breadwinner Model? Childcare Services and the Division of Labor in European Countries' (2014) 21 *Social Politics* 50
- Ciccia, Rossella and Mieke Verloo, 'Parental Leave Regulations and the Persistence of the Male Breadwinner Model: Using Fuzzy-Set Ideal Type Analysis to Assess Gender Equality in an Enlarged Europe' (2012) 22 *Journal of European Social Policy* 507
- Clarke, Victoria and Virginia Braun, 'Thematic Analysis' (2017) 12 *The Journal of Positive Psychology* 297
- Conaghan, Joanne and Kerry Rittich, 'Interrogating the Work/Family Divide' in Joanne Conaghan and Kerry Rittich (eds), *Labour Law, Work and Family* (Oxford University Press, 2005)
- Cooper, Rae, 'The Gender Gap in Union Leadership in Australia: A Qualitative Study' (2012) 54 *Journal of Industrial Relations* 131
- Correll, Shelley J et al, 'Redesigning, Redefining Work' (2014) 41 *Work and Occupations* 3
- Cornwall, Andea, 'Women's Empowerment: What Works?' (2016) 28 *Journal of International Development* 342
- Connell, R W, 'A Really Good Husband: Work/Life Balance, Gender Equity and Social Change' (2005) 40 *Australian Journal of Social Issues* 369
- Cooper, Rae and Marian Baird, 'Bringing the "Right to Request" Flexible Working Arrangements to Life: From Policies to Practice' (2015) 37 *Employee Relations* 568
- Council of Australian Law Deans, *CALD Statement on the Nature of Research* (May and October 2005) 3
- Craig, Lyn, 'Coronavirus, Domestic Labour and Care: Gendered Roles Locked Down' (2020) 56 *Journal of Sociology* 684
- Craig, Lyn, *Contemporary Motherhood: The Impact of Children on Adult Time* (Ashgate, 2016)
- Craig, Lyn and Brendan Churchill, 'Dual-Earner Parent Couples' Work and Care During COVID-19' (2020) 28 *Gender, Work and Organization* 66
- Crofts, Jessica and Julia Coffey, 'Young Women's Negotiations of Gender, the Body and the Labour Market in a Post-Feminist Context' (2017) 26 *Journal of Gender Studies* 502
- Crompton, Rosemary, *Restructuring Gender Relations and Employment: The Decline of the Male Breadwinner* (Oxford University Press, 1999)
- Dahl, Hane, Marlene Hanne, Pauline Stoltz and Rasmus Willig, 'Recognition, Redistribution and Representation in Capitalist Global Society: An Interview with Nancy Fraser' (2004) 47 *Acta Sociologica* 374
- Denscombe, Martyn, *The Good Research Guide* (Open University Press, 4th ed, 2010) 141
- Department of the Prime Minister and Cabinet, *WGEA Review Report: Review of the Workplace Gender Equality Act 2012, December 2021* (Commonwealth of Australia, 2021) 4
- Department of the Prime Minister and Cabinet, 'Workplace Gender Equality Procurement Principles and User Guide', *Workplace Gender Equality Agency* (Guide)
<<https://www.wgea.gov.au/sites/default/files/documents/PMC-WGE-Procurement-Principles.pdf#page19>>
- Department of Social Services, 'Paid Parental Leave Scheme: Review Report' (Review Report, 2014) 51
- Dickens, Linda, *Equal Opportunities and Collective Bargaining in Europe: Illuminating the Process* (European Foundation for the Improvement of Living and Working Conditions, 1998)

- Dreyfus, Tom, 'Paid Parental Leave and the "Ideal Worker": A Step towards the "Worker-Carer" in Australian Labour Law' (2013) 23 *Labour & Industry* 107
- Duvander, Ann-Zofie and Mats Johansson, 'What Are the Effects of Reforms Promoting Fathers' Parental Leave Use?' (2012) 22 *Journal of European Social Policy* 310
- Emslie, Owain, 'Explainer: Everything You Need to Know about the Major Parties' New Childcare Policies' (Explainer, Grattan Institute, 4 April 2022) <<https://grattan.edu.au/news/explainer-everything-you-need-to-know-about-the-major-parties-new-childcare-policies/>>
- Fair Work Commission, *Annual Report: Access to Justice* (Report, 2022) 30
- Forman-Rabinovici, Aliza and Hadas Mandel, 'The Prevalence and Implications of Gender Blindness in Quantitative Political Science Research' (2023) 19 *Politics & Gender* 482
- Forsyth, Anthony et al, *Navigating the Fair Work Laws* (Thomson Reuters, 2010)
- Fraser, Nancy, 'Feminist Politics in the Age of Recognition: A Two-Dimensional Approach to Gender Justice' (2007) 1 *Studies in Social Justice* 23
- Fraser, Nancy, 'Rethinking Recognition' (2000) 3 *New Left Review* 107
- Fraser, Nancy, 'After the Family Wage: Gender Equity and the Welfare State' (1994) 22 *Political Theory* 591
- Friedman, Dana E, 'Employer Supports for Parents with Young Children' (2001) 11 *The Future of Children* 62
- Furlong, Murray, *General Manager's Report into the Operation of the Provisions of the National Employment Standards Relating to Requests for Flexible Working Arrangements and Extensions of Unpaid Parental Leave under s 653 of the Fair Work Act 2009* (Commonwealth of Australia, 2021)
- Gahan, Peter and Andreas Pekarek, 'Unions and Collective Bargaining in Australia in 2017' (2018) 60 *Journal of Industrial Relations* 337
- Gaze, Beth, 'Context and Interpretation in Anti-Discrimination Law' (2002) 26 *Melbourne University Law Review* 325
- Gheaus, Anca, 'Gender Justice' (2012) 6 *Journal of Ethics & Social Philosophy* 1
- Goetz, Anne Marie and Rob Jenkins, 'Feminist Activism and the Politics of Reform: When and Why Do States Respond to Demands for Gender Equality Policies?' (2018) 49 *Development and Change* 714
- Goodstein, Jerry D, 'Institutional Pressures and Strategic Responsiveness: Employer Involvement in Family Issues' (1994) 37 *Academy of Management Journal* 350
- Gornick, Janet C and Marcia K Meyers, 'Building the Dual Earner/Dual Carer Society: Policy Developments in Europe' (Working Paper No 82, Harvard University Center for European Studies, 26–28 January 2001) <<https://core.ac.uk/download/pdf/5081714.pdf>>
- Graham, Melissa, Hayley McKenzie and Greer Lamaro, 'Exploring the Australian Policy Context Relating to Women's Reproductive Choices' (2018) 39 *Policy Studies* 145
- Gíslason, Ingólfur V, 'Fathers on Leave Alone in Iceland: Normal Paternal Behaviour' in Margaret O'Brien and Karin Wall (eds), *Comparative Perspectives on Work-Life Balance and Gender Equality: Fathers on Leave Alone* (Springer, 2017)
- Grau Grau, Marc and Hannah Riley Bowles, 'Launching a Cross-Disciplinary and Cross-National Conversation on Engaged Fatherhood' in *Engaged Fatherhood for Men, Families and Gender Equality* (Springer, 2022)
- Gray, Colin and Christopher Mabey, 'Management Development: Key Differences between Small and Large Businesses in Europe' (2005) 23 *International Small Business Journal* 467
- Haas, Barbara and Margit Hartel, 'Towards the Universal Care Course Model' (2010) 12 *European Societies* 139
- Hantrais, Linda and Peter Ackers, 'Women's Choices in Europe: Striking the Work-Life Balance' (2005) 11 *European Journal of Industrial Relations* 197

