

## Productivity Commission

### Position paper - extended unpaid carer leave entitlement

Submission

28 March 2023

## About ACCPA

The Aged & Community Care Providers Association (ACCPA) is a national Industry Association for aged care providers offering retirement living, seniors housing, residential care, home care, community care and related services.

ACCPA exists to unite aged care providers under a shared vision to enhance the wellbeing of older Australians through a high performing, trusted and sustainable aged care sector. We support our members to provide high quality care and services while amplifying their views and opinions through an authoritative and comprehensive voice to the government, community and media.

Our sector serves to make better lives for older Australians, and so do we.

# Background

The Productivity Commission's position paper<sup>1</sup> — *A case for an extended unpaid carer leave entitlement?* — was released on 28 February 2023.

The Productivity Commission's inquiry is in reference to recommendation 43 made by the Royal Commission into Aged Care Quality and Safety, for the Australian Government to assess the potential impacts of including an entitlement to extended unpaid leave for carers of older people in the National Employment Standards. The Productivity Commission was asked to examine:

- the potential impact of amending the National Employment Standards (NES) in Part 2-2 of the *Fair Work Act 2009* (Cth) to provide for a minimum statutory entitlement to extended unpaid carer leave for national system employees providing informal care to older people who are frail and living at home
- the social and economic costs and benefits from any change to the NES, including the impact on residential aged care services, and broader net impact on the economy.

The Productivity Commission's position paper noted the benefits informal carers make to the care and wellbeing of older people and the community as well as the challenges carers face juggling work and care which can impact carers' workforce participation and their health and wellbeing.

The Productivity Commission found an extended unpaid carer leave entitlement would benefit employees and the older person who would be cared for by the person who would take the leave. However, the suggested provisional model for extended unpaid carer leave would not substantially increase either the number of informal carers or their workforce participation and would impose costs on employers.

The Productivity Commission found that overall, there is not a strong case for amending the National Employment Standards to allow for an entitlement of 3-12 months of unpaid leave and importantly that extended unpaid carer leave was not the highest priority for the majority of carers.

In 2022, ACCPA provided a submission<sup>2</sup> on the Productivity Commission's issues paper.

This submission provides a response to the two draft recommendations, seven draft findings, and two information requests, in the Productivity Commission's position paper.

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<sup>1</sup> <https://www.pc.gov.au/inquiries/current/carers-leave/position>

<sup>2</sup> [https://www.pc.gov.au/data/assets/pdf\\_file/0004/345388/sub029-carer-leave.pdf](https://www.pc.gov.au/data/assets/pdf_file/0004/345388/sub029-carer-leave.pdf)

# Response

## Draft recommendations

### Draft recommendation 1

#### *Providing information about how to request flexible work to working carers*

*The Australian Government should ensure that carers of older people are provided with tailored information about flexible working arrangements and how to request them. This should include, at a minimum:*

- *developing fact sheets designed to help carers talk to their employer about flexible work. The fact sheets should take into account upcoming changes to flexible work provisions of the Fair Work Act 2009*
- *routinely providing the fact sheets to carers at key points in time, such as when they contact the Carer Gateway.*

### Comments on draft recommendation 1

ACCPA supports draft recommendation 1.

### Draft recommendation 2

#### *Reviewing definitions of care relationships in the National Employment Standards*

*The definition of ‘carer’ in the National Employment Standards is used for both paid and unpaid carer leave. Changing this definition is beyond the scope of this inquiry.*

*But the current definition only guarantees carer leave to employees providing care for an immediate family or household member. This can mean that people whose care relationships are broader than their immediate family or household (such as nieces, nephews, people with Aboriginal or Torres Strait Islander kin relationships or families of choice) are unable to access leave to provide care, and potential care recipients receive less care.*

*To address this, the Australian Government should review the eligibility restrictions in the National Employment Standards which limit access to carer leave based on strictly defined relationships between the employee and the person they care for. The review should look at how to amend the eligibility restrictions so that they better reflect the diverse caring relationships of Australian families, friends and communities, and reduce the extent to which carers are excluded from accessing key workplace supports.*

### Comments on draft recommendation 2

An expansion of the definition of ‘immediate family’ would likely have minimal impact on paid leave entitlements with a set quantum across a service year. However, it is important to recognise that consequences will flow beyond Personal/Carers Leave to ‘per occasion’ leave types like Compassionate Leave. Furthermore, the expansion of the definition may open up additional claims for unpaid leave. These flow on impacts are not cost neutral for an organisation and potentially add additional workforce burden for aged-care providers.

