

# Submission to the Productivity Commission position paper: A case for an extended unpaid carer leave entitlement?

## 1. About OPAN

Formed in March 2017, the Older Persons Advocacy Network (OPAN) is a national network comprised of nine state and territory organisations that have been successfully delivering advocacy, information and education services to older people across Australia for over 30 years. Our members are also known as

ACT	ACT Disability, Aged and Carer Advocacy Services (ADACAS)	SA	Aged Rights Advocacy Service (ARAS)
NSW	Seniors Rights Service (SRS)	TAS	Advocacy Tasmania
NT	Darwin Community Legal Service	VIC	Elder Rights Advocacy (ERA)
NT	CatholicCareNT (Central Australia)	WA	Advocare
QLD	Aged and Disability Advocacy Australia (ADA Australia)		

State Delivery Organisations (SDOs). The OPAN SDOs are:  
 OPAN is funded by the Australian Government to deliver the National Aged Care Advocacy Program (NACAP). OPAN aims to provide a national voice for aged care advocacy and promote excellence and national consistency in the delivery of advocacy services under the NACAP.

OPAN’s free services support older people and their representatives to understand and address issues related to Commonwealth funded aged care services. We achieve this through the delivery of education, information and individual advocacy support. In 2021/22, OPAN delivered information and advocacy support to over 27,000 people across the nation.

OPAN is always on the side of the older person we are supporting. It is an independent body with no membership beyond the nine SDOs. This independence is a key strength both for individual advocacy and for our systemic advocacy.

**OPAN member organisations by state or territory:**

ACT	SA	VIC	NSW	NT - Top End
				
QLD	TAS	WA	NT - Central	
				 Funded by: Australian Government Department of Health

## Entitlement to leave is a key part of the puzzle for carers of older people

*“There is not enough support for carers. Sometimes you suddenly find yourself ‘thrown into’ a caring role. I was an academic and when my husband was diagnosed with dementia, I had to quit work earlier than I thought. I had to try and adjust quickly and work out what to do. You really need time to process everything and to work out what you are going to do and how you are going to proceed. You can become bereft yourself (and acquire a mental illness as I did) and it all takes time. It takes time to transition someone into residential care, or to ‘in home services’ and to get things in a routine and some sense of normalcy. Having time to adjust, work out what you need/want to do and how to proceed, via a Carer Leave entitlement would have been really helpful. And then of course, I needed time to work out my husband’s financial affairs and put everything in order for him as his enduring guardian etc. Sometimes there are periods of unrest of ‘upset’ and all that is needed often is a period of time to breathe and think and work out where to go next.”*

OPAN has heard many stories like that of the carer above whose life choices would be substantially enhanced by an entitlement to extended care leave. The gift of time to make necessary decisions and adjustments could make a significant difference to each individual carer of an older person who feels stranded and alone at the point of having to choose between work and care. Instead of making a life-changing decision quickly and with insufficient information, carers could instead be empowered to talk with their employers, their families and most importantly the older person requiring care, about their needs and preferences. Older people, carers and our broader community would all benefit from an entitlement to extended carer leave.

*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*

OPAN supports careful design of an entitlement to extended unpaid carer leave to maximise net benefits and reduce unintended consequences. While the Commission’s modeling shows low to modest uptake, the impact on relieving immediate emotional and future financial stress for those carers and older people receiving care should not be underestimated. As one carer put it, *“In the report it says that the number of people who will use an unpaid leave entitlement would be small, and the ‘impact would be small’. Why then does it matter if it is available to those carers who might find this to be the only option to keep them in the workforce?”*

OPAN believes there are significant social and economic benefits from extended carer leave provisions. It will encourage people with care responsibilities to return to the workforce after care has been completed or alternative arrangements have been made. Leave could be used both to allow carers time to arrange additional or alternative supports, and to continue or increase their direct care and support. Extended carer leave would enable carers to supplement paid care provision and allow older people to exercise choice to remain in their homes longer. Combining informal and formal care at home lowers aged care system costs over time by reducing the need for higher cost residential aged care.

We consider the net benefits to the community of providing access to extended unpaid leave will include:

- Supporting the aged care preferences and choices of older people
- Better support for priority population groups such as older people from culturally, ethnically, and linguistically diverse backgrounds and older people living in rural and remote Australia
- Reduced mental and physical health care costs for carers of older people

OPAN has heard several examples from carers of older people, where they do not feel they have a choice about caring. When people do not have access to enough affordable, high quality and culturally safe care, their capacity to exercise choice is considerably constrained – as identified in Box 4 of the position paper - *An obligation to care: to what extent is caring a choice?* Creating an entitlement to extended carer leave starts to build greater choice for people – both their perception of their ability to make choices and the actuality. An entitlement to leave is empowering for carers and for older people, as many older people may feel more comfortable asking their family members for assistance, if they know they are not asking them to give up their job entirely.

