



A case for an extended unpaid carer leave entitlement?

Position paper

This is a position paper prepared for further public consultation and input. The Commission will finalise its report after these processes have taken place.

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.

The Productivity Commission

The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. Its role, expressed most simply, is to help governments make better policies, in the long term interest of the Australian community.

The Commission's independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

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Opportunity for comment

The Commission would like to thank all participants for their contribution to this inquiry. We are now seeking additional input for the final report.

You are invited to examine this position paper and comment on it by written submission to the Productivity Commission, preferably in electronic format, by Tuesday 28 March 2023.

Further information on how to provide a submission is included on the inquiry website:

www.pc.gov.au/inquiries/current/carers-leave

The Commission will prepare a final report after we have reviewed the additional submissions and held further discussions with participants. **Public hearings will be held on 20 and 21 March 2023**, online or in person in the Commission's Canberra or Melbourne offices. Further details on registering for hearings and making submissions can be found on the inquiry website.

Commissioners

For the purposes of this inquiry and position paper, in accordance with section 40 of the *Productivity Commission Act 1998* the powers of the Productivity Commission have been exercised by:

Dr Catherine de Fontenay Commissioner

Martin Stokie Commissioner

Terms of reference

I, the Hon Josh Frydenberg MP, 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 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 older 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 leave could help reduce future demand for these types of services.

Scope

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 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]

Acknowledgments

This paper uses unit record data from the Household, Income and Labour Dynamics in Australia (HILDA) Survey. The HILDA Project was initiated and is funded by the Australian Government Department of Social Services (DSS) and is managed by the Melbourne Institute of Applied Economic and Social Research (Melbourne Institute). The findings and views reported in this paper, however, are those of the Commission and should not be attributed to either DSS or the Melbourne Institute.

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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 work and care can be challenging, especially for people providing high levels of informal care.

Caring for older relatives can affect carers' participation in the workforce as well as their health and wellbeing. Working carers, who are mostly women, can find their 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, it will become increasingly important for informal carers to be able to reconcile 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 of older people in the National Employment Standards.

The Royal Commission did not specify what it meant by an 'extended period of unpaid leave', but the design of an entitlement to extended leave will determine its impact. The Commission developed a provisional model based on evidence about the likely effects of different design features, and the need to avoid undesirable consequences. We also aligned the features of the provisional model with those used in the National Employment Standards for other types of leave where possible.

The provisional model of extended unpaid carer leave for carers of older people would provide employees with 3–12 months of unpaid leave (with the employee to specify the duration at the outset). The leave would be available to all employees who have worked for at least 12 months for their current employer (including regular casuals). Employees would be required to give 4 weeks' notice of their intention to take leave.

We estimated the effects of this provisional model of extended unpaid leave on the work and caring patterns of working carers of older people, using the best available data (which has some limitations). Between 7000 and 17 000 employees would use an entitlement to 3–12 months unpaid leave to care for an older person each year. This equates to between 3 and 7 per cent of working age carers of older people (less than 0.1 per cent of all Australian workers). These estimates are broadly aligned with the number of users of similar unpaid leave entitlements in other countries.

Our analysis shows that the provisional model of unpaid leave would not substantially increase either the number of informal carers or their workforce participation. There are three main reasons for this.

- 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 164 000 (or less than 40 per cent) are in the workforce.
- About half of the employees who would use the entitlement to 3–12 months unpaid leave would have left their jobs to provide care if they could not take extended leave. As such, only 3500 to 8500 potential users of the entitlement would be providing additional care because of the entitlement.
- Many informal carers who are working would not want to take extended unpaid leave. Most carers of older people want more workplace flexibility, not an extended absence from the workplace.

Despite the relatively small impact, extended unpaid leave would benefit the older people who would be cared for by the people who would take the leave. It could also improve the quality of their care — care

provide 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 extended unpaid carer leave entitlement would also benefit employees. Its key benefit for carers would be to give them the option of taking time away from work to resolve caring issues at key transition points (such as needing to find residential care for a parent or to assist with 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. 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 a loved one if required.

However, an extended unpaid carer leave entitlement would impose costs on employers. They could face disruption to their business, may need to recruit a replacement worker, 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 low. In more specialised businesses that rely on highly skilled staff, the limited evidence (mainly from parental leave) suggests these costs could be material.

In businesses where the costs of the entitlement are material, employers would incorporate the costs into their practices around recruitment and remuneration, and over time they are likely to pass these costs on to workers through reduced employment opportunities and lower long-run wage growth. 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 leave.

The effects of an extended unpaid carer leave entitlement on taxpayers would be mixed. On the one hand, it could reduce taxpayer-subsidised formal aged care, but on the other, there would be lower tax receipts (as people on unpaid leave would not pay income tax) and potentially higher welfare payments (as some of the carers who take unpaid leave would be eligible for carer allowance and/or carer payment). Again, while in aggregate these impacts would be small, an extended carer leave entitlement 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 expenditure on formal care for older people.

Based on our analysis, overall there is not a strong case for amending the National Employment Standards to allow for an entitlement to 3–12 months of unpaid leave. And importantly, extended unpaid leave is not the highest priority for the majority of carers.

