



# Carer leave

## Issues paper

The Commission has released this issues paper to assist individuals and organisations to prepare submissions. It contains and outlines:

- the scope of the inquiry
- the Commission's procedures
- matters about which the Commission is seeking comment and information
- how to make a submission.

**The Productivity Commission acknowledges the Traditional Owners of Country throughout Australia and their continuing connection to land, waters and community. We pay our respects to their Cultures, Country and Elders past and present.**

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- the scope of the inquiry
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- matters about which the Commission is seeking comment and information
- how to make a submission (see attachment B).

Participants should not feel that they are restricted to comment only on matters raised in the issues paper. The Commission wishes to receive information and comment on issues which participants consider relevant to the inquiry's terms of reference.

## **Key inquiry dates**

Receipt of terms of reference	23 February 2022
Due date for submissions	26 August 2022
Release of draft report	January 2023
Final report to Government	July 2023

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## About this inquiry

Family members and close friends who provide informal (unpaid) care and support for older people are a critical part of Australia's aged care system. They reduce the need for formal (paid) care and help to maintain critical social and community connections.

The Royal Commission into Aged Care Quality and Safety (Royal Commission) found that the current aged care system fails to adequately support informal carers (box 1). It reported that many informal carers experience adverse health, wellbeing and financial outcomes and struggle to balance the needs to care for the elderly with their work and other personal commitments. In response, the Royal Commission made recommendations to improve support for informal carers, including:

Recommendation 43: ...the Australian Government should examine the potential impact of amending the National Employment Standards under Part 2-2 of the Fair Work Act 2009 (Cth) to provide for an additional entitlement to unpaid carer's leave.

### Box 1 – Royal Commission — recommendations for informal carers

The Royal Commission into Aged Care Quality and Safety made 148 recommendations to reform the sector which included: a new Aged Care Act that prioritises the needs and preferences of older Australians; new governance arrangements to consistently deliver safe and high-quality care; streamlined national program settings; and a new funding model.

The Royal Commission recognised informal carers as integral to the provision of high-quality care and wellbeing of older people. In making *Recommendation 43* it posited that the need for informal carers was likely to increase and that more flexible work arrangements could relieve some of the adverse impacts experienced by carers.

In addition, the Royal Commission argued that informal carers require better access to information, training, and assessment and support services to maintain their wellbeing and capacity to care for older people. Accordingly, *Recommendation 42* seeks to improve existing supports by streamlining access to information and referrals and establishing a network of community-based Carers Hubs.

Better access to flexible, high-quality respite care was emphasised as a key priority. The Royal Commission proposed that the new Aged Care Act specifically define aged care to include supports, such as respite for informal carers. It also made several recommendations to increase funding and improve access to respite care. To help facilitate this, it argued that the needs of informal carers should be comprehensively considered as part of a single aged care assessment process (*Recommendation 28*).

Source: Royal Commission into Aged Care Quality and Safety (2021).

The Productivity Commission has been asked to examine the economic and social costs and benefits of providing an extended unpaid leave entitlement to informal carers of older Australians under the National Employment Standards (NES).

In the first instance, such an entitlement could contribute to:

- increasing the amount of care provided
- increasing the quality of care
- improving support to carers by granting a right to return to work after extended leave caring.

The Terms of Reference also direct us to consider:

- alternative ways to support informal carers to support older Australians
- the application of paid leave or long-term unpaid carer's leave for other types of care, such as caring for people with disability or having temporary or terminal illness.

## **Focus and scope**

As directed by the Terms of Reference, this inquiry will focus mainly on the effects of inserting into the NES an entitlement for extended unpaid leave for carers of older Australians.

This inquiry will examine how the entitlement would affect the behaviour of carers, older people, and employers, its overall and distributional effects on the welfare of these groups, and how it might affect government budgets. It will also assess the adequacy of the existing leave provisions in the NES for informal carers and consider how the proposed entitlement could be designed.

The proposed entitlement would benefit employees who might need to access an extended period of leave — a relatively small group of potential informal carers. That said:

- the underlying rationales and principles for assessing an entitlement to extended unpaid leave to care for older people may also apply to other types of care situations (including caring for younger people with an illness or with a disability); and
- other support measures and policies (including some that the Royal Commission identified) could benefit a wider cohort of informal carers of older Australians (carers who are not in employment).

Although these considerations are not the primary focus of the Terms of Reference, this inquiry will consider measures other than the entitlement that could be enacted alongside, or in place of it, and the possible rationales for and against extending the entitlement to other types of informal carers.

Separate to this inquiry, we are also undertaking a study relating to another recommendation from the Royal Commission. The Aged Care Employment study is examining employment models in aged care, and the effects that policies and procedures to preference direct employment of aged care workers would have on the sector (see Aged Care Employment — Commissioned study — Productivity Commission ([pc.gov.au](http://pc.gov.au))).

This Issues Paper outlines and seeks your views on:

- how we intend to assess the effects of a potential change to the entitlement for carers leave
- the design features of such a leave entitlement (for example, the length of the leave), which will bear on the effects and costs of the entitlement.

## Role of informal carers of older people

Informal carers play a critical role in complementing the formal in-home and residential care system. For this reason, and to maintain the sustainability of their contribution to the care task, it is particularly important for informal carers to have the flexibility and support to provide the care required. The main proposal for an entitlement to unpaid leave, and the complementary questions posed in the terms of reference, can contribute to these aims.

### Who are informal carers?

Broadly defined, informal carers are people who provide unpaid care and support to family members and friends (box 2). They are distinct from people who are employed or contracted to provide care (in-home or residential care workers). The ABS Survey of Disability, Ageing and Carers estimates that there were 2.6 million informal carers in Australia in 2018, including 862,000 primary carers. Nearly half of these (428,000) were primary carers of older people.

#### Box 2 – Defining informal care

The Carer Recognition Act 2010 (Cth) established a broad and encompassing definition of an informal carer. It defines informal carers to be:

...individuals who provide unpaid care and support to family members and friends who have a disability, mental illness, chronic condition, terminal illness, alcohol or other drug issue, or who are frail aged.

They cannot be employed as a carer (although they may receive income support that is conditional on provision of care) or be caring as a volunteer for an organisation. But they need not reside in the same household as the care recipient.

The ABS further classifies informal carers as 'primary' or 'other' carers:

- Primary carers are those who provide primary assistance with one or more of the 'core activities' of mobility, self-care and communication.
- Other carers are those who provide secondary assistance with one or more of the core activities, or assist only with non-core activities (for example, household chores).