At a practical level, many older people, especially those living in rural and remote areas, cannot access aged care services at home for periods of 18 months or more following assessment of eligibility. In this situation there is no ‘choice’ for carers seeking to support an older person to avoid residential care entry, but to leave the workforce. Similarly, rural and remote areas have very limited palliative care services. Being able to take leave to provide care in this situation will improve the end-of-life experience for both older people and their carers, reducing the impact of grief and bereavement on former carers’ ability to return to work.

OPAN agrees with the Commission’s conclusion that a leave entitlement is not sufficient to achieve the desired outcomes for carers of older people. However, it is necessary to contribute to those outcomes. A leave entitlement in the National Employment Standards provides for equity between carers in different occupational categories and across different employers. Not every carer will aspire to have a career that is unimpeded by their care responsibilities, but many carers do aspire to move from precarious employment to secure employment and a leave entitlement supports this aspiration. The evidence presented by the Commission on who is most likely to take up the entitlement (middle-aged to older women) may also mean that career progression impacts may not be as great as that of extended leave taken earlier in the life course.

Older people and their carers consulted by OPAN strongly support an entitlement to unpaid leave as necessary to maintaining care relationships, especially when caring for people with increasing needs due to dementia. However, they are very concerned that many carers would not be able to afford to take unpaid leave without access to income support. They also noted the savings contributed by carers through their caring role and believe that carers should be paid a higher allowance in recognition of lost earnings, reduced superannuation and savings to government of their unpaid care.

*“Unpaid family and friend carers saved the Australian economy \$77.9 billion in 2020. That was before COVID and the impacts on the community it brought with it. Yet we [carers], some 2.65 million Australians were completely forgotten in the 2022-23 Federal Budget, which also did not outline long-term reform for carers or prepare for the 23% growth in demand for primary carers by 2030.”*

We support recommendation 30 of the report of the Senate Select Committee on Work and Care<sup>1</sup> for review of the level of Carer Payment and Carer Allowance, acknowledging the significant social and economic contribution that carers make. We also support Carers Australia’s call for carers taking unpaid leave to have expedited access to Carer Payment and Carer Allowance.<sup>2</sup>

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<sup>1</sup> Parliament of Australia, Select Committee on Work and Care, [Final Report](#), March 2023

<sup>2</sup> Carers Australia, [Response to the Australian Government Select Senate Community Affairs Inquiry on Work and Care](#), September 2022

OPAN believes that while all Australian carers having access to the same leave entitlement promotes greater equality in the workplace, all carers having access to a range of flexible and individualised supports to balance work and care will achieve greater equity.

*“Caring is a full-time job. We give up our own life and needs. When I was caring for my mother, who had dementia and no English, it was 24/7 work. At night she would get up and bring food from the fridge to hide in the bed. This was related to trauma and hunger during WWII. I got 3 hours per week help, from a bi-lingual support worker, who could not understand my mother's dialect. If I had received more support, I would have not become so physically and mentally unwell, and my mother could have lived with me at home longer, which both of us wanted. The health and aged care budget would have saved money as it is always more expensive to have people at home, if and where there is a family willing. I went back to part-time work once mum was in residential care, even though I brought her home for lunch most days. Government policy makers have no idea what we carers do and what we save the budget.”*

### *Draft finding 2: A provisional model of extended unpaid carer leave, aligned to existing standards*

OPAN supports the design features of an unpaid leave entitlement being consistent with unpaid parental leave provisions. We recommend, however that the evidence requirements for accessing carer leave provisions should be reasonable and not onerous to obtain. For example, a carer should not have pay for a GP appointment or get a letter of support from an aged care provider specifically to obtain evidence that an employer deems satisfactory.

OPAN is pleased the Commission has recognised the benefits to employees are likely to be greatest at key transitions in the caring journey. Like becoming a parent, becoming a carer is a key life course transition. There are several other identifiable key transition points while caring for an older person that could be supported by a leave entitlement, such as transition to residential aged care and end-of-life care.

Older people and carers consulted by OPAN strongly support the need for flexible working arrangements. They consider that in light of the ‘working from home’ revolution prompted by the global pandemic, that many carers could work flexibly at home at times which suit their care responsibilities.

