

**Productivity Commission
Carer Leave Issues Paper**

24 August 2022

About ACCPA

Aged and Community Care Providers Association (ACCPA) is the 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 (the Commission) has been tasked to look at carer leave matter in relation to Recommendation 43 of the Royal Commission into Aged Care Quality and Safety (the Royal Commission), with the Productivity Commission undertaking an inquiry 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 extend unpaid carer's¹ 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 Royal Commission noted there is no minimum statutory entitlement for an employee to take extended unpaid leave for the purpose of caring for an older family member or close friend.

To this end the Commission has released an issues paper (the Paper) for comment, with responses due to the Commission by 24 August 2022.

The Commission is to examine the economic and social impacts of providing a statutory leave entitlement to unpaid carers that provide informal care to older people who are frail and living at home, while offering employment protection on return to work, including considering the following:

- The adequacy of current leave arrangements
- Impacts on the labour market and employers from potential changes to the NES
- Economic and social costs and benefits from any changes to the NES
- Alternate ways to support informal carers, and
- The application of paid leave or long-term unpaid carer's leave for other types of care, such as for people with a disability, or having temporary or terminal illness.

ACCPA is pleased to respond to the issues paper and provide our response below.

¹ The Paper defines informal carers as people who provide unpaid care and support to family members and friends, see page 3.

Response

Defining extended unpaid carer leave

How is extended unpaid carer leave to be defined?

Extended unpaid carer leave could be defined as leave that is available to informal carers of older Australians, to provide unpaid carer support to an elderly family member or close relative.

The National Employment Standards (NES), if expanded to include a provision for *extended unpaid carer leave* would need to:

1. Define an unpaid carer²
2. Prescribe what constitutes 'extended leave', including prescribing the limits of the leave entitlement
3. Define the period an employee has to a 'right of return' and any conditions that may relate to such a right
4. Describe what 'reasonable grounds for refusal' might be for an employer to refuse a request for extended unpaid carer leave
5. Outline the eligibility criteria for the leave; and
6. Prescribe the evidentiary proof required when applying for extended unpaid carer leave.

ACCPA offers the following for consideration in relation to an extended unpaid leave entitlement:

- For the purposes of the proposed entitlement, an unpaid carer should be the primary carer providing unpaid personal care, support, and assistance to an elderly parent or close relative³
- The care recipient must be elderly⁴ or have a short term of terminal illness
- All permanent employees should be eligible for the leave entitlement
- To be eligible for the entitlement employees must have completed at least 12 months continuous service
- Applications for leave must be accompanied by appropriate evidence that would satisfy a reasonable person, for example a medical certificate or statutory declaration
- Extended leave is defined as being limited to a maximum of two years in duration, which can be taken for a period of twelve months with the option to request a further twelve months and which can be refused on reasonable business grounds and with a right of return for a maximum period up to two years, but not necessarily to the previous hours
- Where management, for operational reasons, needs to restructure roles they must be able to do this even where the incumbent is on extended unpaid leave. The employer must consider any consultation provisions of the prevailing industrial instrument, and
- Employees should have the right-to-request extended unpaid carer leave and employers the right to refuse on reasonable business grounds.

² Noting the Carer Recognition Act 2010 and its definition of a carer. Carer recognition Act 2010, Part 1 (4) Meaning of Carer. [Carer Recognition Act 2010 \(legislation.gov.au\)](http://legislation.gov.au)

³ Definition of 'family member' would need to be clearly defined in the expanded NES should this leave provision be included, we note existing NES provisions provide for a range of people to be covered

⁴ 'Elderly' would need to be defined, including for Aboriginal or Torres Strait Islander peoples

For how long would an employee have a right to return?

We note that the Royal Commission into Aged Care Quality and Safety (Recommendation 43) did not outline a specific model or propose how an entitlement would operate within the NES. Counsel Assisting the Royal Commission proposed up to two years of unpaid carer leave⁵.

We also note that the Paper describes OECD countries as increasingly introducing leave for carers, albeit most commonly for periods between three and six months⁶.