- Haas, Linda and Tine Rostgaard, 'Fathers' Rights to Paid Parental Leave in the Nordic Countries: Consequences for the Gendered Division of Leave' (2011) 14 *Community, Work and Family* 177
- Harris, D R, 'The Development of Socio-Legal Studies in the United Kingdom' (1983) 3 *Legal Studies* 315; Lawrence M Friedman, 'The Law and Society Movement' (1986) 38 *Stanford Law Review* 763
- Hegewisch, Ariane and Janet C Gornick, 'The Impact of Work-Family Policies on Women's Employment: A Review of Research from OECD Countries' (2011) 14 *Community, Work and Family* 119
- Heron, Alexandra and Sara Charlesworth, 'Working Time and Managing Care under Labor: Whose Flexibility?' (2012) 38 *Australian Bulletin of Labour* 214
- Hilbrecht, Margo, "'I'm Home for the Kids": Contradictory Implications for Work-Life Balance of Teleworking Mothers' (2008) 15 *Gender, Work and Organization* 454
- Hill, Elizabeth et al, 'Australian Women's Working Futures: Are We Ready?' (Research Paper, International Labour Organisation, 2018) <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_616211.pdf>
- Hodgson, Helen, 'Tax Concessions or Transfer Payments — An Examination of Child Care Reform Proposals' (2007) 22 *Australian Tax Forum* 61
- Htun, Mala and S Laurel Weldon, "When Do Governments Promote Women's Rights? A Framework for the Comparative Analysis of Sex Equality Policy" (2010) 8 *Perspectives on Politics* 207, 209
- Human Rights and Equal Opportunity Commission, *It's About Time: Women, Men, Work and Family: Final Paper 2007* (Human Rights and Equal Opportunity Commission 2007)
- Hurley, Peter, Kate Noble and Jen Jackson, 'Australian Investment in Education: Early Childhood Education and Care' (Research Report, Victoria University, 2020) 13 <<https://www.vu.edu.au/sites/default/files/australian-investment-in-education-ecce-report-mitchell-institute.pdf>>
- Hutchinson, Terry, C M, *Researching and Writing in Law* (Lawbook Co, 3rd ed, 2010) 37
- James, Grace and Nicole Busby (eds), *Families, Caregiving and Paid Work: Challenging Labour Law in the 21st Century* (Edward Elgar, 2011)
- Javornik, Jana, 'Measuring State De-Familialism: Contesting Post-Socialist Exceptionalism' (2014) 24 *Journal of European Social Policy* 240
- Johnson, R Burke, Anthony J Onwuegbuzie and Lisa A Turner, 'Toward a Definition of Mixed Methods Research' (2007) 1(2) *Journal of Mixed Methods Research* 112
- Karakowsky, Leonard and Diane L Miller, 'Negotiator Style and Influence in Multi-Party Negotiations: Exploring the Role of Gender' (2006) 27 *Leadership and Organization Development Journal* 50
- Keddie, Amanda, 'A Framework for Gender Justice: Evaluating the Transformative Capacities of Three Key Schooling Initiatives' (2005) 32 *The Australian Educational Researcher* 83
- Kelly, Erin L and Alexandra Kalev, 'Managing Flexible Work Arrangements in US Organizations: Formalized Discretion or "A Right to Ask"' (2006) 4 *Socio-Economic Review* 379
- Kidder, Louise H and Michelle Fine, 'Qualitative and Quantitative Methods: When Stories Converge' (1987) 1987 *New Directions for Program Evaluation* 57
- Kirton, Gill, 'Union Framing of Gender Equality and the Elusive Potential of Equality Bargaining in a Difficult Climate' (2021) 63 *Journal of Industrial Relations* 591
- Knowlton, Cassidy, 'A Timeline of Covid-19 in Australia, Two Years On', *TimeOut* (Article, 4 July 2022) <<https://www.timeout.com/melbourne/things-to-do/a-timeline-of-covid-19-in-australia-two-years-on>>