Source: DSS (2016) ABS (2018).

In Australia, most primary carers of older people are women (70 per cent; figure 1, panel a). About 47 per cent of primary carers of older people are their children and 43 per cent are their spouses (figure 1, panel b). More than half (55 per cent) are aged under 65 (figure 1, panel c) and 22 per cent provide more than 60 hours of care per week (figure 1, panel d). The most common reasons for taking on the role of primary carer for an older person are:

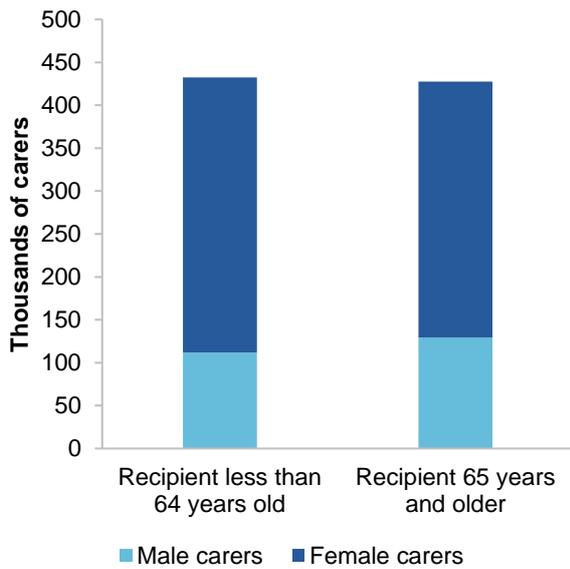
- a sense of family responsibility (71 per cent)
- emotional obligation (45 per cent)

- an ability to provide better care than anyone else (43 per cent) ABS (2018).

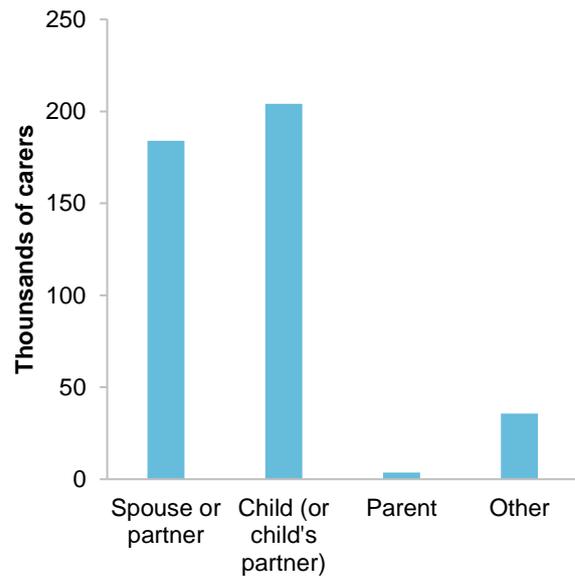
However, 35 per cent of carers report that ‘no other friends or family were available’ to provide care and 16 per cent report they ‘had no other choice’ but to become a carer.

**Figure 1 – Characteristics of carers and care recipients**  
Australia, 2018

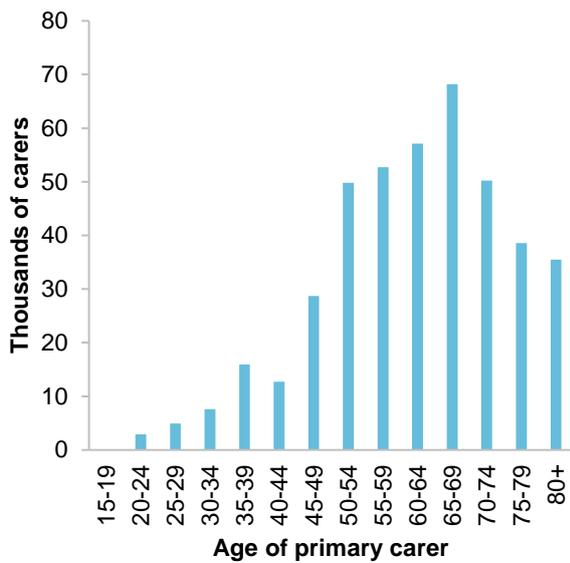
a. Number of primary carers, by carer gender and care recipient age



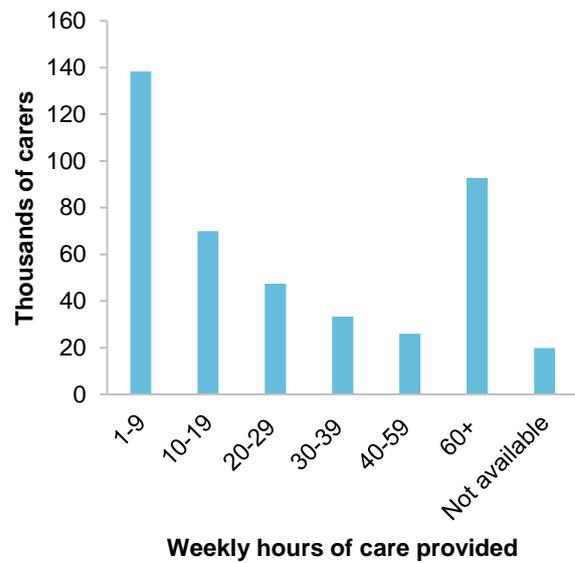
b. Number of primary carers of older people, by relationship to care recipient



c. Number of primary carers of older people, by age of primary carer



d. Number of primary carers of older people, by weekly hours of care provided



Source: ABS (Survey of Disability, Ageing and Carers, 2018, TableBuilder).



### Information request

We seek information about the circumstances in which people become informal carers of older Australians.

- How often does the decision to become a carer necessitate changed work arrangements or leaving the workforce?
- How often is this a planned decision versus an impromptu decision triggered by an emergency?

## What do they do?

Informal carers assist with a range of core and non-core activities, both in place of and alongside support provided by formal carers. Core activities include mobility tasks, self-care and communication, while non-core activities include tasks such as transport, household chores and health care.

The Royal Commission found that informal carers play a significant role in helping older people to stay in their own homes for as long as possible. Living with a co-resident carer is associated with longer intervals between undergoing an aged care assessment and entering permanent residential care compared with relying on a non-resident carer (Australian Institute of Health and Welfare 2017). This suggests a degree of substitutability between formal and informal care, and that informal care can delay the need for formal care.