The current definition of ‘immediate family’ is clear, and able to be easily interpreted and applied by employers. Any change to the definition should similarly uphold clarity and recognise the administrative challenges for employers in its application.

In this context, ACCPA notes recommendation 17 from the Senate Select Committee on Work and Care Final Report March 2023<sup>3</sup>, to extend the definition of immediate family in the *Fair Work Act 2009* for the purposes of an employee accessing carer’s leave.

## Draft findings

### Draft finding 1

*An entitlement to extended unpaid leave for carers of older people should be designed to maximise the net benefits to the community*

*The design of an entitlement to extended unpaid leave for carers of older people should be guided by the objective(s) of an entitlement, evidence about the costs and benefits and likely impact of different design features and the need to avoid (or at least reduce) potential undesirable consequences.*

### Comments on draft finding 1

For employers with staff taking extended unpaid leave, the ability to quickly replace the employee going on leave is highly important. When the employer is only able to offer temporary employment to the replacing employee, this can reduce the talent pool and decrease the ability for the employer to find an appropriate candidate. It could prove difficult in the aged care sector to fill vacancies like this on either a permanent or temporary basis given the skills required and with the current significant workforce shortages. If understood as a potential impact across a provider’s entire workforce, this could potentially put at risk the delivery of care to residential aged care recipients and home care recipients.

### Draft finding 2

*A provisional model of extended unpaid carer leave, aligned to existing standards*

*The design features of the Commission’s provisional model of extended unpaid carer leave for carers of older people are:*

- *unpaid leave for 3–12 months (with the employee to specify the duration at the outset) with access to another period of leave 12 months after the last use*
- *a notice period of 4 weeks*
- *available to employees with at least 12 months of continuous service*
- *applied to businesses of all sizes and to regular casual workers*
- *evidence requirements in line with other National Employment Standards*

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<sup>3</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Work\\_and\\_Care/workandcare/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Work_and_Care/workandcare/Report)

## Comments on draft finding 2

Given the current significant workforce shortages, 4 weeks' notice is most likely to be insufficient to enable providers to source replacement staff for extended unpaid leave. Generally, the minimum notice period for unpaid parental leave is 10 weeks, with further confirmation 4 weeks before the expected leave. Given the potential length of the proposed unpaid carers entitlement (up to 12 months with opportunities for additional extended leave), we would recommend that the notice period mirrors the already established practice of 10 weeks relating to parental leave.

In addition, in keeping with other unpaid extended leave entitlements, extended unpaid carer leave should not count towards continuous service for the purposes of calculating entitlements such as Long Service Leave (although there will be no break in service).

On return from extended unpaid carer leave, the employee should not have the right to return to their previous role. In addition, the employer should only be required to provide as close to the number of previous hours as possible. For operational reasons, employers would need to be able to restructure roles even when an employee is on extended unpaid carer leave.

Employers should also have the right to refuse a request for extended unpaid carer leave on reasonable business grounds.

## Draft finding 3

*Extended unpaid leave in the National Employment Standards is not the highest priority*

*Adding an entitlement to 3–12 months extended unpaid leave to the National Employment Standards is an option that could help support informal carers of older people to juggle expectations and demands of work and family. The number of carers who would benefit would be small and the net benefit to the community would be modest at best.*

- *Extended unpaid leave would not substantially increase the number of informal carers or the workforce participation of carers, or reduce the demand for formal care.*
- *The benefit to carers would be limited as unpaid leave comes at a very high personal cost and most carers prefer flexible work arrangements.*
- *The entitlement would impose costs on employers, which could be passed through to their employees in the form of lower wage growth and reduced employment opportunities.*
- *Upcoming changes to the flexible working arrangements provisions of the Fair Work Act 2009 are expected to make it easier for carers to negotiate flexible work, perhaps obviating the need for change*

## Comments on draft finding 3

ACCPA agrees with draft finding 3.