Extended unpaid leave will always be unsuitable or inaccessible for many carers. This is because of the impact on household income and the episodic nature of some caring roles. In addition, extended unpaid leave is not the lowest cost way for employers to accommodate working carers. Flexible working arrangements, agreed between working carers and their employers, can be a better solution — they have clear advantages 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 (as work can be a respite from caring and can help carers maintain social connections) and continuing to earn an income can 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. A review of the changes is scheduled to be completed in 2025. This review should explicitly look at the impact of these changes on informal carers and in particular, on carers who would otherwise take unpaid leave. There would be merit in waiting for the findings of this review, to understand the effect of the changes on carers, prior to making any decision on whether or not to introduce an entitlement to extended unpaid carer leave.

There are also other ways to improve support for informal carers. Policies that would make a big difference include:

- continuing planned reforms to the aged care system, including expanding access to, and reducing waiting times for, home care and respite care
- proactively providing information to working carers about how to request flexible work when they are seeking out information or interacting with service providers, such as through the Carer Gateway
- reviewing carer provisions in the National Employment Standards, so that people whose care relationships are broader than their immediate family or household (such as nieces, nephews or families of choice — all of whom cannot access carer leave under the National Employment Standards) can take leave to provide care, and all potential care recipients can receive care from a loved one
- ensuring eligibility requirements for income support payments do not unnecessarily limit carers' participation in work, study and volunteering.

The Commission was also asked to consider whether extended unpaid carer leave should be available to employees who provide other types of care, such as care for people with disability or illness. There are roughly the same number of 'other carers' as there are carers of older people and 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 other 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 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 a long-term disability — though 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.

The Commission is seeking feedback on the draft recommendations and findings. We would also like additional information on key issues to inform the final report.

Draft findings, draft recommendations and information requests

Extended unpaid leave for carers of older people



Draft finding 1

An entitlement to extended unpaid leave for carers of older people should be designed to maximise the net benefits to the community

The design of an entitlement to extended unpaid leave for carers of older people should be guided by the objective(s) of an entitlement, evidence about the costs and benefits and likely impact of different design features and the need to avoid (or at least reduce) potential undesirable consequences.



Draft finding 2

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

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

- unpaid leave for 3–12 months (with the employee to specify the duration at the outset) with access to another period of leave 12 months after the last use
- a notice period of 4 weeks
- available to employees with at least 12 months of continuous service
- applied to businesses of all sizes and to regular casual workers
- evidence requirements in line with other National Employment Standards.



Information request 1

The Commission has put forward a provisional model for an entitlement to extended unpaid carer leave to care for an older person. We would like feedback on its features, and the costs and benefits of the provisional model. We are particularly interested in:

- the durations of leave carers are most likely to want to access extended unpaid carer leave
- how costly short-term leave is to businesses, and whether shortening the minimum leave duration would increase these costs significantly
- the potential costs and benefits of taking carer leave as a reduction in working hours over an extended period, rather than as an absence from work
- whether there are ways to design the entitlement to avoid potential negative effects, including on the recruitment and career progression of carers.



Draft finding 3

Extended unpaid leave in the National Employment Standards is not the highest priority

Adding an entitlement to 3–12 months extended unpaid leave to the National Employment Standards is an option that could help support informal carers of older people to juggle expectations and demands of work and family. The number of carers who would benefit would be small and the net benefit to the community would be modest at best.

- Extended unpaid leave would not substantially increase the number of informal carers or the workforce participation of carers, or reduce the demand for formal care.
- The benefit to carers would be limited as unpaid leave comes at a very high personal cost and most carers prefer flexible work arrangements.
- The entitlement would impose costs on employers, which could be passed through to their employees in the form of lower wage growth and reduced employment opportunities.
- Upcoming changes to the flexible working arrangements provisions of the *Fair Work Act 2009* are expected to make it easier for carers to negotiate flexible work, perhaps obviating the need for change.

Extended unpaid leave for other carers



Draft finding 4

The case for an entitlement is similar for all carers

The case to amend the National Employment Standards to include an entitlement to extended unpaid leave for carers of people with disability or illness is similar to the case for creating such an entitlement for carers of older people.

For reasons of equity and administrative simplicity, if there was a decision to amend the National Employment Standards to include an entitlement to extended unpaid carer leave, it would be reasonable to make it available to all carers.

Better support for a larger number of carers



Draft finding 5

Informal carers need timely and high-quality supports

Formal care and respite care services for aged care recipients play a key role in supporting their carers. Continued progress with current and planned reforms to increase access to, and reduce waiting times for, these services is essential.



Draft finding 6

Working carers need access to flexible working arrangements

Working flexibly is highly valued by carers and is a key factor in enabling them to manage their work and caring commitments. The changes to the flexible working arrangements provisions of the *Fair Work Act 2009* (due to commence in June 2023) are expected to make it easier for carers to negotiate working arrangements with their employers that will help them balance their work and care commitments.



Draft finding 7

Evaluation of the effect on carers of legislative reforms to flexible working arrangements

There would be merit in waiting to consider the effect on carers of the upcoming changes to the flexible working arrangements provisions of the *Fair Work Act 2009* prior to any decision on whether or not to introduce an entitlement to extended unpaid carer leave.



Draft recommendation 1

Providing information about how to request flexible work to working carers

The Australian Government should ensure that carers of older people are provided with tailored information about flexible working arrangements and how to request them. This should include, at a minimum:

- developing fact sheets designed to help carers talk to their employer about flexible work. The fact sheets should take into account upcoming changes to flexible work provisions of the *Fair Work Act 2009*
- routinely providing the fact sheets to carers at key points in time, such as when they contact the Carer Gateway.