*“A carer may want work from home on the internet in order to keep themselves ‘in the loop’ in their line of business. Things change rapidly these days and being absent for too long can leave you behind.”*

Access to carer leave is an important and often necessary part of a range of flexible workplace support that would enable carers to better manage both work and care.

### *Features, costs and benefits of the provisional model of carer leave*

OPAN is cautious of the Commission’s modeling in Supporting Paper 1<sup>3</sup> of future uptake of carer leave based on historical and current patterns of workforce participation by carers. As the Commission has acknowledged, our existing aged care and carer support systems are insufficient for carers of older people with care needs living at home to maintain meaningful connection to the workforce. This contributes to a chicken-and-egg scenario, where it is not at all clear whether lack of access to flexible working arrangements or extended carer leave is the cause, or the effect, of the current very low levels of workforce participation by primary carers of older people.

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<sup>3</sup> Productivity Commission, A case for an extended unpaid carer leave entitlement? Position Paper, [Supporting paper 1: Effects of the entitlement on work and care](#)

However, other factors such as increasing preferences of older people to avoid residential aged care entry and increasing government expenditure on home-based aged care services also exert a strong influence. Just as patterns of workforce participation by women of all ages and parents of young children has changed substantially over recent decades, it is likely that future workforce participation by older people and carers of older people will also change significantly, driven by a range of social and economic factors.

OPAN also takes a life course perspective on ageing and care. Carers who are ageing may themselves become older people with care needs. Older former carers, especially older women, are in a better social and financial position as they age if they have retained connection to and participation in the paid workforce rather than being forced to drop out of the workforce due to their care responsibilities.

### *Costs*

With between 65,000 to 70,000 admissions annually to residential aged care,<sup>4</sup> if even 10 per cent of older people delay residential care entry by up to 12 months due to their carer taking leave, this could result in substantial aged care budget savings.

Older people and carers consulted by OPAN acknowledged that some employers would find it difficult to have to employ and train a replacement staff member if they grant extended unpaid leave to employees who are carers. However, they felt the cost to business of granting leave needs to be compared to the cost of not retaining staff who leave due to care responsibilities. They also queried the relative costs to business of providing leave with associated recruitment costs of temporary staff compared to the costs of having to replace staff permanently, such as recruitment, onboarding and training. The patchy evidence on these costs to business has been investigated in Supporting Paper 2.<sup>5</sup>

At present the costs of caring are borne by individuals, families and government. When people of working age drop out of the workforce to provide care, this significantly costs them in terms of lifetime earnings and superannuation.<sup>6</sup> It costs the government through lost taxes and increases in welfare payments. We consider it is not unreasonable for business to share some of the costs (together with individuals, families and government) of providing for a social good. Enabling care – of infants and young children, people with a disability and older people, is a social good and businesses can demonstrate their corporate social responsibility by better supporting the carers they employ.

Given the proposed numbers of employees who would take up the option of extended unpaid leave is predicted to be low, some of these costs could potentially be offset by providing access to grants such as are currently available to incentivise businesses to employ people with a disability or people who are long-term unemployed.

### *Leave duration*

An entitlement to extended unpaid leave provides important workplace protection. Currently if carers take a period of extended unpaid leave, beyond a 'reasonable' length of time as defined by Fair Work

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<sup>4</sup> AIHW, Australia's welfare, [Aged care snapshot](#), 16 September 2021

<sup>5</sup> Productivity Commission, A case for an extended unpaid carer leave entitlement? Position Paper, [Supporting paper 2: Costs and benefits of an entitlement](#)

<sup>6</sup> Carers Australia, [Caring Costs Us: The economic impact on lifetime income and retirement savings of informal carers](#)

Regulations (usually beyond three months), their employer is within their rights to terminate their employment.

The duration of leave carers are likely to want to access is influenced by multiple factors relating to the employment, financial and other care responsibility situation of the primary carer, their spouse/partner if any, and their relationship to the person they are caring for. These include:

- Carers of working age caring for older parents/in-laws
- Carers of working age caring for older spouses/partners
- Carers of working age caring for younger people with age-related conditions e.g. younger onset dementia
- Carers of working age providing end-of-life care for someone of any age
- Carers above age pension age who wish to return to work to supplement their retirement income
- Carers who have used all their superannuation to support themselves while providing care who wish to return to work
- Older workers who are seeking financial security by working for longer, to make up for interrupted work history due to caring responsibility in earlier life. This includes older workers undertaking 'bridge employment' after retirement from their main career but prior to exiting the workforce completely.<sup>7</sup>

Due to the sometimes unpredictable nature of changes to the care needs of older people, OPAN supports flexibility in leave duration being a key feature of the design of the entitlement. We also support older people and their carers being provided with high quality guidance about the expected trajectory of health conditions and disabilities to plan for predictable changes to care needs and the care adjustments required.

