

28 March 2023

Productivity Commission  
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Carers NSW welcomes the opportunity to provide a further submission to the Productivity Commission (the Commission) in response to its position paper on Carer Leave. Carers NSW commends the Commission for its thorough investigation and analysis of the experiences and needs of carers in relation to their participation in employment. This submission will build on Carers NSW previous submissions to the Commission, drawing on our in-depth analysis of Carers NSW 2020 and 2022 National Carer Survey data and consultation with carers, employers and experts undertaken in preparing our initial response and has been shaped by the following key principles:

- Existing carer leave entitlements should be expanded to benefit more carers
- New carer leave entitlements must include eligibility to access financial support
- Access to new carer leave entitlements should not be restricted based on the age of the person receiving care
- Carer leave entitlements must be flexible, equitable, enforceable and widely promoted
- Carer leave entitlements must be complemented by stronger entitlements regarding access to flexible working arrangements, and improved provision of formal care services

Carers NSW is the peak non-government organisation for carers in New South Wales (NSW). A carer is any individual who provides care and support to a family member or friend who has a disability, mental illness, drug and/or alcohol dependency, chronic condition, terminal illness or who is frail. Carers NSW is part of the National Carer Network and a member of Carers Australia. Our vision is an Australia that values and supports all carers, and our goals are to:

- Be a leading carer organisation in which carers have confidence
- Actively promote carer recognition and support
- Actively support carers to navigate a changing service landscape that will be characterised by ongoing policy reform
- Promote connected community experiences and opportunities for carers that are inclusive of diverse carer groups
- Lead and advocate for carer-specific and carer-inclusive policy making, research and service delivery
- Continue to be a quality-driven, responsive and carer-focused organisation.

Thank you for accepting our submission. For further information, please contact Melissa Docker, Senior Policy and Development Officer.

Yours sincerely,

Elena Katrakis  
CEO  
Carers NSW

## Introduction

Carers NSW thanks the Productivity Commission (the Commission) for the opportunity to provide further feedback on this matter. Carers NSW understands that some stakeholders have expressed disappointment with the Commission's findings in the Position paper, *A case for an extended unpaid carer leave entitlement?* However, Carers NSW acknowledges the challenges associated with this inquiry as a result of the narrow scope of the Terms of Reference. While Carers NSW commends the Commission on taking a holistic approach to addressing ongoing barriers to employment for carers, Carers NSW has concerns that failing to provide a clear path forward for Government in the final report may undermine the intent of this inquiry.

Carers NSW supports in principle the introduction of a greater range of leave options for carers, including periods of extended leave. However, as highlighted in Carers NSW earlier submission, there are concerns that prolonged periods of unpaid leave to enable the provision of care are likely to result in the exacerbation of financial strain experienced by many carers. There is also ongoing concern that this entitlement to extended unpaid leave would create greater pressure or expectations on carers to fill service gaps where there may be delays accessing formal care based on Figure 7 (example 1, Steve), in which the example provided suggests that the entitlement may address service gaps as a result of Home Care Package waitlists.

Furthermore, Carers NSW has concerns that the short consultation period following the delayed release of the position paper and limited user testing with carers may not have been adequate to determine whether the proposed carer employment entitlements are fit for purpose and would be appropriate and adequate for a diverse range of carers.

Carers NSW believes this inquiry and the proposed model of extended unpaid carer leave provide opportunities for further discussion about how barriers to maintaining employment for carers could be overcome. However, greater input from carers is needed to ensure that the Commission's final recommendations reflect carers' needs and preferences.

### Delaying decisions about unpaid extended carer leave

Carers NSW supports a number of the findings put forth by the Commission, including that an entitlement to extended unpaid leave may not be a priority for some carers. However, Carers NSW has concerns about the Commission's comments that a decision about whether or not to proceed with an entitlement to unpaid extended carer leave should be withheld until recent changes to the *Fair Work Act 2009* that aim to increase access to flexible working arrangements are evaluated in 2025.