- Koslowski, Alison and Margaret O'Brien, 'Fathers and Family Leave Policies: What Public Policy Can Do to Support Families' in *Engaged Fatherhood for Men, Families and Gender Equality* (Springer, 2022) 141
- Koven, Seth and Sonya Michel, *Mothers of a New World: Maternalist Politics and the Origins of Welfare States* (Routledge, 1993) 4
- KPMG, Diversity Council of Australia, and Workplace Gender Equality Agency, *She's Price(d)less* (Report, 2022) 9
- Kumar, Pradeep and Gregor Murray, 'Canadian Union Strategies in the Context of Change' (2002) 26 *Labor Studies Journal* 1
- Lake, Marilyn, 'State Socialism for Australian Mothers: Andrew Fisher's Radical Maternalism in its International and Local Contexts' (2012) 102 *Labour History* 55
- Lake, Marilyn, 'Women's Changing Conception of Political Power' (Papers on Parliament No 29, Parliament of Australia, March 1997)
<https://www.aph.gov.au/About_Parliament/Senate/Research_and_Education/pops/~/link.aspx?_id=D4C36577D9B24C928B424B01279719F7&_z=z>
- Lee, Amanda, 'Supporting Women to Breastfeed', *NHMRC* (Article, 3 August 2018)
<<https://www.nhmrc.gov.au/about-us/news-centre/supporting-women-breastfeed>>
- Lee, Julie-Anne, 'Women and Enterprise Bargaining: The Corset of the 1990s?' (1994) 53 *Australian Journal of Public Administration* 189
- Lewis, Jane, 'Gender and the Development of Welfare Regimes' (1992) 2 *Journal of European Social Policy* 159
- Lewis, Jane and Susanna Giullari, 'The Adult Worker Model Family, Gender Equality and Care — The Search for New Policy Principles and the Possibilities and Problems of a Capabilities Approach' (2005) 34 *Economy and Society* 76
- Lister, Ruth, *Citizenship: Feminist Perspectives* (Plagrave, Macmillan, 1997)
- Lobe, Bojana, David L Morgan and Kim A Hoffman, 'Qualitative Data Collection in an Era of Social Distancing' (2020) *International Journal of Qualitative Methods* 19
- Lott, Yvonne and Heejung Chung, 'Gender Discrepancies in the Outcomes of Schedule Control on Overtime Hours and Income in Germany' (2016) 32 *European Sociological Review* 752
- Macneil, Johanna, Mark Bray and Leslee Spiess, 'Unions and Collective Bargaining in Australia in 2019' (2020) 62 *Journal of Industrial Relations* 380
- Malatzky, Christina, 'Don't Shut Up: Australia's First Paid Parental Leave Scheme and Beyond' (2013) 28 *Australian Feminist Studies* 195
- Markey, Raymond and Joseph McIvor, 'Regulating Casual Employment in Australia' (2018) 60 *Journal of Industrial Relations* 593
- Mayer, Molly and Céline Le Bourdais, 'Sharing Parental Leave among Dual-Earner Couples in Canada: Does Reserved Paternity Leave Make a Difference?' (2019) 38 *Population Research and Policy Review* 215
- McCrystal, Shae and Belinda Smith, 'Industrial Legislation in 2010' (2016) 53 *Journal of Industrial Relations* 288
- McIntosh, Greg, 'Childcare in Australia: Current Provision and Developments' (Background Paper 9, Parliament of Australia, 1997–98)
<https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/Background_Papers/bp9798/98bp09#:~:text=The%20Commonwealth%20Government%20first%20became,of%20working%20and%20sick%20parents>; *A New Tax System (Family Assistance) Act 1999* (Cth) sch 2, sub-cl 3(2)
- Meyers, Marcia K and Janet C Gornick, *Gender Equality: Transforming Family Divisions of Labor* (Verso, 2009)

- Milner, Susan and Abigail Gregory, 'Gender Equality Bargaining in France and the UK: An Uphill Struggle?' (2014) 56 *Journal of Industrial Relations* 246
- Mitchell, Rebecca and John Mandryk, *The 1995 Australian Workplace and Industrial Relations Survey (AWIRS 95): An OHS Perspective* (Commonwealth of Australia, 1998)
- Moore, Sarah, 'Measuring the Success of Employment Law in Addressing the Problem of Long Working Hours in Australia' (Student Working Paper No 12, Centre for Employment and Labour Relations Law, University of Melbourne, June 2012) 14
- Morgan, Hal and Frances J Miliken, 'Keys to Action: Understanding Differences in Organizations' Responsiveness to Work-and-Family Issues' (1992) 31 *Human Resource Management* 227
- Morgan, Kimberly J, 'The Political Path to a Dual Earner/Dual Carer Society: Pitfalls and Possibilities' (2008) 36 *Politics & Society* 403
- Murphy, John, 'Reply to Humphrey McQueen' (2003) 13(3) *Labour & Industry* 99, 103
- Nolan, Melanie, 'The High Tide of a Labour Market System: The Australasian Male Breadwinner Model' (2003) 13 *Labour & Industry* 73
- Nowell, Lorelli S, 'Thematic Analysis: Striving to Meet the Trustworthiness Criteria' (2017) 16 *International Journal of Qualitative Methods* 1
- NSW Government Public Service Commission, *Make Flexibility Count: Strategic Framework for the NSW Government Sector* (Report, 2017) 8
- OECD, 'How Do Partners in Couple Families Share Paid Work?', *Organisation for Economic Co-operation and Development* (Web Page) <<https://www.oecd.org/gender/data/how-do-partners-in-couple-families-share-paid-work.htm>>
- O'Connor, Julia S 'Gender, Class and Citizenship in the Comparative Analysis of Welfare State Regimes: Theoretical and Methodological Issues' (1993) 44 *British Journal of Sociology* 501
- O'Neill, Bernadette, *General Manager's Report into the Operation of the Provisions of the National Employment Standards Relating to Requests for Flexible Working Arrangements and Extensions of Unpaid Parental Leave under s. 653 of the Fair Work Act 2009* (Commonwealth of Australia, 2018) 14 <<https://www.fwc.gov.au/documents/sites/admingmreporting/gm-nes-2018.pdf>>
- Orifici, Adriana and Dominique Allen, 'Expecting More: Rethinking the Rights and Protections Available to Pregnant Workers under the Fair Work Act 2009 (Cth)' (2022) 50 *Federal Law Review* 504
- Osterman, Paul, 'Work Family Programs and the Employment Relationship' (1995) 40 *Administrative Science Quarterly* 681
- Ozkazanc-Pan, Banu and Alison Pullen, 'Reimagining Value: A Feminist Commentary in the Midst of the COVID-19 Pandemic' (2020) 28 *Gender, Work and Organization* 1
- Partington, G, 'Qualitative Research Interviews: Identifying Problems in Technique' (2001) 11(2) *Issues in Educational Research* 32
- Patnaik, Ankita, 'Reserving Time for Daddy: The Consequences of Fathers' Quotas' (2019) 37 *Journal of Labour Economics* 1009
- Peetz, David, 'What Do the Data on Casuals Really Mean?' (Report, Centre for Work, Organisation and Wellbeing, Griffith University, 27 November 2020) 13
- Pfau-Effinger, Birgit, 'Welfare State Policies and the Development of Care Arrangements' (2005) 7 *European Societies* 321
- Pocock, Barbara, *The Work/Life Collision: What Work is Doing to Australians and What to Do about It* (Federation Press, 2003)
- Pocock, Barbara, Natalie Skinner and Philippa Williams, *Time Bomb: Work, Rest and Play in Australia Today* (University of New South Wales Press, 2012)
- Pocock, Barbara and Sara Charlesworth, 'Multilevel Work-Family Interventions: Creating Good-Quality Employment Over the Life Course' (2017) 44 *Work and Occupations* 23