Evidence from abroad suggests that for lower intensity care, formal and informal care are substitutes, at least to some degree (Bolin, Lindgren and Lundborg 2008; Bonsang 2009). For higher intensity care, however, the degree of substitutability is weaker (Bonsang 2009). Some studies find that formal and informal care are complements — for example, when the formal care consists of nursing or visits to GPs or to hospital (as informal carers can assist older people to access these forms of care) (Bolin, Lindgren and Lundborg 2008).

Based on available data and literature, it is possible to give a stylised sketch of the diversity of care pathways and the role of informal carers in the aged care system (figure 2). About 950,000 (or 80 per cent) of the 1.2 million Australians aged 65 years and older receive at least some form of assistance from informal carers (ABS 2018). More older Australians receive informal care than formal in-home care or permanent residential aged care (ABS 2018, SCRGSP 2019). The pathways towards permanent residential aged care are numerous and diverse (AIHW 2017). Informal carers contribute throughout the aged care sector either by themselves as unpaid informal carers, or by complementing paid formal care.

Care pathways are complex and diverse, and so are the interactions between formal and informal care. Informal care forms part of all pathways, including pathways that include a residential care phase and those that do not. Among the older persons who will spend part of their life in residential care:

- 26 per cent follow a pathway in which they first receive episodic informal care, then more intensive informal care, before transitioning to a period of in-home informal care and formal care, and eventually moving into permanent residential aged care
- 18 per cent follow a similar pathway, that also includes periods of formal residential respite care
- 56 per cent make up a highly heterogeneous group that make multiple use of formal and informal aged care services in their transition towards permanent residential aged care.



### Information request

We seek evidence on how formal and informal care interact in the aged care sector.

- How many older Australians receive informal care and formal in-home care?
- To what extent do informal carers perform similar or different roles to formal in-home carers?
- What formal services would be difficult for some older Australians to access without informal support?
- How many older Australians rely solely on informal care? In what circumstances, or for what reasons does this occur?
- How many older Australians would need to enter residential care, if less informal care was provided?
- To what extent do informal carers support older Australians who are in residential aged care?

## How does caring affect informal carers?

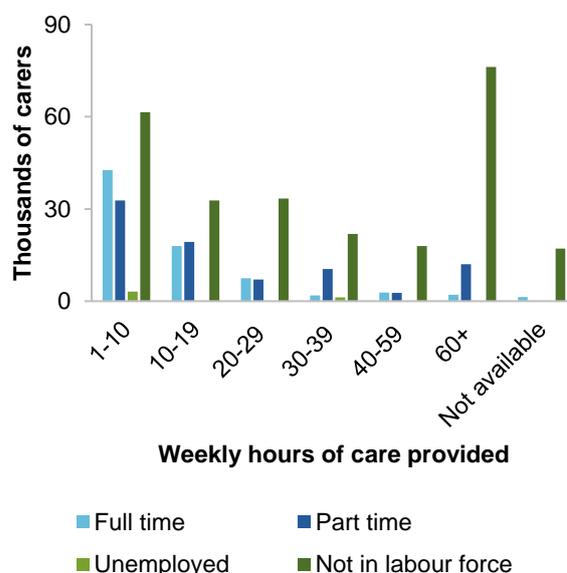
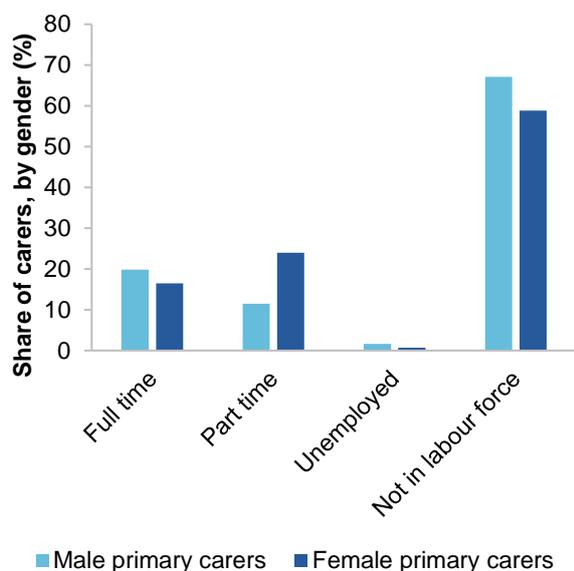
The Royal Commission pointed to the detrimental effects of caregiving on the health, wellbeing and economic security of informal carers and the quality of care they provide. These 'costs of caring' may affect the sustainability of informal care and impose flow-on costs to the carer as well as the broader health and welfare systems. Although the evidence for causality remains to be assessed, some associations are strong.

There is a body of evidence that indicates that informal caregiving is associated with lower labour force participation. This is particularly pronounced for carers providing intensive care (more than 20 hours per week) (Colombo et al. 2011). In 2018, only 59 per cent of primary carers aged 15–65 were in the labour force (figure 2, panel a), compared with 82 per cent of non-carers of that age (ABS 2018). Informal carers were also relatively more likely to be in part time employment than non-carers. Primary carers who provided more than 60 hours of care per week were much less likely to be in the labour force than other primary carers (figure 2, panel b). Carers are also more likely to live in lower income households — 50 per cent of primary carers live in the lowest two income quintiles compared 26 per cent of non-carers. That said, it is uncertain if this is because people in low-income households are more likely to take up a caring role (that is, because caring does not change their income as much, or because paying for formal care is not affordable for them) or because carers are more likely to leave their jobs or are more likely to work fewer hours or in lower paid jobs.

**Figure 2 – Most carers were unlikely to be in the labour force — especially those who provided the most care<sup>a</sup>**

**Australia, 2018**

a. Share (by gender) of primary carers of older people, by labour force status      b. Number of primary carers of older people, by weekly hours of care provided and labour force status



a. Includes only primary carers of working age (15–65 years).

Source: ABS (*Survey of Disability, Ageing and Carers, 2018*, TableBuilder).

There is also evidence that informal caregiving is associated with poorer mental health and wellbeing. Carers are 2.5 times more likely to report low wellbeing than the average Australian adult and twice as likely to report having poor health (Carers Australia 2021). The 2018 Survey of Disability, Ageing and Carers (SDAC) found that about 23 per cent of carers were worried or depressed because of the caring role, and that 6 per cent had a stress-related illness because of the caring role (ABS 2018). These findings are consistent with similar findings overseas. The OECD has found that the prevalence of mental health problems among carers is 20 per cent higher than among non-carers in OECD countries (Colombo et al. 2011).