Employees should be entitled to request extended unpaid carer leave:

- After completing at least twelve months of continuous service
- Initially eligible for twelve months unpaid carer leave with provision for up to a further twelve months up to a maximum of two years; and
- An employee should have a right of return for two years, but not necessarily to their previous hours.

Employers must have the right to refuse requests for leave on reasonable business grounds.

Adequacy of existing leave provisions

What is the adequacy of existing leave provisions in the NES for carers⁷, and to what extent are the proposed changes required?

The NES contain a range of minimum employment entitlements that cover all employees whether covered by an award, enterprise agreement or employment contract⁸. The NES includes three standards that assist informal carers and provide for 10 days of personal/carer leave; 2 days of unpaid carer leave for each episode of care provided; and a right to request flexible working arrangement.

Currently the existing leave entitlements for carers are primarily intended for brief periods of care to deal with an illness or unexpected event or emergency⁹. These provisions are suitable for short term care requirements but are not adequate for extended periods of care.

ACCPA supports the introduction of a provision for extended unpaid carer leave that provides for an unpaid carer to request leave to care for a family member or close relative who is elderly or who has a temporary or terminal illness.

Having such a leave provision available is consistent with modern employment practices that provide for flexible working arrangements that are 'family friendly'.

Such an approach would also be consistent with attractive employment arrangements being available to employees in a tight labour market.

⁵ Carer Leave Issues Paper, Australian Government Productivity Commission, July 2022, p15

⁶ IBID, p15

⁷ See page 8 of the Paper for current standards under NES, including eligibility provisions

⁸ [National Employment Standards - Fair Work Ombudsman](#)

⁹ Carer Leave Issues Paper, Australian Government Productivity Commission, July 2022, p8

Regarding the impact an extended leave provision would have on the sector should it be extended beyond caring for older Australians (to also cover caring for people with a disability or having temporary or terminal illness).

ACCPA is supportive of the provision being extended beyond caring for the elderly to encompass caring for those with a temporary or terminal illness.

Terms such as 'temporary' and 'terminal' would need to be clearly defined with eligibility criteria in place, and independently verified (for example where extended carer leave is applied for to care for someone who is terminally ill, a medical practitioner would need to confirm the medical status of the person to be cared for).

Benefits to the older person of unpaid carer leave

The Paper notes that having an informal carer in place plays a significant role in helping older people to stay in their own homes for as long as possible and having a co-resident carer is associated with longer intervals between undergoing an aged care assessment and entering permanent residential care.

Being able to provide unpaid informal care brings great benefits to the care recipient (for example being able to stay in the location of their choice for longer) and the care giver.

Having provisions in the NES for extended unpaid carer leave provides for an entitlement for these carers to care for family members or close relatives, whilst taking leave from their work, and providing them the assurance of having a job to return to.

There are clear societal benefits to this approach, both to the care recipient but also to society more broadly, including through keeping people at home longer and delaying admission to residential aged care.

And whilst these benefits are not directly beneficial to aged care employers there is merit in providing skilled and valued aged care workers with a means to take extended unpaid carer leave and have them return to the workplace.

Contemporary workplaces must encompass *family friendly* employment practices. This is especially the case in a market where there are acute skills shortages¹⁰, including in aged care¹¹, and where there is very low unemployment.

It makes good sense to put in place measures that supports keeping skilled workers in the workforce.

¹⁰ As recognised by the announcement of a Jobs and Skills Summit for September 2022, [Jobs and Skills Summit | Treasury.gov.au](https://www.treasury.gov.au)

¹¹ A recent report indicated that there are increased rates of attrition in aged care with 65,000 workers leaving the sector each year; a worker shortfall of 35,000 per year; and an additional net increase of 17,000 direct care workers needed per year. (Duty of Care: Aged Care Sector in Crisis, ceda, 2022).

Impact of unpaid care on the care giver

The Paper notes that informal caregiving is associated with lower labor force participation (p6), with informal carers relatively more likely to be in part time employment than non carers.

The Paper describes unpaid caring being associated with lower labour force participation rates, particularly for those providing more than 20 hours of unpaid care per week¹². Unpaid carers are also more likely to be in part time employment.