OPAN supports carers also having the option of taking carer leave as a reduction in working hours over an extended period, rather than an absence from work. Leave could also operate in a similar way to 48/52 purchased leave schemes currently in place in leading family-friendly workplaces.

In terms of design of an entitlement, OPAN considers that it needs to be accompanied by anti-discrimination protections in the workplace to prevent discrimination against workers with care responsibilities in recruitment, dismissal and career progression. Victoria is the only Australian jurisdiction where carer status is a protected attribute in terms of workplace discrimination.<sup>8</sup> OPAN considers that Commonwealth anti-discrimination laws should also be amended to provide protection because of carer status.

*Draft finding 3: Extended unpaid leave in the National Employment Standards is not the highest priority*

OPAN agrees that upcoming changes to the flexible working arrangements provisions of the *Fair Work Act 2009* will make it easier for many carers to negotiate flexible work. However, we do not agree that means that there is not a need to also provide for the right to extended leave in the National Employment Standards. OPAN agrees that evidence shows flexible working arrangements are most preferred and will be used by carers. However, leave may be more likely to be used by carers in

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<sup>7</sup> Topa, G., Alcover, C., Moriano, J. A., & Depolo, M. (2014). *Bridge employment quality and its impact on retirement adjustment: A structural equation model with SHARE panel data*. *Economic and Industrial Democracy*, 35(2), 225–244.

<sup>8</sup> Victorian Equal Opportunity and Human Rights Commission, [Equal Opportunity Act, 2010](#)

occupations and workplaces where flexible working arrangements are more challenging to implement. A leave entitlement is a tangible workplace right, while flexible working arrangements require a negotiated outcome. Workers with care responsibilities who are disempowered in the workplace or who find it difficult to negotiate with their line manager risk having requests for flexible working arrangements dismissed. However, an application for leave is more difficult to refuse and could also prompt a workplace conversation about access to other flexible working arrangements as an adjunct to or instead of unpaid leave.

#### *Draft finding 4: The case for an entitlement is similar for all carers*

OPAN supports extension of an entitlement to unpaid carer leave to carers of people with disabilities or illnesses for reasons of equity and administrative simplicity. All current employees and carers are future older people whose capacity to age well is influenced by their social and economic experiences earlier in life. OPAN strongly supports improving gender equity in the workplace and is cognisant of concerns raised that as carers are more likely to be women, unpaid leave could have a negative impact on gender equity. On balance, we consider that dropping out of the paid workforce entirely has a greater compounding impact on the gender pay gap and the financial disadvantage of older women, than taking unpaid leave and having a job to return to.

#### *Draft finding 5: Informal carers need timely and high-quality supports*

OPAN strongly supports continued progress with current and planned reforms to increase access to, and reduce waiting times for, formal aged care, carer support and respite care services.

Older people and carers consulted by OPAN have identified many deficiencies in the information provided to carers by Carer Gateway and a reduction in access to flexible respite care. They recommend a range of respite care reforms are needed including:

- Paying carers an additional amount of Carer Allowance to enable them to employ someone they know to provide respite care. They felt this would be particularly beneficial to older people living in rural and remote communities.
- Increased access to emergency respite care is critical
- Carers need more information about the importance of self-care and looking after their own health while caring and practical support and access to services to enable carers to do this
- Respite care must also be more flexible, and broader, recognising the different needs of carers and people receiving care, especially people living with dementia
- There needs to be greater thinking 'outside the box' to enable people to access respite care when and where they need it. Options should include cottage respite, in-home respite, and staying at alternative short-term accommodation e.g. serviced apartment, with the support of paid care workers.

#### *Draft finding 6: Working carers need access to flexible working arrangements*

OPAN strongly supports changes to the flexible working arrangements provisions of the *Fair Work Act 2009* (due to commence in June 2023). Working flexibly is highly valued by carers and the people they care for and is a key factor in juggling work and caring commitments. These changes will:

- increase an employer's obligations when considering an employee's request,
- aim to improving an employee's access to flexible working arrangements
- introduce dispute resolution provisions where an employer refuses an employee's request

OPAN supports the introduction of a dispute resolution process to deal with disputes that arise from refusal of a flexible work request. This is a significant amendment as this provision was removed when the *Fair Work Act 2009* was first introduced.

