



A case for an extended unpaid carer leave entitlement?

Inquiry report
Executive summary



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Executive summary

Informal carers – spouses, children, extended family and friends – make an invaluable contribution to the care and wellbeing of older people and the community. And while caring can be a source of personal satisfaction, juggling paid work and care is challenging, especially for people providing high levels of care.

Caring for older people can affect carers' participation in the workforce as well as their health and wellbeing. Working carers, who are mostly women, can find their paid work and caring commitments so demanding that they quit their jobs or retire earlier than anticipated to concentrate on caring. With the population ageing and more women participating in the workforce, there will be more people combining work and care, making it increasingly important for informal carers to be able to reconcile their work and caring responsibilities.

This inquiry is about a recommendation made by the Royal Commission into Aged Care Quality and Safety for the Australian Government to assess the potential impacts of including an entitlement to extended unpaid leave for carers in the National Employment Standards. The Productivity Commission was subsequently asked to examine the economic and social costs and benefits of providing an extended unpaid leave entitlement to informal carers of older people in the National Employment Standards.

The two key tasks for this inquiry were to:

- design an entitlement to extended unpaid leave for carers of older people
- assess whether the entitlement should be included in the National Employment Standards.

Based on the available evidence on the costs and benefits of an entitlement to extended unpaid leave for carers of older people, the Commission did not find a strong case for amending the National Employment Standards. But because the evidence is thin, and measuring some of the impacts challenging (what value do you place on the additional care provided by family or potential changes in attitudes in the workplace about caring?), there is some uncertainty about the overall effects of an entitlement to extended unpaid leave for carers of older people.

What might an extended unpaid carer leave entitlement look like?

The Royal Commission did not specify what it meant by an 'extended period of unpaid leave', but the design of an entitlement determines its impact. The Productivity Commission developed an entitlement based on evidence about the likely effects of different design features (trading off the benefits to employees and people receiving care against the costs to employers) and the need to avoid undesirable consequences. We considered leave entitlements in other countries and aligned the features of the entitlement with those used in the National Employment Standards for other types of leave where possible.

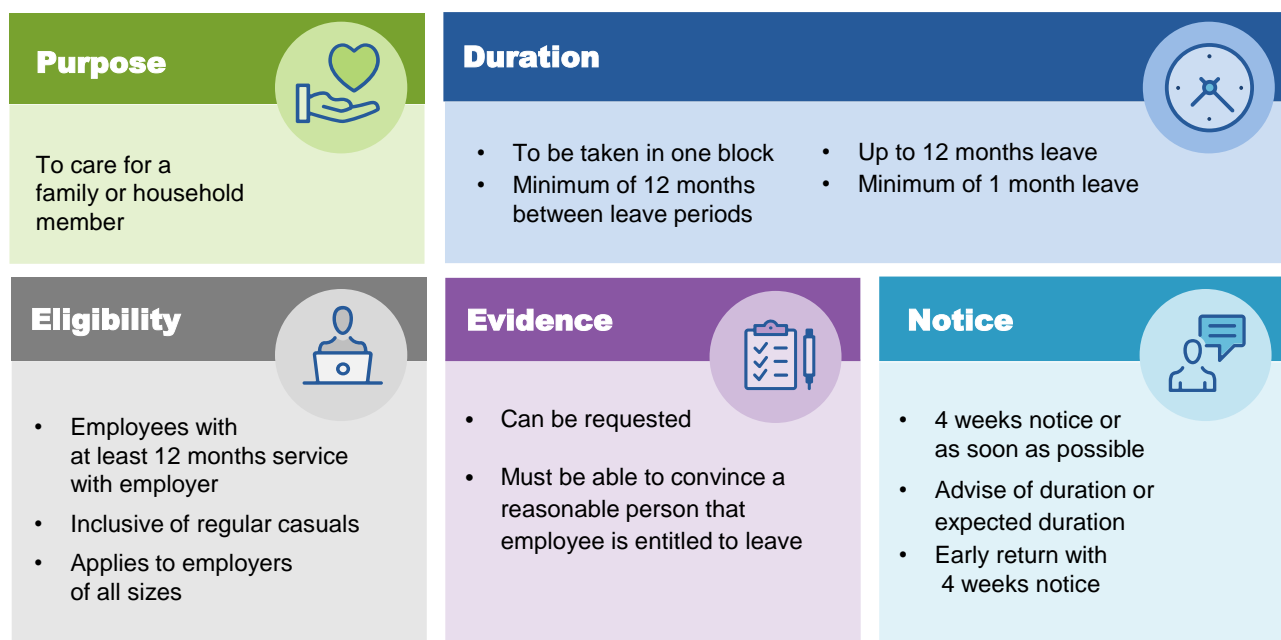
The model entitlement to extended unpaid leave to care for an older person would allow employees to take between 1–12 months of unpaid leave (with the employee specifying the expected duration at the outset). Up to 12 months of unpaid carer leave would provide carers with enough time away from work to manage a range of intense care circumstances (such as a new carer role or a sudden escalation in a carer role) without imposing excessive costs on employers or large wage, career and skill penalties on carers.