Pocock, Barbara, Sara Charlesworth and Janine Chapman, 'Work-Family and Work-Life Pressures in Australia: Advancing Gender Equality In "Good Times"?' (2013) 33 *International Journal of Sociology and Social Policy* 594

Productivity Commission, *Workplace Relations Framework: Productivity Commission Inquiry Report Volume 2* (Commonwealth of Australia, 2015)

Productivity Commission, *Childcare and Early Childhood Learning: Productivity Commission Inquiry Report Vol 2 No 73* (Commonwealth of Australia, 2014)

Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children* (2009, Commonwealth of Australia) 6.11–6.12, 11 <<https://www.pc.gov.au/inquiries/completed/parental-support/report/parental-support.pdf>>

Pay Equity Unit, *First Findings Report: Consolidated Content from Online Publication* (Commonwealth of Australia, 2015)

Queensland Human Rights Commission, 'Review of Queensland's Anti-Discrimination Act' (Discussion Paper, November 2021) 34

Rau, Amy et al, 'Paid Parental Leave: A Detailed Look at Approaches across OECD Countries' (Research Report, World Policy Analysis Center, 2018) 7

Rice, Simon and Cameron Roles, "'It's a Discrimination Law Julia, But Not as We Know It": Part 3-1 of the Fair Work Act' (2010) 21 *Economic and Labour Relations Review* 13

Rinaldi, Mark, Victoria Lambropoulos and Rohan Millar, *Fair Work Legislation 2014* (Thomson Reuters, 2014)

Rubery, Jill, 'Regulating for Gender Equality: A Policy Framework to Support the Universal Caregiver Vision' (2015) 22 *Social Politics* 513

Ryan, Lauren et al, 'Laying the Foundation for Gender Equality in the Public Sector in Victoria: Final Project Report' (Final Report, University of Melbourne, 2022) 25

Sanders, Melanie et al, 'The Power of Flexibility: A Key Enabler to Boost Gender Parity and Employee Engagement' (Report, Bain and Company, 2016) 13

Sen, Gita, 'Empowerment as an Approach to Poverty' (Working Paper Series 97.07, UNDP, 1997)

Senate Economics References Committee, *'A Husband Is Not a Retirement Plan': Achieving Economic Security for Women in Retirement* (Commonwealth of Australia, 2016) ch 4 <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Economic_security_for_women_in_retirement/Report/c04>

Sharp, Rhonda, Ray Broomhill and Jude Elton, *"Modern" Labor and the Fair Work Act 2009: Challenging the Male Breadwinner Gender Order* (Australian Workplace Innovation and Social Research Centre, 2012) 3

Skinner, Natalie and Barbara Pocock, *The Persistent Challenge: Living Working and Caring in Australia in 2014: The Australian Work and Life Index* (Centre for Work + Life, 2014) 4, 41, 44, 45 <<https://apo.org.au/sites/default/files/resource-files/2014-09/apo-nid61996.pdf>>

Skinner, Natalie and Barbara Pocock, 'Flexibility and Work–Life Interference in Australia' (2011) 53 *Journal of Industrial Relations* 65

Skinner, Natalie and Janine Chapman, 'Work-Life Balance and Family Friendly Policies' (2013) *Evidence Base* 1

Skinner, Natalie, Abby Cathcart and Barbara Pocock, 'To Ask or Not to Ask? Investigating Workers' Flexibility Requests and the Phenomenon of Discontented Non-Requesters' (2016) 26 *Labour & Industry* 103

Smith, Belinda, 'Fair and Equal in the World of Work: Two Significant Federal Developments in Australian Discrimination Law' (2010) 23 *Australian Journal of Labour Law* 199

Smith, Belinda 'It's About Time — For a New Regulatory Approach to Equality' (2008) 117

Smith, Belinda, 'Australian Anti-Discrimination Laws — Framework, Developments and Issues' in Nakakubo and Takashi Araki (eds), *New Developments in Employment Discrimination Law* (Kluwer Law International, 2008) 115

Smith, Belinda, 'Not the Baby and the Bathwater: Regulatory Reform for Equality Laws to Address Work-Family Conflict' (2006) 28 *Sydney Law Review* 689

Smith, Belinda, 'A Regulatory Analysis of the *Sex Discrimination Act 1984* (Cth): Can It Effect Equality or Only Redress Harm?' in Christopher Arup et al (eds), *Labour Law and Labour Market Regulation — Essays on the Construction, Constitution and Regulation of Labour Markets and Work Relationships* (Federation Press, 2006) 105

Smith, Belinda, 'What Kind of Equality Can We Expect from the Fair Work Act?' (2011) 35 *Melbourne University Law Review* 545

Smith, Belinda and Monica Hayes, 'Using Data to Drive Gender Equality in Employment: More Power to the People?' (2015) 28 *Australian Journal of Labour Law* 191

Smith, Belinda and Joellen Dilsy, 'Family-Friendly Work Practices and the Law' (2004) 26 *Sydney Law Review* 395