Draft recommendation 2

Reviewing definitions of care relationships in the National Employment Standards

The definition of 'carer' in the National Employment Standards is used for both paid and unpaid carer leave. Changing this definition is beyond the scope of this inquiry.

But the current definition only guarantees carer leave to employees providing care for an immediate family or household member. This can mean that people whose care relationships are broader than their immediate family or household (such as nieces, nephews, people with Aboriginal or Torres Strait Islander kin relationships or families of choice) are unable to access leave to provide care, and potential care recipients receive less care.

To address this, the Australian Government should review the eligibility restrictions in the National Employment Standards which limit access to carer leave based on strictly defined relationships between the employee and the person they care for. The review should look at how to amend the eligibility restrictions so that they better reflect the diverse caring relationships of Australian families, friends and communities, and reduce the extent to which carers are excluded from accessing key workplace supports.



Information request 2

The Commission has made draft recommendations designed to improve support provided to informal carers of older people. We are seeking further information on:

- the expected effects on carers of upcoming changes to the flexible working arrangements provisions of the *Fair Work Act 2009*
- additional ways to support informal carers, beyond those discussed in this position paper.

A case for an extended unpaid carer leave entitlement?

1. Background to this inquiry

The Royal Commission into Aged Care Quality and Safety (the Royal Commission) examined problems in the aged care system. Its final report set out a vision for the future of aged care in Australia and made recommendations to reform the sector. In making its recommendations, the Royal Commission said that ‘the future aged care program should ensure that people who provide informal care and support to older people should themselves be supported’ (RCACQS 2021, p. 1).

This inquiry is about one of the recommendations (recommendation 43), which called for the Australian Government to look at the potential impact of amending the National Employment Standards (NES) under Part 2-2 of the *Fair Work Act 2009* (Cth) to provide for an additional entitlement to unpaid carer leave. The Royal Commission noted that with population ageing and increased female work participation, it will become more important for carers to have access to leave. And without job protected leave, employees could be reluctant to leave the workforce to care for a period of time.

What we have been asked to do

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 in the NES.

We have also been asked to:

- explore the adequacy of current leave arrangements in providing informal support for older Australians
- consider alternative ways to support informal carers of 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 full terms of reference are at the front of this paper.

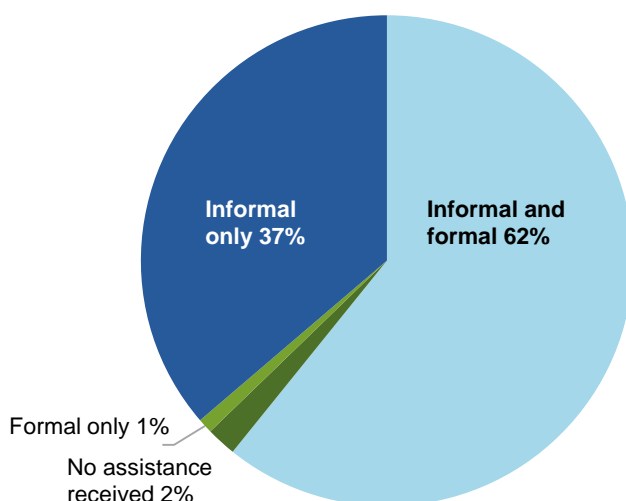
2. Informal care for older people

Informal carers make a significant contribution to the care and wellbeing of older people.¹ Family and friends are the main source of support for older people living at home. This aligns with older people’s preferences — most want to remain at home and be cared for by someone they trust, who will help them maintain their dignity and independence, and who has time for them (Roy Morgan 2020, pp. 44–45; Sinclair, Kopanidis and de Silva 2017, p. 9).

¹ Throughout this paper, ‘older people’ refers to people aged 65 years and over.

Many older people do not need assistance. But of those who receive assistance, about one in three receive assistance only from informal carers. And just over 60 per cent of older people who receive formal aged care support also receive some level of informal care (figure 1).

Figure 1 – Most of the older people who require assistance rely on informal care



Source: ABS (2019a).

What do we know about informal carers of older people?

There are about 430 000 primary carers of older people in Australia (box 1).

Most primary carers of older people are women (and most are aged between 45-64). Daughters and spouses are the main source of informal care to older people. And most (around 60 per cent) are not engaged in paid work (figure 2). About one third of informal carers of older people are from culturally and linguistically diverse backgrounds (RCACQS 2021, p. 201).

Box 1 – Defining informal carers — who are they?

Informal carers are people who provide unpaid care and support to family, friends and community members. The care provided extends beyond what would normally be expected within such relationships. Informal carers are not employed as a carer (although they may receive income support that is conditional on providing care) and they are non-professionals (that is, they usually have not received qualifying training to care). In contrast, formal care is paid for and regulated by some type of contractual arrangement. Informal carers need not reside in the same household as the care recipient.

The *Carer Recognition Act 2010* (Cth) defines carers to be individuals who provide unpaid care and support to another individual who needs care because they experience a disability, mental illness, chronic condition, terminal illness, alcohol or other drug issue, or who are frail and aged.