## Draft finding 4

*The case for an entitlement is similar for all carers*

*The case to amend the National Employment Standards to include an entitlement to extended unpaid leave for carers of people with disability or illness is similar to the case for creating such an entitlement for carers of older people.*

*For reasons of equity and administrative simplicity, if there was a decision to amend the National Employment Standards to include an entitlement to extended unpaid carer leave, it would be reasonable to make it available to all carers.*

#### Comments on draft finding 4

This is a logical conclusion. Therefore, consideration needs to be given to how further widening of the scope/availability of the entitlement will impact employers financially and operationally.

#### Draft finding 5

*Informal carers need timely and high-quality supports*

*Formal care and respite care services for aged care recipients play a key role in supporting their carers. Continued progress with current and planned reforms to increase access to, and reduce waiting times for, these services is essential.*

#### Comments on draft finding 5

ACCPA agrees with draft finding 5.

#### Draft finding 6

*Working carers need access to flexible working arrangements*

*Working flexibly is highly valued by carers and is a key factor in enabling them to manage their work and caring commitments. The changes to the flexible working arrangements provisions of the Fair Work Act 2009 (due to commence in June 2023) are expected to make it easier for carers to negotiate working arrangements with their employers that will help them balance their work and care commitments.*

#### Comments on draft finding 6

Given the already broadened entitlements/protections regarding flexible working arrangements commencing operation in June 2023, expansion of the grounds for requesting flexible working arrangements will likely create additional operational and financial burdens for providers. These operational and financial burdens include (but are likely not limited to):

- Time and cost associated with administration and negotiation of additional flexible working arrangements, including potential engagement with the Fair Work Commission in the resolution of disputes around their management and refusal.
- Supporting flexible working arrangements on an ongoing basis in the context of a significant workforce shortage in the aged care sector. Consequent costs may include additional recruitment effort, as well as the use of additional agency staff to resolve gaps arising from flexible working arrangements that may include reductions in hours or requests for alternate hours as an example. There is an

understanding that these may constitute reasonable business grounds for refusing a request, however given the broadened provisions commencing in June, it is difficult to predict what impact the Fair Work Commission's powers to make orders in this respect will have.

## Draft finding 7

### *Evaluation of the effect on carers of legislative reforms to flexible working arrangements*

*There would be merit in waiting to consider the effect on carers of the upcoming changes to the flexible working arrangements provisions of the Fair Work Act 2009 prior to any decision on whether or not to introduce an entitlement to extended unpaid carer leave.*

## Comments on draft finding 7

ACCPA agrees with draft finding 7.

## Information requests

### Information request 1

*The Commission has put forward a provisional model for an entitlement to extended unpaid carer leave to care for an older person. We would like feedback on its features, and the costs and benefits of the provisional model. We are particularly interested in:*

- *the durations of leave carers are most likely to want to access extended unpaid carer leave*
- *how costly short-term leave is to businesses, and whether shortening the minimum leave duration would increase these costs significantly*
- *the potential costs and benefits of taking carer leave as a reduction in working hours over an extended period, rather than as an absence from work*
- *whether there are ways to design the entitlement to avoid potential negative effects, including on the recruitment and career progression of carers.*

## Comments on information request 1

Current workforce shortages would make an expansion of temporary arrangements very challenging for aged care providers as the supply is simply not there to support the proposed provisional model.

Notwithstanding the above, reductions in working hours are possible for office-based staff, however again, workforce supply for part-time roles particularly where the reduction is on a temporary basis, can create significant challenges. Means of attracting high quality office-based staff can at times be limited by financial constraints, and the pool of available candidates reduces further for short-term appointments.

## Information request 2

*The Commission has made draft recommendations designed to improve support provided to informal carers of older people.*

*We are seeking further information on:*

- *the expected effects on carers of upcoming changes to the flexible working arrangements provisions of the Fair Work Act 2009*
- *additional ways to support informal carers, beyond those discussed in this position paper.*

## Comments on information request 2

ACCPA has no further information at this stage in response to information request 2.