Standing Committee on Family and Human Services, *Balancing Work and Family: Report on the Inquiry into Balancing Work and Family* (Commonwealth of Australia, 2006) [7.25]

Stephens, Julie, 'Who's Afraid of Maternalism? Political Motherhood in Postmaternal Times' in Carla Pascoe Leahy and Petra Bueskens (eds), *Australian Mothering* (Palgrave Macmillan, 2020) 457

Stewart, Andrew, 'Fair Work Australia: The Commission Reborn?' (2011) 53 *Journal of Industrial Relations* 563

Stewart, Andrew, *Supplement for Stewart's Guide to Employment Law — Seventh Edition* (Supplement, July 2023)

Stewart, Andrew and Mark Bray, 'Modern Awards under the Fair Work Act' (2020) 33 *Australian Journal of Labour Law* 52

Stewart, Andrew et al, 'The (Omni)bus that Broke Down: Changes to Casual Employment and the Remnants of the Coalition's Industrial Relations Agenda' (2021) 34 *Australian Journal of Labour Law* 132

Strachan, Glenda and John Burgess, 'Will Deregulating the Labour Market in Australia Improve the Employment Conditions of Women?' (2001) 7 *Feminist Economics* 53

Sutherland, Carolyn, 'Reframing the Regulation of Equal Employment Opportunity: *The Workplace Gender Equality Act 2012* (Cth)' (2013) 26 *Australian Journal of Labour Law* 102

Sutherland, Carolyn, 'All Stitched Up? The 2007 Amendments to the Safety Net' (2007) 20 *Australian Journal of Labour Law* 245

Swinton, Katherine, 'Accommodating Equality in the Unionized Workplace' (1995) 33 *Osgoode Hall Law Journal* 703

Thiagarajah, Lydia and Amanda Darshini Selvarajah, 'COVID-19 and the FBT Child Care Exemption: Examining the Restrictive Tax Ruling Defining "Business Premises"' (2022) 37(4) *Australian Tax Forum* 521

Thornton, Margaret, *The Liberal Promise: Anti-Discrimination Legislation in Australia* (Oxford University Press, 1990)

Tuohy, Wendy, 'Paying Dads to Take Six Months' Leave "Could Help Close the Gender Pay Gap"', *The Sydney Morning Herald* (online, 14 February) <<https://www.smh.com.au/national/paying-dads-to-take-six-months-leave-could-help-close-the-gender-pay-gap-20210212-p5724g.html>>

van Egmond, Marcel et al, 'A Stalled Revolution? Gender Role Attitudes in Australia, 1986–2005' (2010) 147 *Journal of Population Research* 14

van Wanrooy, Brigid, 'Women at Work in Australia: Bargaining a Better Position?' (2009) 35 *Australian Bulletin of Labour* 611

- Wagner, Gabriele, 'The Two Sides of Recognition: Gender Justice and the Pluralization of Social Esteem' (2011) 12 *Critical Horizons* 347
- Wang, Jing and Anil Verma, 'Explaining Organizational Responsiveness to Work-Life Balance Issues: The Role of Business Strategy and High-Performance Work Systems' (2012) 51 *Human Resource Management* 407
- Waterhouse, Jennifer and Linda Colley, 'The Work-Life Provisions of the Fair Work Act: A Compromise of Stakeholder Preference' (2010) 36 *Australian Bulletin of Labour* 154
- Wever, Kirsten S, 'Negotiating Equality? Women, Work, and Organized Labor in the European Union' in Thomas A Kochan and David B Lipsky (eds), *Negotiations and Change* (Cornell University Press, 2018) 244
- Whitehouse, Gillian, 'Industrial Agreements and Work/Family Provisions: Trends and Prospects under "Enterprise Bargaining"' (2001) 12 *Labour & Industry* 109
- Whitehouse, Gillian and Betty Frino, 'Women, Wages and Industrial Agreements' (2003) 6(4) *Australian Journal of Labour Economic* 579
- Widiss, Deborah A, 'The Hidden Gender of Gender-Neutral Paid Parental Leave Examining Recently-Enacted Law in the United States and Australia' (2021) 41 *Comparative Labor Law and Policy Journal* 723
- Wilkins, Roger et al, *The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 19* (16th Annual Statistical Report, 2022)
- Wilkins, Roger et al, 'The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 17' (Research Report, Melbourne Institute: Applied Economic & Social Research, 2019)
<https://melbourneinstitute.unimelb.edu.au/__data/assets/pdf_file/0011/3127664/HILDA-Statistical-Report-2019.pdf>
- Williamson, Sue, 'Bargaining for Gender Equality in the Australian Public Service' (2009) 20 *Labour & Industry* 159, 162
- Williamson, Sue, 'A Literature Review on Bargaining for Family Friendly Working Arrangements' (University of New South Wales, 2007)
- Wood, Danielle, Kate Griffiths and Owain Emsile, 'Cheaper Childcare: A Practical Plan to Boost Female Workforce Participation' (Research Report, Grattan Institute, August 2020)
<<https://grattan.edu.au/wp-content/uploads/2020/08/Cheaper-Childcare-Grattan-Institute-Report.pdf>>.
- Wooden, Mark, 'Enterprise Bargaining and the Gender Earnings Gap' (1997) 23 *Australian Bulletin of Labour* 214
- Workplace Gender Equality Agency, 'WGEA Reforms: A Roadmap to Closing the Gender Pay Gap', (Web Page) <<https://www.wgea.gov.au/about/our-legislation/Closing-the-gender-pay-gap-bill-2023>>
- Workplace Gender Equality Agency, 'Australia's Gender Equality Scorecard: Key Results from the Workplace Gender Equality Agency's Employer Census 2021–22' (Report, December 2022) 42<<https://www.wgea.gov.au/sites/default/files/documents/WGEA-Gender-Equality-Scorecard-2022.pdf>>
- Workplace Gender Equality Agency, '2020 Leaders in Workplace Gender Equality Announced' (Media Release, 25 February 2020) <<https://www.wgea.gov.au/newsroom/media-releases/2020-leaders-in-workplace-gender-equality-announced>>
- Workplace Gender Equality Agency, 'Australia's Gender Equality Scorecard (Web Page, December 2022) <<https://www.wgea.gov.au/sites/default/files/documents/WGEA-Gender-Equality-Scorecard-2022.pdf>>
- Workplace Gender Equality Agency, 'Guide to Citation: WGEA Employer of Choice for Gender Equality 2020–21' (Guide, 2020) <<https://www.wgea.gov.au/sites/default/files/documents/2020-05-01-2020-21%20Guide%20to%20Citation%20v2.0.pdf>>