A minimum duration period of one month of unpaid leave would help contain costs for businesses – with short leave periods, businesses can face higher costs and have fewer options for covering absences – while allowing carers to take leave for shorter care needs (such as post-acute care) without being too costly for them.

The unpaid leave would be available to all employees who have worked for at least 12 months for their current employer (including regular casuals). This is consistent with a number of other workplace entitlements. Employees would be required to give four weeks' notice (or as soon as possible – shorter periods of notice may be required in emergency situations) of their intention to take leave.

The features of the model entitlement to unpaid carer leave are set out in figure 1.

Figure 1 – A model entitlement to extended unpaid leave to care for an older person



An entitlement to extended unpaid carer leave (like all entitlements in the National Employment Standards) would be a minimum statutory right for employees and mutually beneficial arrangements could be negotiated between employees and employers. This would include, for example, negotiating access to extended unpaid carer leave again in a shorter time frame than 12 months following its last use.

An entitlement is expected to have limited uptake

Based on the best available data, the Productivity Commission estimates that between 7,000 and 17,000 employees would use an entitlement to 1–12 months of unpaid leave to care for an older person each year. This equates to between 3% and 7% of working age carers of older people (less than 0.1% of all Australian workers). These estimates are broadly aligned with the number of users of similar unpaid leave entitlements in other countries.

An entitlement to extended unpaid leave would not substantially increase either the number of informal carers or their workforce participation (both proposed objectives of an entitlement). There are three reasons for this.

- Many informal carers who are working do not want to take extended unpaid leave (unpaid carer leave comes at a very high personal cost, including to household income and career progression – as one carer said ‘who will pay the bills?’). Many carers of older people want more workplace flexibility, not an extended absence from the workplace.
- An entitlement to extended unpaid leave would not change the behaviour of many employees. We estimate that about half of the employees who would use an entitlement to 1–12 months of unpaid leave

would have left their jobs to provide care if they could not take extended leave. Only about 6,000 employees each year would be induced to provide additional care because of the entitlement.

- Most informal carers of older people are not in the workforce (many are retired spouses or siblings, or children who are themselves retired). Of the 428,000 informal carers of older people, just 161,000 (or less than 40%) are in the workforce.

But an entitlement would benefit carers and those being cared for

Despite the relatively low number of people expected to use the entitlement, extended unpaid leave would benefit the older people who receive care from those taking leave. It could also improve the quality of their care – care provided by family and friends is often associated with continuity of care and trusting relationships between caregivers and recipients, which are important facets of quality.

An entitlement to extended unpaid carer leave would also benefit employees. Its key benefit for carers would be to give them the option of taking time away from paid work to resolve caring issues, including at key transition points (such as needing to find residential care or for end-of-life care) before returning to work. It would reduce the costs of searching for a job after an extended absence, and reduce the risk of under or unemployment and early withdrawal from the workforce. It could also help carers to maintain their connection to the workplace while caring full-time, and give all employees peace of mind that they could take time away from their job to care for an older loved one if required.

An entitlement to extended unpaid carer leave could also send a signal that taking time out of paid work to care is valued by the community and help change attitudes in the workplace about caring. A number of carers told the Commission that they had not spoken to their employer about their caring role, or requested changes to their working arrangements, because they feared negative career consequences.

