



A Case for an Extended Unpaid Carer Leave Entitlement? Response to Follow-up Position Paper Recommendations

**22nd March 2023
(Hearing 20th March 2023)**

Submitted to the Productivity Commission
Dr Catherine de Fontenay and Martin Stokie
Commissioners - Productivity Commission
Level 8, 2MQ, 697 Collins St, Docklands VIC 3008
Email: carersleave@pc.gov.au

Lived Experience Australia Ltd
Contact: Sharon Lawn
Chair & Executive Director
slawn@livedexperienceaustralia.com.au
PO Box 12, Oaklands Park SA 5046
Phone 1300 620 042
ABN: 44 613 210 889

Table of Contents

Table of Contents	2
Introduction.....	3
In summary, the Productivity Position Paper establishes that:	3
We reiterate the following:	3
Response to Draft Key Findings, Recommendations and Information Requests.....	4
Contact	11

Introduction

Lived Experience Australia Ltd (LEA) is a national representative organisation for Australian mental health consumers and carers, families and kin, formed in 2002 with a focus on the private sector. All members of our Board and staff have mental health lived experience as either a consumer, family carer or both.

Our core business is to advocate for systemic change to improve mental health care (including psychosocial disability) across the whole Australian health system. This includes advocating for empowerment of people with mental health lived experience (people with mental health conditions and their family, carers and kin) in the broad range of issues that impact their mental and physical health, and their lives more broadly. It includes empowering them in their own care and contact with health and social services, promoting their engagement and inclusion within system design, planning and evaluation and most importantly, advocating for systems promote choice, inclusion, justice and fairness, and address stigma, discrimination and prejudice. Our current submission comes from the perspectives and experiences of families, carers and kin with lived experience of mental health challenges.

We welcome the opportunity to provide our submission on the Productivity Commission's Position Paper and Recommendations arising from your earlier consultation on extended unpaid carer leave entitlements.

In summary, the Productivity Position Paper establishes that:

- Informal carers make an invaluable contribution to the community.
- A provisional model of extended unpaid carer leave would provide 3-12 months of unpaid leave, available to all those who have worked at least 12 months for their current employer, and employees would be required to give 4 weeks' notice of their intention to take leave.
- Of the 428 000 informal carers of older people, just 164 000 (or less than 40%) are in the workforce. Only 3500 to 8500 potential users of the extended carer leave entitlement would be providing additional care because of the entitlement.
- Many informal carers who are working would not want to take extended unpaid leave. Most carers of older people want more workplace flexibility, not an extended absence from the workplace.
- Based on the PC's analysis, overall, there is not a strong case for amending the National Employment Standards to allow for an entitlement to 3–12 months of unpaid leave. And importantly, extended unpaid leave is not the highest priority for the majority of carers.
- More flexible work arrangements and improvements to other forms of support to informal carers are likely to support them better (such as more home care and respite care).
- If the National Employment Standards were amended to include an entitlement to extended unpaid carer leave, it would be reasonable to make it available to all carers.

We reiterate the following:

- Informal carers are a critical part of Australia's aged care and broader system of health and welfare, more broadly.
- Caring is not a choice we make.
- Current arrangements fail to adequately support informal carers.
- Most informal carers are women, and this contributes to inequity across all aspects of social, political and economic life for women, particularly with regard to superannuation.
- The nature of the caring role is diverse; there is no one approach to support that will meet the needs of all carers.
- Caring roles can be short-term or episodic; however, many exist over many years due to the relational obligations and commitments within families.

Response to Draft Findings, Recommendations and Information Requests

Our overall response to the Productivity Commission's Position Paper is that it appears to reflect a balanced view of stakeholders and goes some way to recognising the nuanced circumstances and needs of informal carers in relation to juggling their caring commitments with employment and leave arrangements.

More, however, could be said about the Gendered impacts and Superannuation impacts, in particular. We say more about these in our response below to Information Request 2.

The overall feel of the Position Paper is that it fails to frame the importance of recognising that informal care is not a substitute for formal care. The Position Paper also fails to dialogue with the diversity of types of carers and therefore the differing impacts; they are implicitly referred to as an homogenous group, which they are not. For example, single people who are carers, young carers, or single income families are likely do not have the option of simply cutting back their hours of employment, leaving the workforce for a few weeks or months without quite significant negative impacts. There may be types of informal carers who would not benefit at all from unpaid leave and may in fact experience harms from it because of the other systems and circumstances that impact their lives.

The Position Paper therefore is limited to looking at unpaid carer leave arrangements largely in a vacuum, without fully recognising the wider context of systems and circumstances in which informal carer may or may not find the proposed amendment to the National Employment Standards of use or value to them.