**Information request**

We seek evidence on how informal carers of older people are affected by their caring responsibilities:

- What other evidence should the Commission consider relating to what causes informal carers to have lower labour force participation, or incomes, or poorer health and wellbeing compared to those without caring responsibilities?
- Are different groups of informal carers (for example, women, young people, older carers, etc) more or less likely to be affected? Why?

## Carer employment entitlements

The National Employment Standards (NES) are the minimum terms and conditions that employers in the national workplace relations system must provide for their employees (box 3). The existing leave entitlements for carers are primarily intended for brief periods of care to deal with an illness or unexpected event or emergency. The NES does not currently include an entitlement to extended unpaid leave for carers. However, this does not preclude a business from offering carer leave over and above the minimum standards. The NES includes three standards that assist informal carers in managing their work and caring obligations.

- 10 days of paid personal/carer leave (inclusive of sick leave) per year for full-time and pro-rata for part-time employees. Personal/carer leave accumulates during each year of employment. There is no limit to the amount of accumulated personal/carer leave that an employee can take within a year, however an employer can request evidence for the need to take leave (for example, a medical certificate or statutory declaration)
- 2 days of unpaid carer leave for each episode of care required, available to all employees, including casuals. Full-time and part-time employees can only access unpaid carer leave once they have exhausted their paid personal/carer's leave balance.
- A right to request flexible working arrangements — changes to hours, patterns and locations of work – for carers who have worked with their employer for at least 12 months. Employers may refuse requests on reasonable business grounds. There is no mechanism to appeal such refusals.

Eligibility for these entitlements varies. To be eligible for paid or unpaid leave, an employee must be providing care or support to a member of their immediate family or household because of a personal illness, injury or emergency. These criteria might limit some employees from using the existing leave provisions to care for an older person. In contrast, eligibility to request flexible working arrangements follows definitions under the Carer Recognition Act 2010 (Cth), and includes anyone providing care to a family member or friend, who may or may not reside in the same household.

The NES specify several other types of leave from which we might design a new entitlement for carers. They include:

- parental leave — new parents can access up to 18 weeks of paid parental leave and are entitled to 12 months of unpaid leave and the right to request an additional 12 months unpaid leave
- family and domestic violence leave — all employees (including part-time and casual employees) are entitled to 5 days unpaid family and domestic violence leave each year
- volunteer community service leave — all employees are entitled to unpaid leave to engage in voluntary emergency management activity and for reasonable travel and rest time. There is no set limit on the amount of community service leave an employee can take.

The NES carer entitlements appear to be widely used, however there is also evidence that informal carers struggle to balance their work and caring responsibilities. In 2018, 35 per cent of employed primary carers of older people had used paid or unpaid carer's leave in the last 6 months (ABS 2018). However, only 53 per cent said they were aware their employer provided paid carer's leave and only 37 per cent said they were aware they could access unpaid leave. The Carers Wellbeing Survey conducted in 2021 found that among respondents providing informal care to an older person, 22 per cent reported that they had no flexibility in their work hours.

### Box 3 – The National Employment Standards

The National Employment Standards are set out in Part 2-2 of the Fair Work Act 2009 (Cth). They contain 11 minimum employment entitlements that cover:

- maximum weekly hours
- flexible working arrangements
- casual to permanent conversion
- parental leave and related entitlements
- annual leave
- other leave (that is, personal / carer leave, compassionate leave and family and domestic violence leave)
- community service leave
- public holidays
- notice of termination and redundancy pay
- Information statements employers must provide.

The standards apply to all employees, including those covered by an award, enterprise agreement or employment contract as well as casual employees for certain entitlements (for example, maximum weekly hours). An employee is covered by an award, enterprise agreement or employment contract, those conditions cannot be any less than the minimum in the NES.

Source: Fair Work Commission (2022).



#### Information request

We seek information to understand the extent to which employees use existing leave and flexible work provisions in the NES to care for an older person:

- When do employees use paid or unpaid leave or request flexible working arrangements to care for an older person? In what circumstances are the provisions inadequate?
- Do the eligibility requirements for the paid and unpaid leave entitlements allow them to be used by informal carers of older Australians? If not, why?
- Are there barriers that limit informal carers of older people from using the entitlements?
- Are there specific Awards that provide entitlements to informal carers that are beyond those provided in the NES?

We seek information from **employers** regarding the use and provision of leave for informal carers:

- What is the rate of uptake of the existing leave entitlements by employees who are informal carers?
- How often are leave or requests for flexible work arrangements to care for an older person denied by employers? How does this vary in different industries?
- To what extent do employers currently provide leave or other entitlements above the NES standards to employees with caring responsibilities for older people?
- Do employers have other policies to support employees who are informal carers? Are there examples of best practice?

## Effects of an entitlement to extended unpaid carer leave

The Royal Commission and the terms of reference to this inquiry suggested three rationales for creating an entitlement to extended unpaid carer leave.

- Carer wellbeing — the Royal Commission suggested that an entitlement to extended unpaid carer leave might ‘...relieve some of the impacts that informal carers experience’ (Royal Commission into Aged Care Quality and Safety 2021, p. 211).
- Care recipient wellbeing — the Royal Commission highlighted the ‘...preference of older people to remain living at home’ (Royal Commission into Aged Care Quality and Safety 2021, p. 211) and suggested that more informal care (alongside more home-based formal care) would support more people to live at home.
- Reducing the demand for formal care — the terms of reference highlighted that an entitlement to extended unpaid carer leave ‘could relieve some of the burden on formal carers’ (emphasis added).

The effects of an entitlement to extended unpaid carer leave on carer and care recipient wellbeing and the demand for formal care are each important. But an entitlement to extended unpaid carer leave would have other effects too, as both the terms of the reference and the Royal Commission acknowledge. We intend to assess as many of the material effects as practicable and determine how the design of the entitlement would influence them.

When examining any policy proposal, our statutory guidelines require us to consider the interests of the community as a whole, rather than the interests of particular groups (such as, in the case of this inquiry, carers or employers) (PC 2022). As such, we are required to assess whether an entitlement to extended unpaid carer leave would confer a net *community-wide* cost or benefit, including in terms of the distributional effects of such an entitlement.