Workplace Gender Equality Agency, 'Gender Workplace Statistics at a Glance 2020' (Web Page, 13 August 2020) <<https://www.wgea.gov.au/data/fact-sheets/gender-workplace-statistics-at-a-glance-2020>>

Workplace Gender Equality Agency, 'International Gender Equality Reporting Schemes' (Web Page, 8 April 2019) <<https://www.wgea.gov.au/publications/international-gender-equality-reporting-schemes>>

Workplace Gender Equality Agency, 'Gender Segregation in Australia's Workforce' (Factsheet Series, April 2019) 12

Workplace Gender Equality Agency, 'It's Luck of the Draw for Parental Leave' (Web Page, 19 November 2019) <<https://www.wgea.gov.au/newsroom/its-the-luck-of-the-draw-for-parental-leave>>

Workplace Gender Equality Agency, 'Employers Need to Care More about Carers' (Web Page, 22 November 2018) <<https://www.wgea.gov.au/newsroom/employers-need-to-care-more-about-carers>>

Workplace Gender Equality Agency, 'Towards Gender Balanced Parental Leave: Australian and International Trends' (Insight Paper, Workplace Gender Equality Agency, 11 October 2017) <<https://www.wgea.gov.au/sites/default/files/documents/gender%20balanced%20parental%20leave.pdf>>

Workplace Gender Equality Agency, 'Reporting' (Web Page) <<https://www.wgea.gov.au/what-we-do/reporting>>

Workplace Gender Equality Agency, 'Employer of Choice Citation' (Web Page) <<https://www.wgea.gov.au/what-we-do/employer-of-choice-for-gender-equality>>

Workplace Gender Equality Agency, 'Flexible Work' (Web Page) <<https://www.wgea.gov.au/flexible-work>>

Workplace Gender Equality Agency, 'The ABS Data Gender Pay Gap' (Article) <<https://www.wgea.gov.au/data-statistics/ABS-gender-pay-gap-data#:~:text=Australia's%20national%20gender%20pay%20gap,less%20than%20men%20each%20week>>

Workplace Gender Equality Agency, 'Gender Equality Strategy Guide' (Guide, October 2019) 4 <https://www.wgea.gov.au/sites/default/files/documents/2019_WGEA_GE_Strategy_Guide.pdf>

Workplace Gender Equality Agency, 'WGEA Data Explorer' <<https://data.wgea.gov.au/>>

Workplace Gender Equality Agency, 'Non-Compliant Organisations List' (Web Page, 22 January 2021) <<https://www.wgea.gov.au/non-compliant-list>>

Workplace Gender Equality Agency, 'WGEA Employer of Choice for Gender Equality 2023–25', (Guide) 18–20 <<https://www.wgea.gov.au/sites/default/files/documents/2023-04-20%20-%202023-25%20Guide%20to%20Citation%20v1.0.pdf>>

Young, Iris Marion, *Justice and the Politics of Difference* (Princeton University Press, 1990)

B Cases

Ambulance Victoria v Fyfe [2023] FWCFB 104

Australian Licenced Aircraft Engineers Association v Qantas Airways Limited (2013) 234 IR 418 [89] ('*ALAEA v Qantas*')

Australian Workers' Union v Australian Trainers' Association [2009] FWA 418 [9]

Burleigh Marr Distributions Pty Ltd (t/a Bidfood Gold Coast) v Carroll [2020] FWC 6762c

Chen and Secretary, Dept of Social Services (Social Services Second Review), Re (2023) 179 ALD 109

Coal & Allied Mining Services Pty Ltd v MacPherson (2010) 185 FCR 383)

Community and Public Sector Union v CSL Ltd (2002) 116 IR 84

Construction, Forestry, Maritime, Mining and Energy Union v Noorton Pty Ltd T/S Manly Fast Ferry [2018] FWCFB 7224

CSRN and Secretary, Dept of Social Services (Social Services Second Review), Re [2018] AATA 301
Equal Pay Case 1969 (1969) 127 CAR 1142
Escobar v Rainbow Printing Pty Ltd (No 2) (2002) EOC
Fair Work Ombudsman v Jewel Bay 2015 Pty Ltd & Anor [2019] FCCA 3561
 Goh and Secretary, Dept of Social Services (Social Services Second Review), Re (2019) 168 ALD 533
Hickie v Hunt & Hunt (1998) EOC
Howe v Qantas Airways Ltd (2004) 188 FLR 1
Kaler v Secretary, Dept of Social Services (Social Services Second Review), Re [2021] AATA 1920
Keys v Sydney Night Patrol and Inquiry Co Pty Ltd [2015] FCCA 776
Klein v Metropolitan Fire and Emergency Services Board (2012) 208 FCR 178, 206
 Krause and Secretary, Dept of Social Services, Re [2015] AATA 854; Miraschi and Secretary, Dept of Social Services, Re (2014) 144 ALD 171; Lim and Secretary, Dept of Social Services, Re [2013] AATA 817
Lodge v Federal Commissioner of Taxation (1972) 128 CLR 171
MacPherson v Coal & Allied Mining Services Pty Ltd (No 2) (2009) 189 IR 50
Mayer v Australian Nuclear Science and Technology Organisation (2003) EOC
Police Federation of Australia (Victoria Police Branch) (t/a Police Association of Victoria) v Victoria Police/Chief Commissioner of Police [2021] FWC 5983
Poppy v Service to Youth Council Inc (2014) 318 ALR 195
 Reilly and Secretary, Dept of Social Services (Social Services Second Review), Re [2020] AATA 3747
Saad v Ada Evans Chambers Pty Ltd (2018) 279 IR 72
Sayed v Construction, Forestry, Mining and Energy Union (2015) 327 ALR 460
Stanley v Service Youth Council Inc (2014) 225 FCR 317
Treston v Civil Aviation Safety Authority (an Australian Government Public Service Agency) T/A CASA [2022] FWC 248
Turnbull v Symantec (Australia) Pty Ltd (2013) 280 FLR 196 [50]–[64]
Wilkie v National Storage Operations Pty Ltd [2013] FCCA 1056
Williams v Macmahon Mining Services Pty Ltd (No 2) (2009) 187 IR 426
Wolfe v Australia and New Zealand Banking Group Ltd [2013] FMCA 65
Working Hours Case July 2002 (2002) 114 IR 390
 XKYN and Secretary, Dept of Social Services (Social Services Second Review), Re [2019] AATA 5605