Examples of these systems are NDIS, My Aged Care/Carer Gateway and Centrelink which are highly bureaucratic and difficult systems for exhausted carers to navigate with the family and kin they support. The NDIS system, for example, continues to serve only a limited proportion of people with disability, and has, arguably, created further system siloes in support and care, particularly where the person has physical health, mental health and psychosocial disability support needs. Where the person has informal carers involved, many of those carers have arguably become more burdened by the need to navigate these systems and juggle their employment arrangements. Where the informal carer takes leave and then must navigate the Centrelink system for income, there is no account in the Position Paper for the implications of this, the added burden or consequences.



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.



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.

Our Response to Information Request 1:

- **the durations of leave carers are most likely to want to access extended unpaid carer leave?**

The nature of caring for a person with various health conditions or disabilities is highly variable and, at times, unpredictable and changeable, and can involve the need for a more immediate crisis response and supports by informal carers. The ability to take blocks of time away from employment (of 3-12 months) may suit some circumstances (eg. where the cared for person may be in the later stages of palliation for cancer; where the person may need more hands-on informal carer support post discharge from hospital following heart surgery or joint replacement surgery). Many of these circumstances and their timing may be known to the carer and can be planned for. However, other circumstances may occur suddenly and so the 4-week notice requirement is likely problematic in these circumstances. Also, there would be many informal carers who may well value periods of leave shorter than 3 months. At present, their only options are to use up their own annual leave or sick leave or take unpaid leave. Where carers do this year in and year out, to accommodate their caring role, they may eventually resign or switch to part-time employment much sooner than they would otherwise. Many of us just get tired, we persist with juggling work and caring, and our own health and wellbeing suffers too.

The criteria may not match the reality or timing of need if the informal carer takes said unpaid leave with the hope of returning to work once alternative support arrangements are put in place for the person. For example, as the Nursing and Midwifery submission stated – “In 2018–19, the waiting times between being assessed as eligible for a Home Care Package to being assigned a package ranged from seven months for a Level 1 package to 34 months for a Level 4 package.” Similar problems are experienced by people and their informal carers waiting on outcomes of NDIS support applications which can be bound up in bureaucratic paperwork for weeks and months and no guarantee that the support will occur or match their needs.

Also, as stated in our earlier submission, many informal carers are supporting people for whom the concept of ‘episodes’ of need for support is not their everyday experience; more often, the care is ongoing, over longer periods, and deeply embedded into the everyday ebb and flow of these lives because of the nature of the needs of the person to whom they provide support.

- **how costly short-term leave is to businesses, and whether shortening the minimum leave duration would increase these costs significantly?**

We don’t have a clear view on this question; we believe this would be different for each business type and size, the type of work involved, the flexibility of finding other staff to fill the role in the person’s absence, and so forth. This situation occurs already in the normal cycle of businesses due to annual leave, sick leave and long-service leave arrangements, so business should have structures to cope with shorter notice for unpaid carer leave.

- **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?**

The costs for employees who are carers are the economic impacts, as already stated. These are impacts associated with immediate reductions in actual weekly income and the longer-term impacts on superannuation and quality of life in retirement.

The benefits would seem logical for employees who are carers because they are maintaining connection with their job, the currency of skills, contact with others in their workplace, and ‘respite’ from their role as carers by being employed outside the home. They may also avoid the problems of returning to work, especially in roles where changing technologies and practices impact the currency of the skills.

The costs for employers would be disruptions to the flow of work arrangements and costs by having part-time versus full-time staff, the potential for 'presenteeism' with part-time roles, and loss of experience and skills into more senior roles which require full-time presence in the role.

The benefits for employers would be in retaining employees who bring loyalty, skills, and return on investment for the training and support provided over the course of their employment.

- **whether there are ways to design the entitlement to avoid potential negative effects, including on the recruitment and career progression of carers?**

We would hope that any future carer leave arrangements and rules would include flexible criteria to accommodate the diversity of carer needs and experiences, rather than attempting to develop more rigid criteria that would only meet the needs of some carers. This would include ensuring return-to-work arrangements and options are flexible and don't create unintended consequences through more rigid arrangements related to timing, the types of roles they return to, whether their specific job still exists in its previous form prior to their leave, and so forth. Enterprise bargaining agreements would need to consider such entitlements.

The assumption is that more senior roles are more likely to require full-time employees who are 'present' more through the working week of an organisation/business, especially where they involve holding the 'corporate' knowledge required to react and respond to customers/clients/the community, and day-to-day management of teams of employees, supervision, etc. This potentially works against career progression/promotion opportunities for part-time employees. Therefore, more creative job-sharing arrangements for the more senior roles is needed.