By expanding access to extended unpaid leave to a wider group of employees, an entitlement would improve equity among carers of older people who need 1–12 months of unpaid leave to care (some employers offer extended unpaid leave to their employees while others do not). Arguing for an entitlement to extended unpaid leave, one carer said ‘give all carers choice’. However, an entitlement would not improve equity across caring situations (such as where employees require leave for episodic care or for more than 12 months). In addition, because caring responsibilities are shared unequally between women and men, an entitlement to extended unpaid carer leave is likely to reinforce gender inequality in paid work and care (although these effects are likely to be small given the small number of employees expected to take up the entitlement).

Employers are likely to pass on additional costs

An extended unpaid carer leave entitlement would impose costs on employers. They could face disruption to their business, may need to recruit replacement workers, and face uncertainty about the capabilities and productivity of any new workers. Where a business has high turnover of relatively unskilled labour, these costs would be small. In more specialised businesses that rely on highly skilled staff, the limited evidence (mainly from unforeseen changes to parental leave)¹ suggests these costs could be material. While an entitlement to extended unpaid carer leave would partly benefit employers by helping them retain employees, the need for a statutory requirement suggests the costs for the average business outweigh the benefits.

In businesses where the costs of the entitlement were material, employers would incorporate the costs into their practices around recruitment and remuneration. This means that over time, employees are likely to pass

¹ The costs of extended unpaid carer leave are likely to be higher than the costs of parental leave because there is likely to be less notice given before leave is taken, and fewer leave-takers are expected to return to work.

these costs on to workers through reduced employment opportunities and lower long-run wage growth, effectively placing the costs of the entitlement on the very carers it is meant to help. They may also pass the costs on to their customers through price increases. In aggregate though, the impacts on employers and the downstream effects of those impacts are likely to be small given the small proportion of all employees expected to take extended unpaid carer leave.

Taxpayers would also bear some costs

The effects of an entitlement to extended unpaid carer leave on taxpayers would be mixed. On the one hand, it could reduce taxpayer-subsidised formal aged care. On the other hand, it would lower tax receipts (as carers on unpaid leave would pay less income tax) and potentially increase welfare payments (as some carers on unpaid leave would be eligible for Carer Allowance and/or Carer Payment). Again, while in aggregate these impacts would be small, an entitlement to extended unpaid carer leave is expected to result in a net negative for the Budget. This is because lower tax receipts and higher welfare payments are unlikely to be offset by reduced spending on formal care for older people.

There are modest net benefits and better ways to support carers

Adding an entitlement to 1–12 months extended unpaid carer leave to the National Employment Standards would help some informal carers of older people to balance the expectations and demands of paid work and care. However, the number of carers who would benefit would be small and the net benefits to the community are expected to be modest at best.

Importantly, most carers told us that while it would be handy to have, an entitlement to extended unpaid carer leave is not their highest priority. And it will be unsuitable or inaccessible for many carers. This is because of the impact on household income (unpaid leave is simply unaffordable for many carers) and the episodic nature of some caring roles. Anglicare Australia, for example, said a legislated return to work would be helpful, 'but having enough money to live on while carrying out caring responsibilities is far more important'.

Flexible working arrangements, agreed between working carers and their employers, can be a better solution for both working carers and for employers.

- Flexible working arrangements allow people to continue working and keep more carers in the workforce for longer. They can take many forms, including changes to hours of work, locations of work (including working from home) and patterns of work (for example, split shifts or job sharing). These changes can make it easier for carers to earn an income and progress their career while also supporting and caring for their older family member or friend. Flexible working arrangements that allow carers to continue working can also have a positive impact on carers' wellbeing (carers told us that work is a respite from caring and work helps them maintain social connections). Continuing to earn an income can also help carers with the additional costs of caring.
- Flexible working arrangements can help employers recruit and retain staff (and result in lower recruitment and training costs). And employees who have the option of working flexibly may be more committed and engaged, potentially resulting in higher productivity.

The Australian Government recently legislated to strengthen the right to request flexible work in the National Employment Standards. These changes will take effect in June 2023 and are expected to provide carers with greater workplace flexibility, but it will take time before we know their actual effect on carers and employers.