In our initial submission to the Commission on this matter, Carers NSW highlighted that currently there is limited data collected or reported on by employers about requests for and use of flexible work arrangements in relation to meeting carer needs. Carers NSW has concerns that this lack of data will create significant barriers to thoroughly evaluating the effectiveness of these new measures. The Final Report recently released by the Senate Select Committee on Work and Care<sup>1</sup> made recommendations that requests for and use of flexible work arrangements be reported on in annual Workplace Gender Equality Agency (WGEA) Gender Equality Reporting, in line with Carers NSW previous recommendations. Carers NSW believes, that unless this data is collected and reported on, it will not be possible to evaluate the uptake and effectiveness of this measure in meeting carer needs.

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<sup>1</sup> Senate Select Committee on Work and Care (2023) *Select Committee on Care and Work: Final report*, available online at: [https://www.apf.gov.au/Parliamentary\\_Business/Committees/Senate/Work\\_and\\_Care/workandcare/Report](https://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Work_and_Care/workandcare/Report), viewed 28 March 2023.

Furthermore, regardless of how the effectiveness of the new flexible work measures will be evaluated, Carers NSW believes that if the Commission maintains the position in the final report that the decision should be withheld until evaluation in 2025, they must create a clear requirement for the Government to review an entitlement for extended unpaid leave following this evaluation. The Commission must also provide a clear path forward for Government in the interim to begin addressing barriers to employment for carers identified through this inquiry.

### **Ensuring carer financial security**

In our initial submission, Carers NSW highlighted the need to consider extended paid leave options for carers, providing a three-tiered model consisting of paid and unpaid periods of leave. Carers NSW maintains that any entitlement to extended leave for carers must have periods of extended paid carer leave to ensure that carer finances are not further impacted by accessing such entitlements. While Carers NSW acknowledges that the scope of this inquiry was to explore extended unpaid leave, we have concerns that the inquiry has not adequately considered the potential financial implications of taking such a period of unpaid leave or explored potential existing or new financial supports that could be made available to carers accessing this new entitlement to encourage and facilitate them to access the measure.

Given the strict eligibility requirements and means testing for financial supports such as Carer Payment, highlighted in Carers NSW previous submissions, it is likely that a number of carers who may choose to take up an extended unpaid leave entitlement would be ineligible for Carer Payment during this period of leave. Carers NSW believes that a new, for-purpose paid carer leave payment, similar to that available through the paid parental leave scheme, is most likely to address this gap in financial support. While such a payment would likely come at a cost to Government, it would be offset by the savings to Government in lieu of paying for formal care.

To ensure that the financial needs of carers accessing extended unpaid carer leave can be effectively met by carers accessing the proposed extended unpaid leave entitlement, Carers NSW believes that before publishing final recommendations, the Commission must further explore financial supports that may be needed to facilitate uptake and use of the measure and limit further financial impacts of caring.

### **Extending an entitlement to extended unpaid carer leave to all carers**

Carers NSW supports the extension of an entitlement to extended unpaid carer leave to all carers. As found by the Commission, for reasons of equity and administrative simplicity, if such an entitlement were introduced, it would be reasonable to extend it to all carers. However, Carers NSW has some concerns about the application of the modelling used to estimate uptake of this entitlement for carers of persons who are older to carers of younger persons, as these carer cohorts differ in regards to their mean age and workforce participation. Carers NSW believes that to ensure accuracy of the report, the Commission should ensure modelling for other carers is conducted independently. This will also enable the Government to plan effectively if the entitlement is to be introduced.

### **Provisional model of extended unpaid leave**

Carers NSW maintains that an entitlement to extended unpaid carer leave may not adequately meet carer needs, which is likely to result in low uptake. However, Carers NSW acknowledges that some carers may benefit greatly from this entitlement and it may provide carers with greater opportunities to maintain both work and care long-term. Therefore, we have identified some opportunities within the proposed model that may enhance or increase uptake of the model.

## Leave period

Carers NSW acknowledges that access to a 12-month period of leave may be suitable for some carers and as it aligns with the existing entitlement to 12 months unpaid parental leave, it may be more appealing to employers than longer periods of extended leave such as 24 months. Enabling carers to access multiple non-consecutive periods of extended unpaid leave may also support ongoing informal care within the community.