We seek feedback on what the effects of an entitlement to extended unpaid carer leave would be, how we should assess the net community-wide cost/benefit associated with each, and how we should assess the distributional consequences.

We have separated the effects into two types.

- Effects on caring and other economic activity. These are the ways in which the entitlement would affect carers’ decisions about whether to work or provide care, and employers’ hiring decisions.<sup>1</sup>
- Redistributive effects. These are the ways in which the entitlement would redistribute resources from employers and employees to carers, and, potentially, from carers to older Australians.

### Effects on caring and other economic activity

An entitlement to extended unpaid carer leave would change the incentives that employees and employers face. For carers who have already left the workforce, such a change would have no impact; but for others, an

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<sup>1</sup> Throughout, the section refers to groups such as ‘carers’ and ‘employees’. These groups are not mutually exclusive; for example, a carer might also be an employee.

entitlement to unpaid leave could lead them to take up leave and employers would have to manage the process and the related absences.

## Some employees would cease working and provide more care

The creation of an extended unpaid carer leave entitlement could result in some employees, who would otherwise have kept working, now taking extended unpaid carer leave. We seek feedback on how we might measure the magnitude of this effect.

It might also increase the number of people who intend to return to work after an extended period of caring.



### Information request

We seek your feedback on how many employees would likely take extended unpaid carer leave and provide more informal care if they were entitled to do so.

What data (other than from ABS, Carers Australia and HILDA) could we use to estimate:

- how many employees would take extended unpaid carer leave if they were entitled to do so, and how much more care they might provide
- how many of these employees would have left their job to provide care in the absence of the entitlement
- how many of these employees would have continued working while providing some informal care?

A key question for this inquiry is whether this increase in the amount of informal care would amount to a net cost or benefit from a community-wide perspective?

For example, more informal care would increase government spending in the form of income supports and support services and decrease income and payroll tax receipts. Whether the net fiscal effect would be positive or negative is an empirical question that this inquiry will seek to answer.

Other costs and benefits might be less apparent, but not necessarily less important. We seek feedback on what these costs and benefits might be.



### Information request

We seek your views on whether there are costs and benefits of leaving formal employment to provide informal care that carers don't take into consideration. To what extent and how do carers consider the following factors when deciding whether to provide informal care:

- their ability to return to work
- their future income, including retirement income
- the health and wellbeing of the care recipient
- their own health and wellbeing
- the cost of alternative care arrangements
- any other important matters?

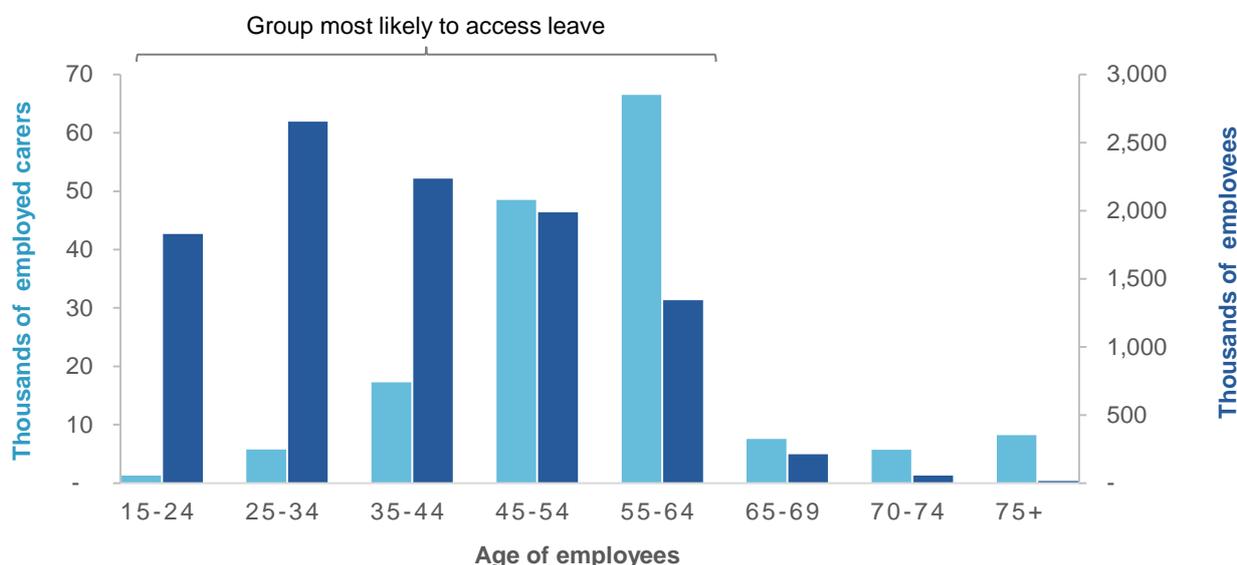
## More employees would return to work following care provision

At its core, the change to the NES envisaged by the Royal Commission is a right to return to work. Such a change would ease the burden of unpaid leave for those carers who took the leave option and thereby reduce the numbers leaving the workforce.

Many who are likely to avail themselves of the entitlement could be in the prime of their earning capacity, between 45 and 64 (figure 3).

The entitlement would not benefit other people who care for older persons, such as those who are not part of the workforce (who might be retired, see figure 1.c.) or are self-employed.

**Figure 3 – An entitlement to carer leave would benefit employees**  
**Number of employees and employee carers, Australia, 2018**



Source: ABS (*Survey of Disability, Ageing and Carers, 2018*, TableBuilder) and ABS (*Labour Force, Australia, 2018*).

To assess whether this would yield a net community-wide cost or benefit, we will again focus on the hidden costs and benefits; but this time those associated with the carers’ decision to return to work following a period of caregiving, or not. The net fiscal effect of more carers returning to work is likely to be positive in this instance, as it would result in additional income and payroll tax receipts.



### Information request

We seek your feedback on how many employees who would take extended unpaid carer leave would subsequently return to work once they had ceased caring.

## Employment may fall, especially among expected users of the entitlement

An entitlement to extended unpaid carer leave would indirectly increase the cost of labour. If an employee were to take carer leave, their employer would reasonably be expected to incur additional costs in hiring and training new staff on a temporary basis to cover for the absence.