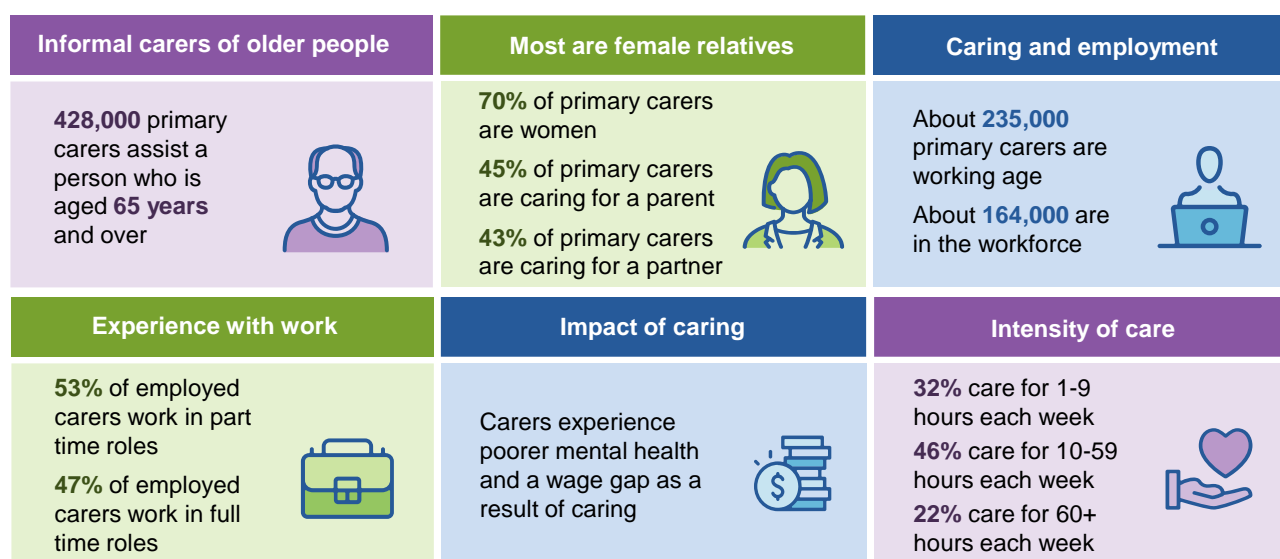
Box 1 – Defining informal carers — who are they?

More than one person can be providing care to someone. The Australian Bureau of Statistics classifies 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).

Sources: ABS (2019b); DSS (2016).

Figure 2 – Key facts about informal carers of older people



Source: ABS (2019a).

There are several limitations to the available data on informal carers.

- People providing care do not always identify themselves as carers. This is in part because providing care and support can be viewed as something that is expected of family members. And often becoming an informal carer happens over time rather than being a decision at a particular point in time.
- The latest Survey of Disability, Ageing and Carers (SDAC) — the main survey that collects data on informal carers — was undertaken in 2018 and data from the Household Income and Labour Dynamics in Australia (HILDA) survey is available up to 2020 (box 2).

Box 2 – Data on informal carers

The Australian Bureau of Statistics (ABS) conducts the Survey of Disability, Ageing and Carers (SDAC) every three to four years. The SDAC provides the most comprehensive information on informal carers available in Australia.

The most recent SDAC was conducted in 2018 and early 2019. Data collection for the next SDAC is currently underway. The 2018 SDAC data was one of the main sources of data for the analysis undertaken in this inquiry.

It is possible to hypothesise about how care patterns may have changed since 2018. For example, the proportion of the population aged over 65 years has continued to increase, which is likely to have led to there being fewer potential informal carers for each older person. The widespread shift toward working from home prompted by the COVID-19 pandemic may have made it easier for people to combine work and care, increasing the number of informal carers. The overall effect of these and other trends cannot be known in the absence of more up-to-date data.

The Household Income and Labour Dynamics in Australia (HILDA) survey also provides information on family carers (though not on care provided by friends or other people who are not related to the care recipient). The HILDA survey follows the lives of more than 17 000 Australians each year, and collects information about household and family relationships, income and employment, and health and education. HILDA participants are asked whether they provide ongoing help with self-care, mobility or communication to a relative who is elderly or has a disability. Information collected includes whether they live with the person they care for, their relationship with that person and whether they are the main carer. The information on caring is then combined with other information available in the HILDA survey to examine carers' personal characteristics and wellbeing. The Commission used HILDA data from 2005 to 2020 in its analyses.

Sources: ABS (2019b, 2023); Wilkins et al. (2021).

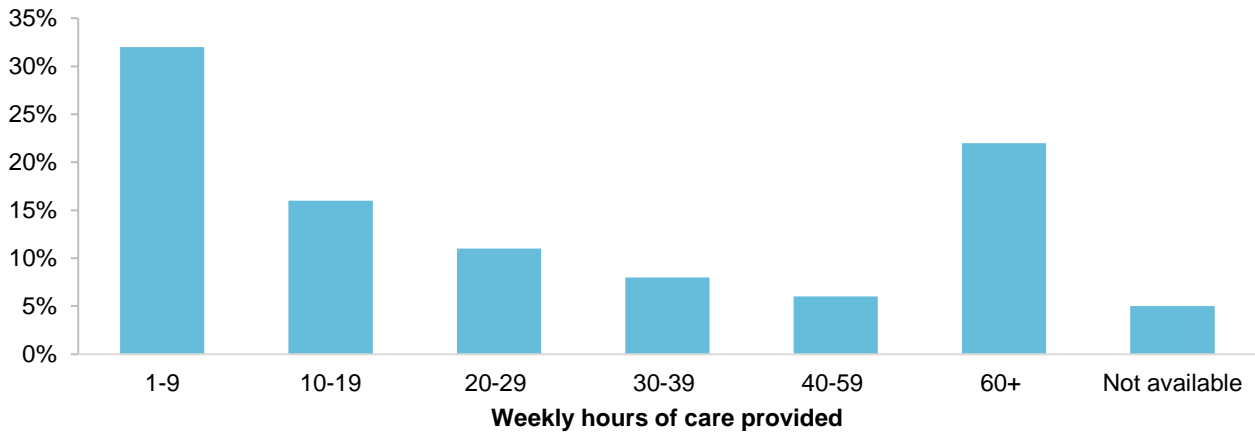
The care and support provided by informal carers

How much care and what support do informal carers provide?