A review of these changes is scheduled to be completed in 2025. However, it will not be easy for this review to determine the effects of the right to appeal on workplace flexibility because the COVID-19 pandemic has driven large changes to workplace flexibility that are likely to mask any changes due to the right to appeal.

And for the few employees who have access to the right to appeal under their enterprise agreements, very few rejected requests are appealed to the Fair Work Commission. As such, this review will be of most value if it focuses on ways to improve the right to request flexible working arrangements and the right to appeal. It should consider improvements to administrative processes and changes to the 'reasonable business grounds' criterion for rejecting requests. To allow the review to consider improvements to the right to appeal, the Fair Work Commission should begin collecting data (surveying employees and employers involved in appeals and arbitration) as soon as practicable.

There are also other ways to improve support for informal carers.

- The National Employment Standards should be amended to remove the requirement that two days unpaid carer leave (per occasion) can only be taken when an employee's paid carer leave entitlement is exhausted. This change will give carers the flexibility to use unpaid leave in a way that best suits their needs and to take unpaid leave to deal with emergencies and other short-term caring responsibilities.
- Information about how to request flexible work should be proactively provided to working carers when they are seeking out information or interacting with service providers (such as through the Carer Gateway).
- The current and planned reforms to the aged care system, including expanded access to home care and respite care, should continue to be implemented. Access to high quality formal care is key to helping carers remain in paid work and to continue caring.

Some existing leave entitlements in the National Employment Standards are not working well for carers and they should be reviewed. This includes assessing whether amendments should be made (based on net benefits to the community) so that:

- people whose care relationships are broader than their immediate family or household (such as nieces, nephews or families of choice) can take leave to provide care, and potential care recipients can receive care from a loved one
- eligible occasions of care for carer leave, which are currently limited to employees providing care for an illness, injury or unexpected emergency, allow carers to undertake other caring activities, such as organising formal care
- the design of personal/carer leave (including the amount of leave and the aggregation of leave) does not prevent carers from being able to access sufficient leave to provide care and look after their own health and wellbeing.

Future reviews of income support payments, to be conducted by the Economic Inclusion Advisory Committee, as well as reviewing the rate and eligibility of carer income support payments, should consider whether the complexity of multiple payments is contributing to carers' economic disadvantage.

The case for an entitlement is similar for all carers

The Commission was also asked to consider whether an entitlement to extended unpaid carer leave should be available to employees who provide other types of care, such as care for people with disability or illness, regardless of their age. There are about the same number of these carers as carers of older people.

The case to amend the National Employment Standards to include an entitlement to extended unpaid leave for these carers is similar to that for carers of older people. Just as for carers of older people, the needs of these carers in terms of length and frequency of leave vary, which makes a relatively defined entitlement to an 'extended' period of leave useful for some caring situations but not others. For example, a period of leave of up to 12 months would not fit with the needs of someone caring for a person with long-term disability, but it might help them to deal with a crisis that adds to the usual care needs. Similarly, care needs may be episodic rather than continuous over a defined period. However, for reasons of equity and administrative

simplicity, 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.

A whole-of-government approach to supporting carers is warranted

The Australian Government should take a more holistic approach to supporting informal carers to engage in paid work. The National Carer Strategy, which is currently being developed, is an opportunity for a whole-of-government approach to supporting carers, including to give visibility to the range of supports for carers across government, and to confirm that the needs of carers are being considered in other areas of reform, such as aged care.

The National Carer Strategy should include a commitment to undertake an audit of existing policies to support carers to balance paid work and care. It should also have a process for undertaking policy evaluations and building an evidence base about what works and what is good value for money. The evidence base and gap analysis, together with the lived experiences of carers, should inform future policy direction. An independent review of the Strategy should also be undertaken every five years to assess whether the various supports it covers complement each other and are making a difference to the wellbeing of carers.

Findings and recommendations

Extended unpaid leave for carers of older people



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.



Finding 2

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

The design features of the Commission's 'model' entitlement of extended unpaid leave for carers of older people are:

- unpaid leave for 1–12 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 four weeks, or as soon as possible
- 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.