Some employers might respond by hiring fewer people based on either their understanding of the prospective employee's circumstances or the prospective employee's characteristics (for example, their age and gender). Of these employers, some might still hire as many people in total as they would otherwise (i.e. by hiring more people that they expect would *not* use the entitlement than they otherwise would), but there would likely still be fewer people employed by all businesses in total. This effect is likely to yield net community-wide costs.



### Information request

We seek your feedback on how the proposed entitlement might affect employer costs, behaviour and hiring practices and on the extent to which an entitlement to unpaid carer leave might dissuade some businesses from employing people, especially those expected to be most likely to use the entitlement.

- How large are these effects likely to be in your industry?
- Would there be differences in costs based on the size of businesses?
- How targeted are these effects likely to be, and at which types of prospective employees?
- Is there evidence from other employment entitlements (for example, unpaid parental leave) that we could draw on to infer these effects?

## Distributional effects

In addition to altering the behaviour of carers and employers, an entitlement to extended unpaid carer leave would redistribute resources in two main ways; from carers to care recipients, and from employers and employees to carers and care recipients.

- Employees who cease working to provide care would gain the right to return to work if they so desired. These employees fall into two groups — 1) those who cease working and provide more care as a result of a new leave entitlement, and 2) those who would have left their job to provide care regardless of a leave entitlement. Among the first group, the entitlement would be to the collective benefit of the employee and of the care recipient, but — in some cases — via a cost to the carer that is more than offset by a benefit to the care recipient. While some carers find personal fulfillment in providing care, many do so out of obligation (Carers Australia 2021; ABS 2018). Among the second group, the gain of the right to return to work suggests that the entitlement would be to the employee's benefit.
- The entitlement would impose costs on businesses, some of which would be passed through to employees in the form of lower pay and/or conditions in the longer run.

These effects reflect the rationales for the entitlement proposed by the Royal Commission — improving carer and care recipient wellbeing. However, it is possible that not all carers would benefit from the entitlement.

## Distributional effects within families

There is gendered dynamic to the carer-to-care-recipient redistribution. Historically, women have borne the majority of the care load and anything that encourages greater informal care without any other consideration, is likely to compound this historical burden. This would be further reinforced by and consistent with economic decisions that impose the care task on the person in a household with the lowest income, often a woman. The decision to care can have large effects on someone's income, superannuation and savings, and ultimately their total wealth. We intend to focus on how societal expectations would influence how the proposed entitlement might affect men and women differently.

## Distributional effects within society

The entitlement will lead to different distributional impacts for employers and employees and for carers and care recipients.

To consider whether this would yield net community-wide costs or benefits, it is important to recognise that the entitlement to extended unpaid carer leave would benefit more than just the people who actually use it, as many would benefit from the existence of the entitlement even if they never used it — akin to a form of insurance.

This raises the question: 'If employees value an entitlement to extended unpaid carer leave, wouldn't many employers already provide this entitlement?'

The shortcoming of this argument is that Australia's workplace relations arrangements might prevent workplaces from adopting the entitlement even if it were mutually agreed between employers and employees (box 4).

### **Box 4 – Is the workplace relations system a barrier to adoption?**

Australia's workplace relations arrangements might present some barriers to adoption of an entitlement to extended unpaid carer even when many employees at a given workplace that they were willing to sacrifice their pay and conditions to obtain it.

- The 'better off overall test' (BOOT) requires that an enterprise agreement make every employee better off than they would be under award conditions. Because some employees might not benefit from the proposed entitlement (for example, if their parents were both deceased), the BOOT might prevent conditions from being exchanged for the entitlement during enterprise bargaining.
- As enterprise bargaining is infrequent and complex, the entitlement might be pushed out of the scope of bargaining by more pressing issues.



### Information request

We seek your views on how we ought to assess the redistributive effects of the proposed entitlement to unpaid carers' leave and other policies that might support carers.

- How do women and men experience different pressures to provide informal care?
- How should we think about, and measure, the value of an entitlement to unpaid carer leave? Does it vary across employees?
- How has the 'better off overall' test been applied when evaluating an entitlement that might not benefit all employees?
- Have employers or employees sought to introduce an entitlement to extended unpaid carer leave into an enterprise agreement but found barriers to them doing so? If so, what were these barriers?

## Design considerations and their implications

The effects of an entitlement to extended unpaid leave will depend on its design. In making Recommendation 43, the Royal Commission did not outline a specific model or propose how the entitlement would operate within the NES. However, it did cite submissions responding to the proposal and discussed international examples (box 5).

### Box 5 – Views on the design of an unpaid leave entitlement

Carers NSW welcomed the Counsel Assisting's proposal to provide up to two years of unpaid carer leave. It further submitted that the entitlement should apply irrespective of the age of the care recipient and that the NES should not strongly distinguish between primary and secondary carers.

Professor Andrew Stewart (John Bray Professor of Law at the University of Adelaide) suggested that unpaid parental leave could be used as a model. It would:

- be available to all employees (including casuals) who have completed at least 12 months of continuous service with their employer
- provide up to 12 months of leave in the first instance, with a right to request up to a further year. Employers could only deny an extension on reasonable business grounds.

Internationally, the OECD reports that countries are increasingly introducing leave for carers. Approximately a third of OECD countries provide unpaid carer leave, most commonly between 3 and 6 months. Half of OECD countries provide paid leave specifically for carers of older people, although there is significant variation in duration, eligibility criteria and amounts of income support.

Source: Rocard and Llana-Nozal (2022); Royal Commission into Aged Care Quality and Safety (2021).

This inquiry will consider how an unpaid leave entitlement should be designed to maximise communitywide benefits. There are several design parameters.

- Eligibility. This includes the range of employment forms that might be covered (for example, permanent vs casual; full-time vs part-time), the length of tenure required, the nature of the employee's relationship to the care recipient (for example, an immediate family member vs a friend) and the intensity and/or type of care required by the recipient.
- Duration. An extended unpaid leave entitlement could range from a period of several weeks to an open-ended return to work guarantee. If time-limited, it could be a once-off entitlement, or multiple periods of leave could be allowed.
- Flexible or pre-determined length. The employee may need to specify the duration of the leave in advance, in order to facilitate the hiring of a replacement. However, flexibility to return sooner might be advantageous to the carer, as some caring needs may drastically reduce without much advance notice, for example if the care recipient enters residential care.
- Type of mechanism. An entitlement to unpaid leave could be designed as a guarantee to employees or as a right to request which could be rejected by an employer on specified grounds.
- Employer coverage. Employers will have different capacities to manage extended staff absences depending on the size of their business and the industry they operate in, among other things. This might provide a rationale for allowing some types of employers to be excluded from the entitlement (for example, small businesses).