Additionally, Carers NSW acknowledges that in order to minimise impacts on employers, a minimum period of 3 months extended unpaid leave may be most appropriate, enabling them to secure short-term staff for fixed periods. While some carers may need shorter periods of leave than 3 months, improving access to other entitlements may better meet their short-term needs, this could include separating out paid sick leave from paid carer leave, increasing short-term unpaid carer leave to more than 2 days per instance and improving access to flexible working arrangements. Additionally, exploring opportunities for carers to take extended unpaid carer leave in shorter blocks throughout the year may also provide an alternative solution.

## Notice periods

Providing a 4-week notice period to access extended unpaid leave may prohibit some carers from accessing leave where they require it, especially where there is a sudden onset of or increase in a caring role. Ensuring ongoing access to existing entitlements during this period, such as paid and unpaid carers leave and flexible working arrangements, may assist carers to balance their caring role with their employment during this notice period. However, it is not clear whether accessing periods of leave during the notice period would prolong this period beyond 4 weeks.

## Eligibility

Carers NSW understands that the 12 months of service eligibility requirement in the proposed model aligns with other entitlements, such as unpaid parental leave. However, it is important to note that unlike pregnancy and parenthood, caring can come on at any time, it is often unexpected and initially intense. Ensuring that the entitlement contains adequate flexibility that would enable it to be accessed before 12 months of service in unforeseen circumstances, where onset of a caring role is sudden and unexpected, would enable the entitlement to be most effective. Furthermore, Carers NSW commends the Commission on proposing that the entitlement to extended unpaid leave be extended to casuals given the high representation of carers in casual employment.

## Evidence

Carers NSW supports the broad approach to evidence requirements in line with existing National Employment Standards (NES) entitlements proposed. However, as highlighted in our initial submission, carers often have difficulty meeting these existing NES evidence requirements. While it should not be made a requirement, the provision of templates, proformas and resources for medical and health professionals to enable them to provide necessary evidence would likely improve carers' access to all available leave entitlements. Such templates or proformas should aim to capture key information such as how long caring is expected to continue for, the intensity of care required and where care may be ongoing, fluctuating or episodic, to limit the need for carers to obtain evidence repeatedly.

## Additional opportunities

Carers NSW supports the two recommendations proposed by the Commission in the position paper, however believes that these recommendations could be expanded to increase their effectiveness.

### Providing information about flexible work

Improving carer awareness and building carer confidence to access available carer-focused workplace entitlements is likely to better support carers to balance work and care. Carers NSW has heard from many carers that there is limited awareness of their rights or entitlements as a carer in the workplace. However, Carers NSW believes that this awareness raising should also be extended to employers to ensure that they are also aware of and adequately equipped to support their staff to access the available entitlements as needed.

### Reviewing definitions relating to care in the National Employment Standards

Carers NSW supports the review of definitions of care relationships in the NES. As highlighted in our previous submissions, the current definition of care relationships, which includes only immediate family and household members may disproportionately act as a barrier to carer-focused entitlements for diverse carer cohorts who may have a broader range of familial relationships and associated caring responsibilities. However, Carers NSW believes that this recommendation should be extended to also review what caring situations meet the threshold for carer leave under the NES to ensure that regular caring duties that cannot be conducted outside of business hours, such as attending appointments, are considered eligible caring tasks. Carers NSW believes, as outlined in our initial submission, that extending the definitions within the NES will enable greater access to existing entitlements available to carers.

## Conclusion

Carers NSW again thanks the Commission for the opportunity to provide a further submission on the current inquiry into Carer Leave. Carers NSW supports taking a balanced and holistic approach to improving support for carers in paid work. Through this submission, Carers NSW has outlined a number of opportunities for the Commission to enhance their proposed model and increase workplace support for carers. However, first and foremost, Carers NSW would like to reiterate the need to ensure that the Commission's final report provides a clear path forward for Government in regards to an entitlement to extended unpaid leave, including clear timelines in the instance that the Commission recommend that decision making be delayed or withheld until evaluation of alternate measures has been conducted.