Finding 3

Extended unpaid carer leave in the National Employment Standards would have few positive impacts, and pose some costs

Adding an entitlement to 1–12 months extended unpaid carer leave to the National Employment Standards is an option that could help support informal carers of older people to juggle expectations and demands of paid work and care. 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. Unpaid leave comes at a very high personal cost and most carers prefer flexible working arrangements.
- An entitlement would impose costs on employers and these could be passed onto employees in the form of lower wage growth and reduced employment opportunities.
- An entitlement to extended unpaid carer leave would improve equity among carers of older people who require 1–12 months leave to care, but it would not improve equity across caring situations (such as where employees require leave for episodic care or for more than 12 months).
- An entitlement to extended unpaid carer leave is likely to reinforce unequal sharing of caring responsibilities between women and men (although the effects would be small given the low number of carers expected to take up the entitlement).
- Upcoming changes to the flexible working arrangements provisions of the *Fair Work Act 2009* (Cth) are expected to make it easier for carers to negotiate flexible work, perhaps obviating the need for extended unpaid carer leave.

Extended unpaid leave for other carers



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 an entitlement for carers of older people.

For reasons of equity and administrative simplicity, 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.

Better support for a larger number of carers



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.



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 paid work and caring commitments. The changes to the flexible working arrangements provisions of the *Fair Work Act 2009* (Cth) (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 paid work and care commitments.



Recommendation 1 Evaluate the right to appeal rejected requests for flexible working arrangements

The review of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) (to be completed by June 2025) should consider how the right to appeal rejected requests for flexible working arrangements to the Fair Work Commission (FWC) (to take effect from June 2023) could be improved.

To inform the review, the FWC should, as soon as practicable, start surveying employees who appeal rejected requests for flexible working arrangements, and their employers, about the process and seek their views on how it could be improved. For cases that proceed to arbitration, the FWC should also survey employees and employers about aspects of their case. The FWC should provide the survey responses (or de-identified versions of them) to the Department of Employment and Workplace Relations.



Recommendation 2 Provide 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* (Cth)
- routinely providing the fact sheets to carers at key points in time, such as when they contact the Carer Gateway.



Recommendation 3

Review 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, but it 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.



Recommendation 4

Review eligible occasions of care and the combining of paid carer leave and sick leave in the National Employment Standards

The eligible occasions of care in the National Employment Standards limit carer leave to employees providing care for an illness, injury or unexpected emergency. This can mean that carer leave is not available to carers to provide assistance with everyday activities or to organise formal care.

Paid carer leave is combined with the carer’s sick leave entitlements in personal/carer’s leave in the National Employment Standards. This can mean carers have insufficient leave balances to be able to take leave when they are sick, making it more difficult for them to manage their own health and wellbeing.

The Australian Government should review both the eligible occasions of care and the design of personal/carer’s leave (looking at the quantum of leave and whether paid sick leave and carer leave should form part of the same entitlement) in the National Employment Standards, to see if amendments should be made (based on net benefits to the community).

**Recommendation 5****Remove the requirement that unpaid carer leave can only be accessed when paid carer leave is exhausted**

Under the National Employment Standards, all employees have access to an entitlement to unpaid carer leave (up to two days per occasion) but they can only access the unpaid leave when their paid carer leave (personal leave) is exhausted. This requirement reduces carers' options for taking short-term leave to care, including flexibility around how to use the unpaid carer leave entitlements to best support them and their care recipients.

The Australian Government should amend the National Employment Standards of the *Fair Work Act 1999* (Cth) to provide employees with the choice to take either paid carer leave or unpaid carer leave in circumstances where they are eligible to take both forms of leave.

**Recommendation 6****The National Carer Strategy: an opportunity for a whole-of-government approach to supporting carers**

The Australian Government National Carer Strategy should include:

- a whole-of-government approach to supporting carers to participate in the workforce
- action to ensure carers' needs are included alongside the needs of the care recipient
- a commitment to undertake an audit of existing policies to support carers to reconcile paid work and care and actions to resolve gaps
- a formalised process for undertaking policy evaluations and building the evidence base on effective carer supports, and for incorporating this evidence alongside carers' lived experiences in the development of future policy.

An independent review of the National Carer Strategy should be undertaken every five years.