How these parameters are specified will influence the effects of the entitlement. For example, requiring that the care recipient's needs must be high might target the policy at reducing the burden on formal aged care and bolster the notion that it insures employees against the costs of finding a new job after a genuine need to provide informal care arises.



#### Information request

We seek your views on how an entitlement to extended unpaid carer leave ought to be designed.

- Who should be eligible and why? What criteria should an employee need to meet and why? For example, tenure, relationship to the care recipient, and/or the nature of care required.
- Should access to the proposed entitlement be once-off or occur more often?
- How long should an entitlement to unpaid leave to care for an older person be? Why?
- What should the process be for revising the return date, if any?
- How should the entitlement be provided (for example in single block or in multiple) and why? What would likely be the consequences?
- Should all employers be required to provide the entitlement? Why or why not?
- What costs, perverse incentives or unintended consequences should the design of the entitlement aim to minimise or avoid? How might this be achieved?
- What would be required practically to insert the proposed entitlement in the NES?

# Alternative policies to support informal carers of older people

## Existing supports for informal carers

In addition to leave and flexible work arrangements, the main forms of support for carers are financial assistance, advice and information, counselling, training, and respite care (Rocard and Llana-Nozal 2022).

The Australian Government funds three main income support payments to assist carers with the financial pressures of caring (table 1).

**Table 1 – Carer income supports and payments<sup>a,b</sup>**

	Description	Amount <sup>a</sup>	Number of recipients <sup>b</sup>
<b>Carer Payment</b>	Paid to carers providing constant care in the home of the person being cared for. Payment is income and asset tested and requires the care recipient to require care for at least 6 months (or terminal). Carer must not be employed, in education or volunteering for more than 25 hours a week and income cut off points (depending on the carer's situation) are between \$56 053 and \$115 440 per year).	\$988 per fortnight, equivalent to the standard pension rate	298,000, including 126,000 aged 65+
<b>Carer Allowance</b>	An income supplement available to carers who provide additional daily care at home to a person with a disability, has a severe medical condition or is frail aged. The allowance is income tested (combined income below \$250 000 per year) and requires the care recipient to require care for at least 12 months. Carer Allowance can be paid in addition to the Carer Payment.	\$137 per fortnight	681,000, including 273,000 aged 65+
<b>Carer Supplement</b>	An annual top-up payment of up to \$600 paid to recipients of the Carer Payment or Carer Allowance.	\$600 per annum	<i>Not available</i>

**a.** Rates for a single person. **b.** As of December 2021. Care recipients of carers receiving payments. Rounded to nearest thousand.

Source: Services Australia (2021); DSS (2021)

The Australian Government also delivers and funds organisations to provide services to informal carers. Carer Gateway was launched in 2015 to provide carers with a single pathway to access them (DSS 2022). Through a phone and web-based service it connects carers to peer support groups, counselling, self-guided coaching, training and emergency respite care. It also assists carers to access planned respite care through the Aged Care system. Planned respite care services include: short-stays in residential aged care, centre-based day care, overnight community or host-family based care and flexible respite delivered in-home.

How informal carers are identified and legally defined affects who will seek and access support. Moreover, not all people providing care identify themselves as informal carers. Acknowledging this, the Carer Recognition Act 2010 (Cth) was introduced to increase recognition and awareness of carers and formally acknowledge the valuable contribution they make to society (DSS 2016). It does not create legally enforceable rights or duties but sets out 10 principles as to how carers should be treated and considered in policy, program and service delivery settings.



### Information request

We seek your views on the income supports and services currently offered to informal carers.

- To what extent does eligibility for the existing payments affect carers' employment decisions?
- What challenges do informal carers of older people face in accessing the supports they need?
- What are the main types of supports that informal carers rely on?

## Alternative supports for informal carers

The Terms of Reference ask us to consider 'alternative ways to support informal carers to support older Australians'. These supports could encompass a broad range of policy measures such as other types of employment entitlements, income support payments and carer support services. Alternative policies could be enacted alongside an unpaid leave entitlement or in place of it.

An entitlement to extended unpaid leave on its own may not reduce the burden experienced by carers or improve the quality of care they are able to provide to older people. For example, supports could better equip carers to provide high quality care, or maintain their own wellbeing.

The Royal Commission was critical of the provision of existing supports for informal carers and summarised the current system as "reactive, inadequate and piecemeal" (2021, p. 203). It was particularly concerned with respite care, finding that:

There has been compelling evidence that as a result of poor quality, inflexible and inappropriate respite, informal carers felt significant stress and that this could be detrimental to the health of the person receiving care. (Royal Commission into Aged Care Quality and Safety 2021, p. 207).

Respite care is considered to be one of the most important supports for informal carers (Rocard and Llana-Nozal 2022). It provides carers with a break from their regular duties without which they are at greater risk of experiencing health issues and social isolation. Despite this, 87 per cent of primary carers of older Australians had never used respite care (ABS 2018).

Training is another important measure that improves outcomes for carers and care recipients (PC 2011). Research has found that training interventions can have significant benefits for carer mental health and their ability / knowledge. Knowledge about the conditions of the person they care for, as well as practical skills (for example, safe lifting) and nursing skills (administering medication) can allow informal carers to take over between formal nursing visits (Rocard and Llana-Nozal 2022).

Alternative employment arrangements or supports could be preferable to the proposed entitlement or complement it. Expanded access to flexible work arrangements is one example. Carers might also require shorter but occasional periods of leave to respond to episodic care needs, such as emergencies that require more than one or two days of intensive caregiving, or for respite purposes.

As the inquiry is primarily focused on evaluating the effects of the proposed entitlement, our focus in this part of the inquiry will be limited to canvassing possible alternatives.



### Information request

We seek your views on alternative supports for carers of older people.

- What types of alternative support measures are most needed by informal carers? Why?
- Are there particular supports that would be needed to complement the introduction of an entitlement to extended unpaid leave?
- Are there alternative employment measures that ought to be considered in place of, or in addition to an entitlement to extended unpaid leave? What kind? Why?

