



**Submission to the Commonwealth Ombudsman
Issues Paper "Mistakes and Unintended
Consequences– a safety net approach"**

January 2010

Carers Australia is the national peak body representing the diversity of Australians who provide unpaid care and support to family members and friends with a disability, mental illness or disorder, chronic condition, terminal illness or who are frail.

Carers Australia believes all carers, regardless of their cultural and linguistic differences, age, disability, religion, socioeconomic status, gender identification and geographical location should have the same rights, choices and opportunities as other Australians.

They should be able to enjoy optimum health, social and economic wellbeing and participate in family, social and community life, employment and education. These rights should be mandated in legislation.

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**CA Submission to the Commonwealth Ombudsman Issues Paper
“Mistakes and Unintended Consequences— a safety-net approach”**

Title:

Date:

January 2010

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About Carers Australia

Carers Australia is the national peak body representing those Australians who provide unpaid care and support to family members and friends with a disability, mental illness or disorder, chronic condition, terminal illness or who are frail.

Carers Australia's members are the Carers Associations in each state and territory that deliver specialist information, counselling and other services to carers in the community. Carers Australia is informed about carer issues through its member Carers Associations (the Network of Carers Associations) and its participation in national and international forums.

We believe that all carers are entitled to the same rights, choices and opportunities as other Australians in order to enjoy optimum health, social and economic wellbeing and to participate in family, social and community life, employment and education.

About Australia's Carers

Australia has almost 2.6 million carers, and nearly 500,000 of these are primary carers – the people who provide the most care.¹

Carers are sometimes referred to as 'family carers' to distinguish their role from other caring roles in our society such as paid care providers, foster carers, parents or guardians.

Many carers are termed 'sandwich carers or the sandwich generation' because they care for more than one person – a frail parent, a partner or a child with a disability or chronic condition. Anyone, anytime can become a family carer and the caring journey can last a lifetime. This can be from the birth of a child through to their own inability to continue to provide care because of age or illness.

Carers are the foundation of our aged and community care systems, and the annual replacement value of the vital care they provide is over \$30.5 billion. In 2005 it is estimated that carers provided 1.2 billion hours of unpaid care and the productivity loss of this care is approximately \$4.9 billion.²

Diversity of carers

Carers are from all walks of Australian society and come into the caring journey at various stages throughout their life. Carers are young, of working age, older, Aboriginal and Torres Strait Islanders, they live in rural and remote areas, and may have been born outside Australia. The Australian Bureau of Statistics has identified:

- 350,000 Australians under the age of 25 provide care to a family member who has a disability, or a mental or chronic illness³
- 170,000 carers under the age of 18⁴
- 31,600 Indigenous carers over the age of 15⁵
- 620,000 of Australia's carers born outside Australia⁶
- 366,700 of those born in other than main English-speaking countries.⁷

Introduction

Carers Australia welcomes the opportunity to respond to this important issues paper. One of the unintended consequences of a lack of flexibility in government processes and legislation is the significant difficulties that can emerge for family carers.

The stress associated with caring, and the lack of certainty, time and finances many family carers experience, means that many carers need a great deal of understanding, consideration and support. However, the vital assistance they provide can easily be complicated by barriers associated with inflexible legislation, policies or processes.

Carers Australia works to ensure that the impacts of legislation and policy on carers are considered throughout the process of development, implementation and review. Often, we find the needs of family carers overlooked in these processes, despite their presence as a large demographic with crucial involvement across a vast range of areas including disability, health, ageing, education, housing and social welfare.

Carers particularly come up against barriers in legislation and regulation that sit under those departments most directly dealing with carer issues, including the Department of Families, Housing, Community Services and Indigenous Affairs (Centrelink) and the Department of Health and Ageing. However, the potential impacts of legislation and policy across many other portfolio areas should not be understated.

Even across portfolio areas that may not be automatically associated with carers themselves, unintended consequences can have significant impacts on carers. To provide an example: the Department of Veterans' Affairs' recent 'Review of Military Compensation Arrangements' involved a review of the compensation paid to veterans and their families. Any changes introduced in this area have the capacity to affect the lifestyles and future financial security of those carers of veterans in receipt of military compensation.

This potential for wide-ranging unforeseen impacts on carers, dictates a need for adequate consideration of their needs across the gamut of government policy areas. Carers Australia has long campaigned government and its departments for the inclusion of a 'Carer Impact Statement' in all relevant policies. However, this simple and low-cost initiative to reduce the risk of negative impacts for carers has yet to be given due consideration.

This submission outlines four recent case examples that have come to the attention of Carers Australia and illustrate the ability for unforeseen consequences of inflexible legislation to have important ramifications for family carers.

These examples provide evidence that unintended consequences can have significant and palpable impacts on carers and demonstrate the clear need for legislative safety nets. Safety net processes would reduce or altogether avoid incidents where carers are negatively impacted by policy or legislation.