The amount of care that informal carers provide varies. About one third of primary carers of older people provide between 1 and 9 hours of care each week, however, just over 20 per cent provide more than 60 hours each week (ABS 2019a) (figure 3).

The care provided by informal carers can include assistance with core activities, such as mobility, self-care and communication and help with household chores, property maintenance and transport. Family, neighbours, friends and volunteers also support the emotional needs of the people they care for and facilitate social bonds and connections between older people and the broader community. Carers Australia spoke about informal carers assisting with 'service system navigation', including helping older relatives and friends complete paperwork, liaise with other family members and make arrangements for formal aged care services (sub. 36, p. 7).

Figure 3 – Most primary carers of older people provide between 1 and 9 hours of care each week



Source: ABS (2019a).

Informal care can help older people remain in their homes for longer as they begin to experience age-related frailty. When an older person experiences mild frailty they may rely on informal care for supports such as meals, transportation and company. As people experience moderate frailty-related episodes (such as a fall), they might rely on a combination of formal and informal care. Older people with severe limitations requiring ongoing care are likely to rely more heavily on formal care services. The evidence indicates that the intrinsic value of informal care is greatest for people with moderate limitations due to frailty (Bergeot and Tenand 2021).

However, informal carers often continue to provide support after people enter residential care. A survey conducted by Dementia Australia found that informal carers supported people living with dementia after they entered residential aged care by providing assistance finding allied and other health care providers, accompanying older people to appointments outside residential care and supporting aged care staff to provide personal care (Dementia Australia, sub. 12, p. 10). We also heard about carers identifying themselves as the ‘extra pair of hands’ to prop up understaffing in residential aged care.

Informal care that allows older people to remain at home can help them retain familiarity, social connections, and a sense of dignity. Families and communities can also continue to benefit from their lived experiences (older people are often the custodians of family traditions and history). The National Aboriginal Community Controlled Health Organisation (NACCHO) commented that more informal care:

... allows more older people to remain living in their homes and communities and for those in rural and remote areas ensures they do not have to move away from family and Country to access aged care services. (sub. 5, p. 5)

Putting a value on informal care

Informal carers make a significant contribution to the community. While estimating the value of informal care is challenging, and there is no internationally accepted methodology, the replacement value of all informal care provided to people requiring assistance due to age or disability in Australia was recently estimated to be around \$78 billion each year (Deloitte Access Economics 2020) (box 3). This points to the importance of informal carers to the sustainability of the aged care system (RCACQS 2019, p. 3). Informal care can also

contribute to improved end-of-life care, as care from family and friends (in conjunction with community-based palliative care) is an essential part of enabling people who would prefer to die at home to do so (PC 2017).

However, there is a growing 'carer gap' — the demand for informal care is forecast to increase by 23 per cent by 2030 while the supply of informal carers is set to increase by just 16 per cent (Deloitte Access Economics 2020, p. 28). Factors driving this include:

- the ageing of the population
- changes to family structures such as smaller family sizes and fewer people having children
- rising rates of female participation in the labour force (Deloitte Access Economics 2020, p. v).

Carer leave entitlements are one possible way to help close the carer gap.

Box 3 – Putting a value on informal care

Replacement value

In 2020, Deloitte Access Economics estimated the replacement value of the informal care provided to people requiring assistance due to age or disability in Australia. A replacement value is a measure of the cost of 'buying' an equivalent amount of care from the formal sector if the informal care was not supplied.

Primary informal carers were estimated to provide an average of 35.2 hours of care each week and non-primary carers 5 hours each week in 2020. Based on 906 000 primary carers and 1.9 million non-primary carers, a total of 2.2 billion hours of care were estimated to be provided in 2020. Using an average hourly replacement cost of \$36.12, the total cost to replace all informal care in 2020 was estimated to be \$77.9 billion. However, in practice, formal care could not fully replace all informal care.

Opportunity cost

Deloitte Access Economics also used an opportunity cost method to measure the amount of paid work foregone because of caring. This found the age-standardised rate of employment among primary carers to be 47 per cent, compared to the average Australian rate of 65 per cent. The rate for non-primary carers was also found to be slightly lower than the average at 62 per cent.

Deloitte Access Economics estimated that 160 900 primary carers and 53 000 non-primary carers were not in paid employment because of their caring role. This was equivalent to about 1.5 per cent of the workforce in 2020. The estimated earnings foregone for all carers was \$15.2 billion in 2020 (equivalent to 0.8 per cent of gross domestic product).

Source: Deloitte Access Economics (2020).

Providing care affects many aspects of carers' lives

Carers' health and wellbeing

Caring can be a source of purpose and personal satisfaction (although many carers take on their role out of a sense of duty, box 4). Caring can lead to closer relationships and the assurance that loved ones are being well cared for, but it can also negatively affect the health and wellbeing of carers.