## Extensions to carers other than carers of older people

The Terms of Reference direct the Commission to consider the application of paid leave or extended unpaid carer leave in other areas, such as care for people with a disability or people with temporary or terminal illness. Keeping our primary focus on the proposed entitlement to unpaid carer leave for older people, we intend to consider this extension by asking ‘In which ways would the effects of unpaid carer’s leave (or other policies) be different for carers other than carers of older people, and what consequences would this have for the desirability of a support?’

Do different types of carers have sufficiently different needs to warrant different types of supports? For example, the needs that carers of older people require might differ from the needs that other types of carers (such as carers of persons with a disability, with an episodic mental illness, or recovering from surgery, and so on) might require.



### Information request

We seek your views on how we should consider whether reforms to supports for carers of older people should apply to other carers too.

- In which ways does informal care of older people differ from the care that other people might require?
- Are there reasons to have different policies for informal carers of older people than for informal carers of other types of people?

## A. Terms of reference

I, Josh Frydenberg, Treasurer, pursuant to Parts 2 and 3 of the *Productivity Commission Act 1998*, hereby request that the Productivity Commission undertake an inquiry to examine:

- The potential impact of amending the National Employment Standards (NES) in Part 2-2 of the Fair Work Act 2009 (Cth) to provide for a minimum statutory entitlement to extended unpaid carer's leave for national system employees providing informal care to older people who are frail and living at home.
- The social and economic costs and benefits from any change to the NES, including the impact on residential aged care services, and broader net impact on the economy.

### Background

The Royal Commission into Aged Care Quality and Safety (the Royal Commission) was established on 8 October 2018 and the Final Report: Care, Dignity and Respect was released on 1 March 2021.

The Australian aged care system provides subsidised care and support to older people. It is a large and complex system that includes a range of programs and policies. The aged care sector is facing an ageing population with increasing frailty, while Australians are living longer than ever before.

### Informal carers

Informal carers are a critical element of the aged care system for older people. They reduce the need for formal care, supplement the care provided by aged care services, and maintain critical social and community connections.

The Royal Commission reports that there is no minimum statutory entitlement for an employee to take extended unpaid leave for the purpose of caring for an older family member or close friend. An entitlement of this nature could relieve some of the burden on formal carers, noting employers may provide more generous employment entitlements, such as leave to provide care for an elderly family member or friend.

The aged care sector is experiencing increased demands for formal aged care services as the Australian population ages. Access to a minimum entitlement to unpaid carer's leave could help reduce future demand for these types of services.

### Scope of the inquiry

The Commission will undertake an Inquiry to examine the economic and social impacts of providing a statutory leave entitlement to extended unpaid carers that provide informal care to older people who are frail and living at home, while offering employment protection on return to work.

In undertaking this Inquiry, the Commission should:

- explore the adequacy of current leave arrangements in providing informal support for older Australians
- consider the impact on the labour market and employers from potential changes to employment standards
- consider the economic and social costs and benefits from any change to the NES, including those that will impact older Australians, residential aged care services, and broader regulatory, economic and social impacts
- consider alternative ways to support informal carers to support older Australians

- consider the application of paid leave or long-term unpaid carer's leave for other types of care, such as caring for people with disability or having temporary or terminal illness.

The Commission should consider the recommendations made by the Royal Commission into Aged Care Quality and Safety Final Report: Care, Dignity and Respect, and arrangements used to support informal carers in other countries.

The Commission should support analysis with modelling using quantitative and qualitative data.

## **Process**

The Commission should undertake broad consultation with employers, unions, carers, aged care consumers and aged care service providers. In addition, the Commission should conduct public hearings and invite public submissions.

The Commission will commence this Inquiry by April 2022 and provide a final report to the Australian Government within 12 months of the receipt of these terms of reference.

**The Hon Josh Frydenberg MP**

Treasurer

[Received 23 February 2022]

## B. How to make a submission

### How to prepare a submission

Written submissions may range from a short comment outlining your views on a particular topic to a much more substantial document covering a range of issues. Where possible, you should provide evidence, such as relevant data and documentation, to support your views.

### Publishing submissions

- Each submission, except for any attachment supplied in confidence, will be published on the Commission's website shortly after receipt, and will remain there indefinitely as a public document.
- The Commission reserves the right to not publish material on its website that is offensive, potentially defamatory, or clearly out of scope for the inquiry or study in question.

### Copyright

- Copyright in submissions sent to the Commission resides with the author(s), not with the Commission.
- Do not send us material for which you are not the copyright owner – such as pictures, photos and newspaper articles – you should just reference or link to this material in your submission.

### In confidence material

- This is a public review and all submissions should be provided as public documents that can be placed on the Commission's website for others to read and comment on. However, information which is of a confidential nature or which is submitted in confidence can be treated as such by the Commission, provided the cause for such treatment is shown.
- The Commission may also request a non-confidential summary of the confidential material it is given, or the reasons why a summary cannot be provided.
- Material supplied in confidence should be clearly marked 'IN CONFIDENCE' and be in a separate attachment to non-confidential material.
- You are encouraged to contact the Commission for further information and advice before submitting such material.

### Privacy

- For privacy reasons, all **personal** details (for example home and email address, signatures and phone numbers) will be removed before they are published on the website.
- You may wish to remain anonymous or use a pseudonym. Please note that, if you choose to remain anonymous or use a pseudonym, the Commission may place less weight on your submission.

### Technical tips

- The Commission prefers to receive submissions as a Microsoft Word (.docx) files. PDF files are acceptable if produced from a Word document or similar text based software. You may wish to search the Internet on how to make your documents more accessible or for the more technical, follow advice from Web Content Accessibility Guidelines (WCAG) 2.0: <https://www.w3.org/TR/WCAG20/>

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- Do not send password protected files.
  - Track changes, editing marks, hidden text and internal links should be removed from submissions.
  - To minimise linking problems, type the full web address (for example, <http://www.referredwebsite.com/folder/filename.html>).

## How to lodge a submission

Submissions should be lodged using the online form on the Commission's website. Submissions lodged by post should be accompanied by a submission cover sheet, available from the Commission's website.

Online\*      [www.pc.gov.au/inquiries/current/carers-leave](http://www.pc.gov.au/inquiries/current/carers-leave)

Post\*      Carer Leave  
Productivity Commission  
Locked Bag 2, Collins St East  
Melbourne Vic 8003

Phone      Please contact the Administrative Officer on 03 9653 2253

\* If you do not receive notification of receipt of your submission to the Commission, please contact the Administrative Officer.

## Due date for submissions

Please send submissions to the Commission by **24 August 2022**.

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