Negative impacts on promotion, career progression and superannuation are clear concerns, and there are existing examples/models that have attempted to account for career disruption inherent in negative impacts like these. One example is for researchers who apply for NHMRC or ARC grant funding where career disruption is acknowledged and calculated against their length of time in role and expected achievements and research outputs.



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.



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.



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.



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.



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.



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.



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.

Our Response to Information Request 2:

- **the expected effects on carers of upcoming changes to the flexible working arrangements provisions of the *Fair Work Act 2009***

We recognise that many of the flexible working arrangements that arose largely as a consequence of the COVID pandemic had positive impacts for carers, as it did for many people. In particular, many carers benefitted from being able to work from home in jobs that were previously assumed to be only possible by leaving home. In general, the nature of work, when it starts and ends each day, was no longer seen within the more traditional rigid structures, and more flexibility was seen as not only possible but preferable by many. Carers now working from home, for example, have valued the time and financial savings that result from not needing to travel to jobs outside the home. But there have also been downsides to working from home for informal carers who may be perceived by the cared for person as 'always on tap'. Some carers may be more isolated because they no longer have the benefits of social contact and 'respite' through attending work outside the home. Some may struggle to contain the boundaries of the amount of work they do for their employment because they 'working day' at home can blur across their working role and caring role. Some of these issues are noted in a recent project on Mental Health Carers and COVID which found both positives and negatives. <https://nmhccf.org.au/news/mental-health-family-carer-experiences-of-covid-19-in-australia>

Another issue of note is that the nature of some jobs means some informal carers may not be able to benefit from the flexible work arrangements. We know that many informal carers already undertaken employment roles that are casual and inherently lower paid but fit with the juggle that they must do to accommodate their caring roles. This includes working in aged care, disability, childcare, cleaning, admin, shop assistants, factory work, and so forth. Many of these types of roles can only be done in locations outside the home, and many have rigid working hours and expectations, therefore excluding people in these roles from many of the benefits of flexible working arrangements.

The causal nature of this potential for informal carers to be disproportionately in such roles needs to be better understood. For example, is it a cause or consequence (or both) for gender inequity in career progression for women and for informal carers?

- **additional ways to support informal carers, beyond those discussed in this position paper.**

There are many concerns that are simply not discussed by the Position Paper or given only brief consideration. Some of these include the following:

Superannuation concerns

These are only mentioned once in the Position Paper (as quoted below), with no dedicated focus despite a comprehensive set of concerns raised by several submissions (eg. Nursing and Midwifery submission offers substantial detail but is barely cited, some of which we have included again below). This issue seems 'buried' within the document; yet it is so central to considerations of equity and gendered impacts underpinning care and unpaid carer leave implications being considered here.

From the Position Paper:

(pp.27-28) - However, while policies to address the gendered distribution of informal care could be justified on equity grounds, an entitlement to extended unpaid carer leave could also reinforce the gender gap in informal care. This concern was raised by a number of inquiry participants. For example, Anglicare Australia, noting that women shoulder most of the responsibility for unpaid care work, raised concerns about the consequences of encouraging more women to take unpaid leave for the gender pay gap....Encouraging more women to take unpaid leave to care for loved ones may have an unintended impact of widening the gender pay gap, as they miss opportunities for career advancement and salary increases available to male counterparts. Extended unpaid leave can also reduce women's superannuation balances, leaving them at risk of poverty as they age. (sub. 6, p. 1)

From the Nursing and Midwifery submission:

In the years approaching retirement age, the gender superannuation gap can be anywhere between 22 per cent and 35 per cent.⁵ The median superannuation balance for men aged 60-64 years is \$204,107, whereas for women in the same age group it is \$146,900, a gap of 28 per cent. For the pre-retirement years of 55-59, the gender gap is 33 per cent and in the peak earning years of 45-49 the gender gap is 35 per cent.¹

Gender Impacts

There is also very limited dialogue with this topic in the Position Paper, and predominantly a sense of bias shown in how it is discussed. For example, it doesn't interrogate the nature of jobs that many informal carers take up in order to support household income in the first place (casual work, aged care, disability workforce, cleaning, admin, shop assistant work, as stated above). It also takes no account of single person households, single parent families, and so forth and the potential amplified consequences for them.

From the Position Paper:

(p.27) An entitlement to extended unpaid carer leave could reduce the costs to carers of returning to paid work and encourage women to maintain their attachment to the workforce. This in turn could improve gender equity, with benefits for carers and the community more generally. But at the same time, an entitlement could encourage some carers who otherwise would not have left paid work to take unpaid leave to provide care (and some of these may not return to the workforce).