Box 4 – An obligation to care: to what extent is caring a choice?

The caring role can be a source of personal satisfaction and fulfillment. The Australian Nursing and Midwifery Federation, for example, said:

Providing care for a loved one or a friend can be incredibly rewarding and the value of caring for others cannot be understated. (sub. 39, p. 3)

But many participants also spoke about the choice to care and support an older family member as being a constrained choice — a choice made out of necessity or a sense of responsibility or societal pressure. As one carer from New South Wales said:

In my case it meant leaving the workforce. It was a considered decision, but it has broken me. It wasn't a 'choice': there was no-one else who would support the person (Quality Aged Care Action Group, Aged Care Reform Now and Carers' Circle, sub. 21, p. 14)

Care decisions can be related to gender and the relationship with the person being cared for. The availability and suitability of formal care is also likely to be a factor in whether an informal carer's choice to care is constrained.

Carers report a sense of responsibility (70 per cent) and emotional obligation (47 per cent) as the two main reasons for taking on the role of primary carer (ABS 2019a). 35 per cent of carers reported that 'no other friends or family were available' to provide care and 16 per cent reported that they 'had no other choice' but to become a carer.

Choice in caring can affect carers' wellbeing. A sense of control is connected to wellbeing and believing that a caring role has been entered into by choice can be a protective coping strategy that can help carers continue in their role without resentment. Al-Janabi et. al. commented that:

It may be much better for a person's health to see himself or herself as having taken on caring not due to societally imposed duty, but due to his or her internalised values about the importance of looking after close family members. (2018, p. 164)

Carers Australia (sub. 36) referred to United States evidence that found carers without a choice in caring experienced higher levels of stress. Nearly half of the carers who had no choice in providing care felt a high amount of emotional stress, compared to just under a quarter of those who reported having a choice (NAC and AARP 2020, p. 53).

There is a large body of evidence showing an association between informal caregiving and poor physical and mental health of carers (for example, Bom et al. 2019; Ervin et al. 2022). The greater the intensity and length of care, the greater the risk of burnout and social isolation (section 8). Health problems caused by caring can limit labour market participation — people who develop a chronic health condition are five times more likely to give up work before the traditional retirement age (Welsh et al. 2018).

Caregiving not only affects informal carers' health and wellbeing, but can also affect the quality of care provided and the sustainability of informal care (if carers become burnt out, ill, injured or otherwise unavailable to care) which can lead to increased costs in the aged care, health and welfare systems.

Carers' working lives

For the 164 000 primary carers of older people in the workforce, combining paid work and caring can be challenging. Caring responsibilities can induce someone to leave a paid job or reduce the number of hours they work. In a survey of carers of older people:

- 22 per cent reported that they had quit working or were looking for work to be able to care
- 22 per cent reported retiring earlier than anticipated to be able to care
- 20 per cent reported reducing their working hours (Carers Australia, sub. 36, p. 4).

And carers described their experiences in submissions.

I decided to work less than I used to. I used to work fulltime and looked for opportunities to grow and to enhance my employability skills. However, since becoming a main carer ... I chose to work as a part time employee until now. Chi, Carer Representative (Merri Health, sub. 18, p. 2)

Becoming a carer for my father was brought about by the unexpected death of my mother who had been his primary carer, and by a deterioration in his health a few months later ... I left my job, hastily, and painfully culled most of my possessions so I could rent out my house to make it financially feasible for me to relocate to my father's home and become his carer. Anonymous carer (Merri Health, sub. 18, pp. 2–3)

I had to take many days of carers leave to attend [medical] appointments with my husband. I retired 5yrs earlier than planned to take on a carer role. (Dementia Australia, sub. 12, p. 7)

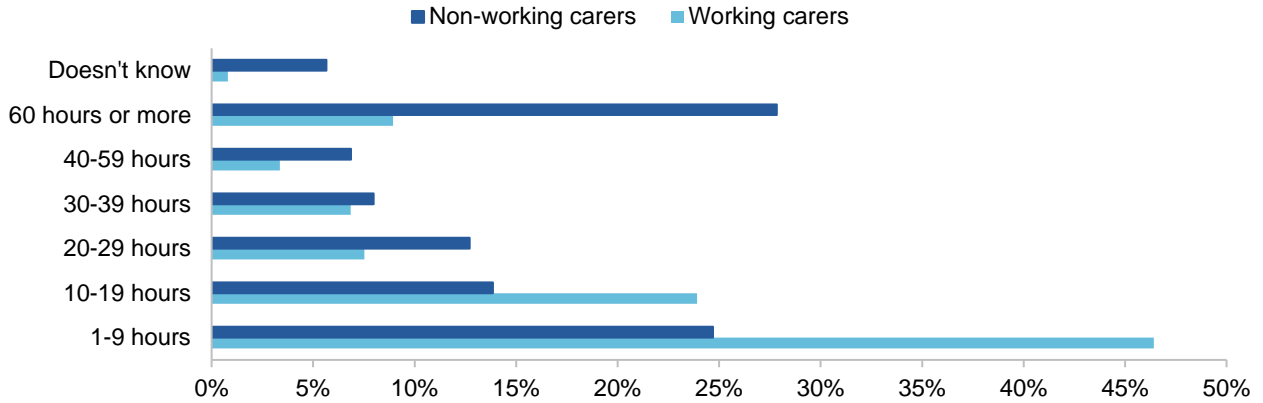
The impact of unpaid caring on workforce participation is most pronounced when carers are providing intensive, time-demanding care (more than 20 hours per week) (Colombo et al. 2011).