Introducing a Carer Impact Statement as an overarching safety-net mechanism for family carers, would have benefits not only for carers themselves and those for whom they care, but for government and the broader community which benefit greatly from the invaluable ongoing contribution of unpaid care provided by family carers.

Case Studies

Case Study 1: Disability Support Payments

Any Australian who needs to be posted overseas as a requirement of their employment and who is the legal guardian of an adult child with physical and intellectual disabilities in receipt of DSP, can experience significant consequences as a result of social security legislation.

Social security legislation dictates that those in receipt of Disability Support Payment (DSP) will have their payments suspended indefinitely after an absence of 13 weeks from Australia. While they are able to reapply for the payment once back in Australia, there is no guarantee that the application will be successful at this later date. While the loss of DSP can in itself cause difficulties, this regulation also has further consequences for caring families.

The realities of legal guardianship are not taken into account. Legal guardianship implies a level of responsibility on the part of the guardian for another person. It is often the case that the person with the disability is not able to live away from the family. Therefore, this legislation and its implications can directly influence a caring family's decision to either accept overseas positions, or to remain in Australia.

The impacts of this legislation can be substantial and can influence caring families into making career decisions with very serious consequences:

- families may be split
- unsuitable care arrangements may be made
- career progression may be limited.

Taken individually, each of these impacts have serious ramifications, when combined they are even more life-altering. These issues can apply to any person in this situation for which overseas travel is a requirement of their employment. Caring families must be protected from significant impacts such as this.

The way in which the issue is addressed now will directly impact on future instances. When such issues are addressed, it is essential that they are fixed at a systemic level and that government ensures that enough flexibility is introduced to account for similar problems that may occur in future.

The need to revisit legislation to determine its ongoing value is also an issue to be considered in preventing negative legislative consequences. The unintended consequence of this social security legislation can be attributed in part to the purpose and applications of Disability Support Payment having changed greatly over time since it was established, while the related policy and legislation as not kept up.

Case Study 2: Young carer students and the 25 hour rule

A 21 year old young carer had a life-long dream of becoming a doctor. She persevered through her secondary schooling and studied hard.

Finishing school as primary carer for her mother had been challenging, but she consistently worked to keep her grades up and was determined to make the most of her hard work by applying for medicine at university. She was accepted into the university of her choice and began her first year of medical study.

However, she soon realised that the change of situation would have an impact her eligibility for Carer Payment. The '25 hour rule': the requirement that no more than 25 hours of education, employment or volunteer work can be undertaken per week while receiving Carer Payment, now applied to her situation.

The required study time for her course (and medical courses elsewhere) exceeded 25 hours a week. With travel time to and from university also taken into account under the rule, her surplus of hours was even greater.

Carer Payment would provide much needed support for this young carer as she is unable to work while studying and providing care to her mother. As a payment tailored to the needs of carers, it would also allow her to access additional supports that other payments such as Austudy would not. The payment also provides recognition of her role as carer, something that this young carer values very highly.

In order to make the best of her situation, this young carer then had to make the difficult decision to give up her place studying medicine, opting instead to undertake an alternate course of study with less intensive hours that would allow her to study and be eligible for Carer Payment. She has had to sacrifice her pursuit of a career in medicine as a direct result of the '25 hour rule'.

She remains determined not to sacrifice her own goals and life opportunities because of her caring role, but is left disappointed that she is unable to overcome this legislative barrier which stands between her and her dream.

This case reveals that there is an entire demographic of young carers whose life decisions can be greatly affected by the legislation, but were not considered at the time of drafting or implementation. It also clearly demonstrates the potential need for exemptions from policy requirements as negative impacts emerge.

Carers Australia has been calling for the exemption of study and travel hours from the 25 hour rule— as study is not an alternative source of income as paid work would be for a working carer— or alternatively, the exemption of all young carers from this requirement.

Supporting young carers is particularly important as young carers are less likely to complete secondary education than their non-carer peers and have an increased likelihood of low socio-economic status over their lifetime.

Exempting this group or providing more flexible eligibility requirements would not affect the intended outcomes of the legislation. Ultimately, changes to the underlying legislation are required in order to adequately address this issue.

Recently, Carers Australia has been involved in the restructure of legislation and processes relating to Carer Payment (child). The resources required to make these adjustments were long overdue and has required a substantial commitment of time and resources to implement.

Alterations to legislation and related policy are often expensive and lengthy and therefore not usually a process that government will readily undertake. For organisations lobbying for change, convincing the government of the need for a significant investment to enact such changes is complicated in the absence of a simple process for questioning and renegotiating policy and legislation.

Case Study 3: The Northern Territory Emergency Response (NTER) and welfare reform measures

Recent changes to welfare payments as part of the Northern Territory Emergency Response (NTER) initiatives came to the attention of Carers Australia because of their ability to impact on carers in families in receipt of income support payments.

This was particularly apparent in the introduction of pilot programs in several QLD districts involving the suspension of income support payments to encourage school attendance and engagement.