Again, in a tight labour market with an acute shortage of aged care workers, measures are needed that enable unpaid carers of older Australians or those with a short-term or terminal illness to take extended unpaid carer leave and then, when the time is right return to their workplace.

Having provisions in place for extended unpaid carer leave will enable these unpaid carers to remain connected to their employer and not be in a position of having to make a choice between their job or caring for an elderly parent or family member. This has benefits to both the individual worker and their employer.

Effects of an entitlement to extend unpaid carer leave

The Commission notes that it is obliged to consider the interests of the community as a whole, rather than interests of particular groups (in this case either carers or employers), including the need to assess whether the proposed entitlement would confer a net community-wide cost or benefit.

The Paper acknowledges that the introduction of an extended unpaid carer leave provision in the NES would have a range of impacts broader than those on unpaid carers and their employers. Effectively the Commission needs to assess whether such a measure would have a net community benefit or cost. For the sake of this submission, we are limiting our response to impacts on the aged care sector.

In considering these matters we ask the Commission to undertake analysis of the proposed changes to the NES to determine whether there is an overall benefit or cost to aged care employers. We believe there is the potential for significant impost on providers, particularly for small providers and those in thin markets.

We ask the Commission to consider:

- What are the distributional consequences of the proposed change to the NES (who is experiencing the benefits and who is bearing the 'cost', or are they in relative equilibrium)? and
- If employers are shown to be shouldering a 'cost burden' from the proposed provision, what are these costs¹³ how might this burden be mitigated?

Employers will potentially experience significant costs to backfill staff taking extended leave, this needs to be factored into the Commissions deliberations.

¹² Carer Leave Issues Paper, Australian Government Productivity Commission, July 2022, p6

¹³ These could be for example costs associated with employing and training staff to cover those taking extended unpaid carer leave.

Employees should be required to expend paid leave provisions including annual or long service leave, prior to applying for extended unpaid carer leave, with a minimum balance required to be left available to the employee.

Effects on caring and other economic activity

Entitlements to extended unpaid carer leave would change the incentives that employees and employers face i.e. the leave entitlement could lead employees to take up leave and employers would have to manage the process and the related absences.

Extending the NES to include a provision for extended unpaid carer leave would create a cost for employers that would need to be managed. As we have discussed earlier, the Commission should determine what the employer relates costs would be, including the impact of these costs on a sector that is currently stressed financially¹⁴ and which is experiencing an acute workforce crisis¹⁵.

Whilst there are benefits to employers in having workers retained in the workforce (rather than leaving to provide unpaid care) there are costs related to backfilling those positions.

There is also the matter of an acute worker shortage which may mean aged care providers experience difficulty in backfilling those workers who take extended unpaid carer leave.

These costs / benefits must be weighed up carefully when considering the introduction of an extended unpaid carer leave provision.

In an environment of demonstrable workforce pressures, employers must have capacity to make discretionary decisions as to whether to grant requests for extended leave based on reasonable business operating grounds. 'Reasonable business operating grounds' should be defined so as to be clear to employers and employees.

Distributional effects of unpaid carer leave within families

The Paper notes there is a gender dynamic involved, as historically carer burden has predominantly fallen on females; and that this would be further reinforced. This entitlement would likely largely affect largely women with negative impacts on their income, superannuation, and savings.

An employee who has available to them a right to return to work would not be forced to make a choice between providing care to an older family member or close relative or leaving their work. This potentially has positive benefits to a person who may be in the prime of their earning capacity and may also minimise negative impacts on longer term financial security, including negative impact on superannuation accumulation that might occur if the person is forced to leave their job to provide extended unpaid care.

The large majority of workers in aged care are female, as are most unpaid carers, meaning the burden of caring is predominantly borne by females. The ability to access extended unpaid carer leave, with the right to return to their job may improve their longer-term financial security.

¹⁴ StewartBrown Aged Care Financial Performance Survey, September 2021, [2022 01 StewartBrown Aged Care Financial Performance Survey Sector Report - September 2021](#)

¹⁵ Duty of Care: Aged Care Sector in Crisis, ceda, 2022