The effects of caring on work are related to the strain of caring, as well as to how much care is provided (Constantin et al. 2022). Most working carers of older people — about 70 per cent — provide less than 20 hours of care each week. About 12 per cent provide over 40 hours of care each week. Carers of older people who are not in paid work (non-working carers) spend more time caring than working carers — 28 per cent provide over 60 hours of care per week (figure 4, panel a).

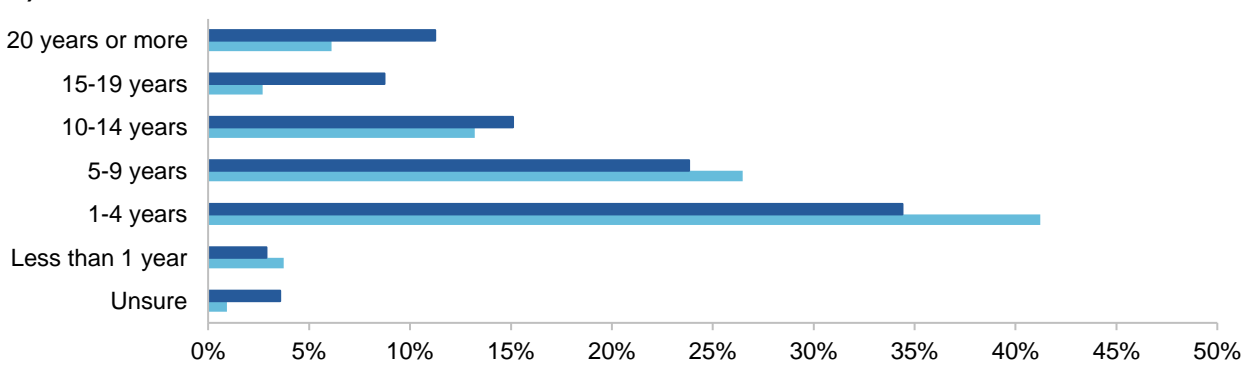
About 40 per cent of working carers of older people have provided between one and four years of care, and over a quarter between five and nine years. The patterns of care duration are similar for non-working carers who look after an older person, except that these carers are more likely to have been providing care for long periods of time (20 per cent for 15 years or more) (figure 4, panel b).

Figure 4 – Quantity of care provided by working and non-working carers of older people

a) Weekly hours of care



b) Duration of care



Source: ABS (2019b).

Decisions about who within a household takes on a caring role are influenced by a range of factors, including the potential earnings, labour market opportunities and other characteristics of household members (such as health, age and relationship to the care recipient). There is some evidence that the people who elect to care are those who already have low levels of labour force participation (Leigh 2010). An OECD paper, noting that female carers were already more likely to not be participating in paid work before caring for an older person (in part because they were caring for children before caring for an older relative) said ‘informal care to older people reinforces gender inequalities in labour force participation’ (Rocard and Llana-Nozal 2022, p. 16).

Caring can also affect carers’ incomes, with people who provide informal care having lower incomes than those who do not. In 2018, the median gross personal income per week was \$525 for primary carers and \$729 for other informal carers, compared to \$863 for people who provided no informal care (Furnival and Cullen 2022, p. 11).

3. Employment standards relevant to balancing work and care

At a minimum, all employees covered by the national workplace relations system have guaranteed and enforceable entitlements under the NES that can help them balance paid work and care (box 5). Many employers also provide entitlements in excess of those in the NES.

Under the NES, carer leave is available to employees caring for an immediate family or household member. 'Immediate family' is defined as a spouse, de facto partner, child, parent, grandparent, grandchild or sibling as well as a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner (current or former).

Box 5 – National Employment Standards and balancing work and care

The National Employment Standards (NES) are a set of 11 minimum standards which must be provided to all employees covered by the *Fair Work Act 2009* (Cth). They provide a legislative safety net and apply to all employees in the national workplace relations system irrespective of their award, agreement or contract (however, some do not apply to casual employees, or apply to casual employees differently). The NES cover work hours and arrangements, leave, public holidays, notice of termination and redundancy pay as well as information statements.

Of the 11 standards in the NES, nine are statutory entitlements, and two are a 'right to request', which means that the employee has a right to request a particular workplace arrangement, but that request can be denied on 'reasonable business grounds'.

A number of NES are relevant to balancing work and care.

- **Unpaid parental leave** allows employees to access 12 months unpaid leave, with the ability to request an additional 12 months, to care for newborn or newly adopted children. Employees who have worked for their employer for at least 12 months and regular casuals^a are eligible for this entitlement. This leave can be taken to care for additional children 12 months after the last period of unpaid parental leave.
- **Carer leave** is provided for certain employees in two forms; paid and unpaid carer leave. Paid carer leave is bundled with sick and personal leave and can be taken to care for an immediate family or household member who is sick or injured or during a family emergency. Employees except casuals have access to 10 days paid carer/sick/personal leave yearly which accumulates when not used (pro-rata for part time employees). All employees have access to unpaid carer leave when their paid carer leave runs out, up to two days per episode. Notice must be given of the intention to take leave and the expected duration as soon as possible and evidence must be given if it is requested.
- **Compassionate leave** allows employees to take 2 days of leave per episode. Casual employees are entitled to unpaid compassionate leave and other employees are entitled to paid leave. Employees can take compassionate leave if:
 - a member of their immediate family or household dies, or contracts or develops a life-threatening illness or injury
 - a baby in their immediate family or household is stillborn
 - they have a miscarriage