From the Nursing and Midwifery submission:

Women will experience a reduction in future income, retirement income, workforce participation and opportunities for career progression. These outcomes are counterproductive to the objective of gender equality.... the social and familial burden of informal care continues to fall to women.

¹ KPMG: *The Gender Superannuation Gap: Addressing the Options, 2021. The Gender Superannuation gap: Addressing the options (assets.kpmg)*

Women who take time out of the workforce to provide unpaid care, have their workforce participation emphasis and reliance upon informal care through the provision of extended unpaid carers leave is counterproductive to the objective of addressing the undervaluation of care-based, feminised workforces. The inference that formal care and informal care are easily interchangeable sends a message about the value of the work performed by our members and others in care-based professions.

Culturally and Linguistically Diverse (CALD) informal carers and other marginalised carers

The Position Paper states that about one third of informal carers of older people are from CALD backgrounds. The below statement from the document, speaks to a potential benefit for the person being cared for; yet there is virtually no further consideration of what it might actually mean for such carers in relation to unpaid carer leave.

Again, we wish to reiterate that informal carers (CALD carers or otherwise) should not simply be viewed as a replacement for formal carers and services. The problem here is similar to what the Nursing and Midwifery submission raised ie. that it dismissed the need to improve formal care and support to these populations by existing services, and weakens the argument for the need for current and future reform and funding to address inherent inequity in access, help-seeking, etc.

This is concerning for all types of informal carers, and it has particular adverse implications for already marginalised groups such as informal carers within CALD communities, Aboriginal and Torres Strait Islander communities, older carers, mental health carers, and the people they care for.

From the Position Paper:

(p.42) Increasing the amount of informal care could lead to more culturally appropriate and safe care being provided. This is particularly the case for many culturally and linguistically diverse older people who can struggle to find formal care that accommodates them in terms of their language, food and cultural activities.

From the Nursing and Midwifery submission:

An increased emphasis on informal care arrangements in the context of older Australians, undermines the importance and prioritisation that should be given to investment in the aged care workforce and aged care system more broadly.

Other Concerns

The Position Paper seems to reflect a somewhat superficial understanding of the informal carer role. It takes no account, as mentioned, of young carers whose employment arrangements may be quite different to older carers. It also makes no acknowledgement that informal carers may be caring for more than one family member and may also still be providing primary care for children (the sandwich generation) so the ability to simply cut down the employment to part-time may not be an option. There is also no account of the location of the carer in relation to the person cared for who may be interstate or at a substantial distance from the carer and their employment.

As mentioned, many informal carers undertake casual employment (by choice or out of necessity to juggle their caring role) and this is not considered here. The potential to reinforce existing inequalities and discrimination is apparent.

We note and strongly agree with the comments made by one of the individuals who has submitted further comments to this inquiry:

“Informal elder carers need such rights, possibly along the lines of parental leave. The role of enterprise bargaining improvements in employment entitlements through bargaining are usually made by the most unionised workforces with the most industrial power. The most equitable way for

changes to occur is through statutory entitlements. This also benefits small businesses by providing a floor of statutory rights which cannot be undercut by competitors. Where additional arrangements are made for carers by employers, these are often subject to managerial/employer agreement and are not entitlements. Improved rights to carer's leave should be widely publicised."

We also strongly support the comments made by another individual to this further inquiry and the Nursing and Midwifery submission, which align with the concern we raised earlier about the Position Paper's failure to fully reflect the wider context in which informal carers perform their role and may even consider unpaid carer leave:

"It is attempting to address a tertiary issue, rather than addressing the primary issue which is a catastrophic lack support for older people as they attempt to 'age in place' in their own homes, and the high impact this is having on their adult children given there is no, or very limited access to services and support, specifically in regional areas. Merely making changes to workplace legislation will not address the root cause of the matter."

"The sustainability and success of informal care arrangements, whether that be through the use of extended unpaid carers leave or otherwise, is limited without the provision of accessible, timely and appropriate formal supports for both care recipients and carers."

Contact

We thank the Productivity Commission for the work it is doing on this important national and community issue. We also wish to thank you for the opportunity to attend the Hearing to present our concerns on behalf of Lived Experience Australia and the many mental health carers, family and kin who provide support to their family members with mental health challenges, many who may also experience significant psychosocial disability and physical health conditions. We wish you every success with the next steps and would be keen to be involved in any future discussions about this important topic.

Your sincerely

Sharon Lawn

Professor Sharon Lawn
Lived Experience Australia Ltd
Board Chair and Executive Director