While these changes are expected to make it easier for carers to negotiate working arrangements with their employers, it is important to note that the circumstances where an employee may request flexible working arrangements remain limited. For example, we are aware of carers who are reluctant to return to office-based working due to the vulnerabilities of the person they care for, who have their request to continue working from home refused.

*Draft finding 7: Evaluation of the effect on carers of legislative reforms to flexible working arrangements*

OPAN does not support 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 to introduce an entitlement to extended unpaid carer leave. As discussed, there are so many diverse individual circumstances and differences in care relationships, we consider the upcoming changes to flexible work would only be enhanced by including an additional leave entitlement. We also consider that extended leave will benefit carers who are unable or unsuccessful in making flexible working arrangements. Evaluation should be carefully designed to determine the range of flexible arrangements and leave types used by which types of workers over the course of their caring journey, not just at a single point in time.

*Draft recommendation 1: Providing information about how to request flexible work to working carers*

OPAN supports carers being well informed and supported to access flexible working arrangements. Provision of fact sheets through Carer Gateway on how to talk with your employer about flexible work is the minimum that should occur. However older people and carers consulted by OPAN were adamant this must be accompanied by individualised support and assistance for carers to return to the workforce after their caring role ends. This type of person-centred support is also necessary for carers who are still caring and seeking to effectively balance both work and care. This can help the caring role from becoming an all-consuming one, ensuring that they have other outlets and other parts of their life other than caring.

*Draft recommendation 2: Reviewing definitions of care relationships in the National Employment Standards*

OPAN strongly supports a review of 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. Amending the eligibility restrictions so that they better reflect the diverse caring relationships of Australian families, friends and communities will prevent carers from being excluded from accessing key workplace supports.

In our earlier submission to this inquiry, OPAN strongly supported reviewing the unnecessarily restrictive definition of care relationships to those of immediate family or household member. We have many examples of people caring for aunts, uncles, friends and neighbours who are excluded from the definition of 'carer' as they do not live with the older person. We also strongly support enhancing access to carer leave for people with Aboriginal or Torres Strait Islander kin relationships or LGBTIQ+ families of choice. Older people in these communities experience additional barriers to engagement with formal



care services, and often prefer informal care from family and community members. We support older people in all the Aged Care Act 1997 identified priority populations receiving more care, not less.

OPAN considers that while the Commission outlined evidence received on the ongoing role played by carers after an older person has entered residential care, (Dementia Australia, sub. 12, p. 10), these carers do not seem to have been included in the modelling of projected uptake. It is vital to acknowledge that care at home is not the only form of care provided by carers. In addition to providing unpaid care, carers act as care coordinators and informal advocates to promote and protect the human rights, dignity and care needs of their relatives and friends living in residential aged care.

In line with the recommended changes to the definition of immediate family, OPAN considers that carers of people living in residential aged care should be eligible for extended carer leave. Examples of these circumstances would include an older person taking leave from residential aged care to stay in the home of their carer, such as we saw during the pandemic, or for end-of-life care.

### *Moving from luck of the draw to a workplace right*

Commissioner de Fontenay wrote that she “was incredibly lucky to have ample leave balances” and “to get a good deal of support” when her father was diagnosed with dementia, and that “we ought to make sure we are all that lucky”.<sup>9</sup>

OPAN supports an entitlement to extended leave under the National Employment Standards (NES) to reduce the impact that luck plays in the impact of caring on carers. We support people in lower paid jobs, who work casually or on time limited contracts and who do not have ample paid leave balances, having the right to apply for and be granted leave rather than relying on being lucky enough to have a supportive employer.

OPAN supports all the additional wrap-around supports identified in Supporting Paper 3<sup>10</sup> that are required to effectively support carers in their caring role. We maintain that in order for employed carers to make timely and best use of this range of supports, an extended leave entitlement is also necessary. As the carer quote at the start of this submission demonstrates, carer leave could support and enable both the practical and emotional tasks of caring. Carers returning to work having accessed carer wellbeing support while on leave will be less physically and emotionally drained and better prepared for the future challenges of balancing work and care.

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<sup>9</sup> The Conversation, 10 March 2023, [Carers of older Australians need more support – but we found unpaid extended leave isn’t the best solution](#)

<sup>10</sup> Productivity Commission, A case for an extended unpaid carer leave entitlement? Position Paper, [Supporting paper 3: Supporting informal carers of older people](#)