C Legislation

Administrative Appeal Tribunal Act 1975 (Cth)
Affirmative Action (Equal Employment Opportunity for Women) Act 1986 (Cth)
Anti-Discrimination Act 1991 (ACT)
Anti-Discrimination Act 1977 (NSW)
Anti-Discrimination Act 1992 (NT)
Anti-Discrimination Act 2011 (NT)
Anti-Discrimination Act 1991 (Qld)

Anti-Discrimination Act 1998 (Tas)
Anti-Discrimination Act 1984 (WA)
Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022 (Cth)
Australian Human Rights Commission Act 1986 (Cth)
Equal Opportunity Act 1984 (SA)
Equal Opportunity Act 2010 (Vic)
Carer Recognition Act 2010 (Cth)
Consultation Clause in Modern Awards [2013] FWCFB 10165 [35]
 Crimes (Amount of Penalty Unit) Instrument 2023 (Cth)
Discrimination Act 1991 (ACT)
Equal Opportunity Act 1984 (SA)
Equal Opportunity Act 1955 (Vic)
Equal Opportunity Act 1984 (WA)
Equal Opportunity for Women in the Workplace Act 1999 (Cth)
Explanatory Memorandum, Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 (Cth)
 Explanatory Memorandum, Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023
 Explanatory Memorandum, Fair Work Bill 2008 (Cth) r 45
 Explanatory Memorandum, Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) Bill 2020 (Cth), House of Representatives (Explanatory Memorandum) at ii, xxix–xxxix.
 Explanatory Memorandum, Fair Work Amendment Bill 2013 (Cth)
 Explanatory Memorandum, Family Assistance Legislation Amendment (Jobs for Families and Child Care Package) Bill 2016 (Cth)
https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5696_ems_c766f19f-8199-479c-b840-a818e3db13d6/upload_pdf/489987.pdf;fileType=application%2Fpdf
 Explanatory Memorandum, Family Assistance Legislation Amendment (Cheaper Child Care) Bill 2022 (Cth)
 Explanatory Memorandum, Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2016 (Cth)
Fair Work Act 2009 (Cth)
Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 (Cth)
 Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) Bill 2020 (Cth)
Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 (Cth)
Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023 (Cth)
Family Assistance Legislation Amendment (Cheaper Child Care) Act 2022 (Cth)
 Family Assistance Legislation Amendment (Cheaper Child Care) Bill 2022 (Cth)
Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017 (Cth)
Family-Friendly Working Arrangements [2018] FWCFB
Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 (Cth)
Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023 (Cth)
Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017 (Cth)
Fringe Tax Benefits Assessment Act 1986 (Cth)
Gender Equality Act 2020 (Vic)

Maternity Allowance Act 1912 (Cth)
Maternity Leave (Commonwealth Employees) Act 1973 (Cth)
A New Tax System (Family Assistance) Act 1999 (Cth)
Paid Parental Leave Act 2010 (Cth)
Paid Parental Leave Amendment (Flexibility Measures) Act 2020 (Cth)
Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Act 2022 (Cth)
Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measures) Act 2012 (Cth)
 Paid Parental Leave Rules 2020 (Cth) r 26
Republic Act No 10028: An Act Expanding Breastfeeding Promotion Act of 2009 (Philippines)
Sex Discrimination Act 1984 (Cth)
Sex Discrimination Act 1994 (Tas)
Workplace Gender Equality (Minimum Standards) Instrument 2023 (Cth)
Workplace Gender Equality Act 2012 (Cth)
Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Act 2023 (Cth)
Workplace Gender Equality (Matters in Relation to Gender Equality Indicators) Instrument 2013 (No 1) (Cth)
Variation on the Commission's Own Motion — Flexible Work Amendments and Unpaid Parental Leave [2023] FWCFB

D Other

Abbott, Tony and Scott Morrison, 'Jobs for Families Child Care Package Delivers Choice for Families' (Joint Press Release, Prime Minister's Office, 10 May 2015)
 <<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressre1%2F3825778%22>>

ACT Chief Minister, 'Statement: ACT Chief Minister' (Statement, 23 March 2020)

Australian Bureau of Statistics, 'One in 20 Dads Take Primary Parental Leave' (Media Release, 4125.0, 19 September 2017)

Australian Bureau of Statistics, *Labour Force, Australia, Detailed—Electronic Delivery*, cat. no. 6291.0.55.001, ABS, December 2020

Australian Government, 'Women's Workforce Participation — An Economic Priority', *Towards 2025: An Australian Government Strategy to Boost Women's Workforce Participation* (Web Page)
 <<https://womensworkforceparticipation.pmc.gov.au/index.html>>

Australian Taxation Office, 'Fringe Benefits Tax — A Guide for Employers' (Web Page, 8 December 2020) <<https://www.ato.gov.au/law/view/document?DocID=SAV%2FFBTGEMP%2F00002>>

Standing Committee on Family and Human Services, *Balancing Work and Family: Report on the Inquiry into Balancing Work and Family* (Commonwealth of Australia, 2006) 233 [7.2]

Application by Metropolitan Fire and Emergency Services Board [2019] FWC 106

Australian Competition and Consumer Commission, 'Childcare Inquiry' (Web Page)
 <<https://www.accc.gov.au/focus-areas/inquiries-ongoing/childcare-inquiry>>