In the design of the policy for these pilots, the negative impacts for those families in with caring responsibilities was either not considered, or not adequately accounted for. Of particular concern for Carers Australia were the potential negative impacts on young carers who often have difficulty balancing care requirements with schooling.

This measure, which penalises young carers and their families for lack of attendance instead of assisting them to meet their educational requirements, could easily result in significant negative outcomes for this group.

In response to this case, Carers Australia has been informed by government that concessions or exemptions from the regulations will be made in 'special circumstances' which can encompass caring responsibilities. However, there is still no safeguard in place to protect this group for being negatively affected without good cause.

Carers Australia has also not been reassured by the government's response that those carers adversely affected in the first instance would eventually have this rectified by government through a process of intervention by social workers and reconsideration of their case at this time.

The more responsible approach would be to protect caring families as a group from adverse effects (which could be significant), rather than including them under catch-all reforms that are designed to encompass

all welfare payment recipients and then providing a 'fix' for carers who experience negative outcomes. By this time, much of the damage will have been done.

In this case we believe adequate consideration has not been given to the seriousness of adverse impacts for caring families, or to the differing nature of demographic groups within the Centrelink client pool; essentially all client groups have instead been 'lumped' together.

Further, this example may indicate a more worrying "wait and see" approach being adopted by government in response to problems arising from legislation or policy, where action is not taken until it is too late.

There is also the real danger of government taking a more relaxed approach toward potential negative consequences stemming from programs or policies in 'pilot' form. However, if this occurs, issues can easily remain unaddressed and be carried through unchanged in subsequent extensions of these pilot programs with significant consequences.

Case Study 4: Amendments to the Fair Work Act

Recent amendments to the Fair Work Act 2009 have introduced a new provision to support some carers in the workforce: as of 1 January 2010, parents of children with a disability under the age of 16 have the right to request flexible work arrangements.

Carers Australia has campaigned for all carers to have equal access to these rights as well as additional leave entitlements to support those who wish to combine work with caring. The potential impact of affording this right to only a small subset of carers can be seen in the following example:

A two-parent caring family of a son with a disability balance their caring responsibilities with work. By making use of the right to request flexible working arrangements, one parent is able to leave work at 2pm everyday to collect their son from his special needs school. This enables both parents to engage with the workforce and contribute to the household income and save for retirement.

However, when their son turns 16 everything changes. Their son is unable to continue schooling and the right to request flexible working arrangements no longer applies to the parents. As a result, the parent who had previously been able to request flexible arrangements must now give up work to care for their son full-time, thereby reducing the capacity to build retirement income.

The point of transition from 16 to over 16, from included to excluded that is defined under this legislation will probably make little sense to family carers who are impacted negatively as a result. Feedback from carers tells us that the need for flexible working arrangements is greater after the child turns 16. It is important that government is able to justify parameters in legislation or policy to those who are negatively affected by such decisions. The need to exclude certain groups or individuals from legislative changes should be carefully considered.

This case also provides an example where additional flexibility could have been built into the legislative changes with a view to broadening these parameters at a future date to be inclusive of all carers. However, this opportunity has not been considered.

Conclusion

Carers Australia believes that government policies often do not devote enough time or resources to the consideration of adverse effects or unintended consequences.

We believe carers and others in the community will be the ones to bear the cost of this, not only the cost to the taxpayer but the time, effort, stress of pursuing such matters, which in many cases, carers will simply find too difficult to do. A more reasoned approach to the development of policy and legislation that takes into account the needs of carers, could easily avoid much confusion and distress.

While community groups like Carers Australia will continue to lobby in order to bring negative outcomes to be attention of government and policy makers, we have often found that we are often engaged too late in the process for lobbying efforts to make any significant impact. The inflexible nature of legislation and policy can often also hinder lobbying efforts.

Safety net provisions should be encouraged where possible, but having safety nets in place should also be complemented by a culture that plans ahead and encourages greater consideration of potential impacts. Actions must also be taken to pre-emptively avoid negative consequences. Not to do so is irresponsible, particularly when it comes to protecting and assisting groups such as unpaid family carers who are greatly and unwittingly impacted once legislation is in effect or policy is put into practice.

Recommendation

Carers Australia recommends that the impact of policy and legislation on family carers be accounted for through the introduction of a Carer Impact Statement within all government legislation and policies across portfolios.

Reference

¹ Australian Bureau of Statistics (2004) 2003 Disability, Ageing and Carers: Summary of Findings, Australia, Canberra

² Access Economics (2005) The Economic Value of Informal Care, prepared for Carers Australia, Canberra

³ Australian Bureau of Statistics (2005a) 2003 Disability, Ageing and Carers, Australia: Caring in the Community, Cat No 4430.0.55.003 Canberra

⁴ *ibid*

⁵ Australian Bureau of Statistics (2008) The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples, 2008 Cat No 4704.0, Canberra, April 2008

⁶ Australian Bureau of Statistics (2003) Migrants, Disability, Ageing and Carers, Australia, 2003 Cat No 34150DS004, Canberra November 2007

⁷ *ibid*