Australian Tax Office, 'Fringe Benefits Tax — A Guide for Employers' (Web Page, 1 July 2021)
 <<https://www.ato.gov.au/law/view/document?docid=SAV/FBTGEMP/00021&PiT=20170711000001>>

Australian Services Union (Qantas Airways Limited) Agreement 9 [2011] FWA 3632

The Australian Catholic University Staff Enterprise Agreement 2010 [2011] FWA 3693

Commonwealth of Australia, 'Budget October 2022–23: Expanding Paid Parental Leave', *Budget Australia* (Web Page) https://budget.gov.au/2022-23-october/content/factsheets/download/factsheet_parental_leave.pdf

Commonwealth of Australia, 'Budget October 2022–23: Cheaper Child Care', *Budget Australia* (Web Page) https://budget.gov.au/2022-23-october/content/factsheets/download/factsheet_child_care.pdf

Commonwealth of Australia, 'Budget October 2022–23: Expanding Paid Parental Leave', *Budget Australia* (Web Page) https://budget.gov.au/2022-23-october/content/factsheets/download/factsheet_parental_leave.pdf

Convention Concerning the Revision of the Maternity Protection Convention (Revised) 1952, ILO/C183 art 10

Department of Social Services, 'Early Years Strategy' (Web Page, 20 January 2023) <https://www.dss.gov.au/families-and-children-programs-services/early-years-strategy>

Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on Work-Life Balance for Parents and Carers and Repealing Council Directive 2010/18/EU [2019] OJ L 188, art 31

Fair Work Commission, 'Modern Awards' (Web Page, 18 September 2020) <https://www.fwc.gov.au/awards-and-agreements/awards/modern-awards>

Fair Work Commission, 'Equal Pay Case 1969' (Web Page, 10 Jan 2017) <https://www.fwc.gov.au/waltzing-matilda-and-the-sunshine-harvester-factory/historical-material/equal-pay-case-1969>

Fair Work Ombudsman, 'Effective Dispute Resolution' (Web Page) <https://www.fairwork.gov.au/tools-and-resources/best-practice-guides/effective-dispute-resolution#dispute-resolution>

Fair Work Ombudsman, 'Parental Leave' (Web Page) <https://www.fairwork.gov.au/tools-and-resources/best-practice-guides/parental-leave>

Fair Work Ombudsman, 'Pay Secrecy, Job Ads and Flexible Work' (Web Page, 6 January 2023) <https://www.fairwork.gov.au/newsroom/news/secure-jobs-better-pay/pay-secrecy-job-ads-and-flexible-work#job-ads>

Furqan and Secretary, Dept of Education, Skills and Employment (Social Services Second Round Review), Re [2021] AATA 2916

Gillard, Julia, 'BUDGET 2009–10: Rudd Government Delivers Paid Parental Leave' (Media Release, Department of Education, Skills and Employment, 12 May 2009)

Gillard, Julia, Wayne Swan and Jenny Macklin, 'Productivity Commission to Investigate Paid Maternity Leave' (Media Release, Department of Education, Skills and Employment, 17 February 2008)

Government of Iceland, 'Maternity and Paternity Leave in Iceland', *Work in Iceland* (Web Page) <https://work.iceland.is/living/maternity-and-paternity-leave/>

He and Secretary, Dept of Education, Skills and Employment (Social Services Second Round Review), Re [2021] AATA 4307

Norman, Jane, 'Tony Abbott Reframes Paid Parental Leave Scheme As "Holistic Families Package" Following "Community Concern"', *ABC News* (online, 8 December 2014) <https://www.abc.net.au/news/2014-12-08/paid-parental-leave-scheme-tony-abbott-acknowledges-concern/5950302?nw=0&r=HtmlFragment>

NSW Health, 'Community Urged to Help Prevent Coronavirus' (Media Release, 27 February 2020)

Parliament of Australia, 'Select Committee on Work and Care' (Web Page) https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Work_and_Care

National Museum Australia, 'Maternity Allowance Introduced' (Web Page, 28 April 2021) <https://www.nma.gov.au/defining-moments/resources/maternity-allowance-introduced>

O'Neill, Steve 'Paid Maternity Leave' (E-Brief, Parliament of Australia, 11 August 2004) <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/archive/maternityleave>

Office for Women in the Department of Families, Housing, Community Services, and Indigenous Affairs, 'Reform of the Equal Opportunity for Women in the Workplace Act 1999' (Regulation Impact Statement, 2011)

Rishworth, Amanda, 'Parents to Benefit from Paid Parental Leave Changes to Support Gender Equality' (Media Release, 6 March 2023) <<https://ministers.dss.gov.au/media-releases/10531#:~:text=The%20Senate%20today%20passed%20the,to%20be%20with%20their%20children>>

Services Australia, 'How to Claim' (Web Page, 3 April 2023) <<https://www.servicesaustralia.gov.au/how-to-claim-parental-leave-pay-for-child-born-or-adopted-before-1-july-2023?context=64475#:~:text=Sign%20in%20to%20myGov.,prompts%20to%20complete%20your%20claim>>

Services Australia, 'Providing Parental Leave Pay' (Web Page, 10 December 2021) <<https://www.servicesaustralia.gov.au/providing-parental-leave-pay?context=23121>>

Services Australia, 'Reviews and Appeals of a Centrelink Decision' (Web Page, 23 May 2023) <<https://www.servicesaustralia.gov.au/reviews-and-appeals-centrelink-decision?context=64107>>

Services Australia, 'Transferring Your Payment' (Web Page, 13 October 2020) <<https://www.servicesaustralia.gov.au/individuals/services/centrelink/parental-leave-pay/who-can-get-it/transferring-your-payment>>

University of Melbourne Enterprise Agreement 2013 [2014] FWCA 1133

World Health Organization, 'Infant and Young Child Feeding', *World Health Organization* (Fact Sheet, 9 June 2021) <<https://www.who.int/en/news-room/fact-sheets/detail/infant-and-young-child-feeding>>