Box 5 – National Employment Standards and balancing work and care

- their current spouse or de facto partner has a miscarriage.
- **Flexible working arrangements** can be requested by employees who have worked for their employer for at least 12 months and regular casuals.^a Flexible working arrangements can include changes to hours, patterns or locations of work and can be requested by employees who are parents or have responsibility for a child, carers, have a disability, are 55 or older, or are experiencing family or domestic violence or providing care or support to a member of their household or immediate family due to family or domestic violence. Requests can be refused on ‘reasonable business grounds’. These provisions will be amended on 6 June 2023, to increase requirements on employers refusing requests for flexible work and to introduce a review mechanism where requests are refused (box 7).

a. A casual employee is a ‘regular casual’ if they have been employed on a regular and systematic basis for at least 12 months and have a reasonable expectation of continuing work on a regular and systemic basis.




Working carers who are not casual employees also have access to paid leave though personal leave and annual leave. Personal leave can be taken to provide informal care at the employee’s discretion (subject to evidence requirements), while annual leave requires employer agreement (which cannot be unreasonably refused). Under the NES, full-time employees have access to 10 days of personal leave and 20 days of annual leave each year (pro-rata for part-time employees), and unused credits accumulate.

Beyond the entitlements contained in the NES, employees and employers can seek to develop arrangements that meet the needs of carers. The Fair Work Act requires every modern award and enterprise agreement to contain a ‘flexibility’ term which allows for the development of Individual Flexibility Arrangements that set the conditions of employment for an individual employee. Where caring responsibilities cannot be accommodated within the conditions of employment established by a modern award or an enterprise agreement, an Individual Flexibility Arrangement can be used to vary those conditions in a mutually beneficial way (within certain legislated parameters).

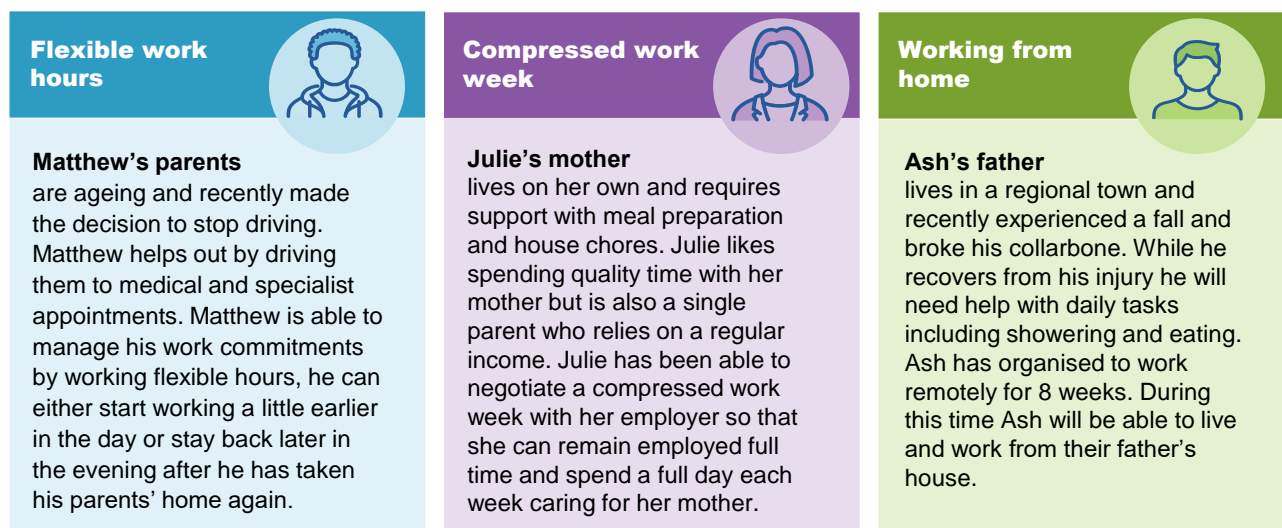
Outside these arrangements, employees and employers can use informal arrangements to help employees meet their caring responsibilities. For example, employers can seek to provide additional supports beyond the minimum entitlements under the NES to cultivate carer-friendly workplaces. There is some evidence that carer-friendly workplaces are associated with reduced caring strain among informal carers and reduced withdrawal from work (Constantin et al. 2022).

Many different types of flexible working arrangements are available (figure 5). Working carers use these in a range of different ways, depending on the care needs of their loved ones (figure 6).

Figure 5 – What can be included in flexible working arrangements?

Hours	Patterns	Locations
<p>Changes to hours of work, such as changing start and finish times, reducing hours of work or compressing the work week</p> 	<p>Changes to the patterns of work, such as split shifts or job sharing</p> 	<p>Changes to the locations of work, such as working from home or working remotely</p> 

Source: FWO (2023c).

Figure 6 – Managing care responsibilities with flexible working arrangements

Use of workplace entitlements to balance work and care

Most working carers have a preference to continue working, and use flexible working arrangements to achieve this.

- Full-time employed carers are more likely to be in jobs that offer flexible work arrangements relative to non-carers and are more likely to take paid leave of more than 20 days each year compared to non-carers.
- On average, full-time employed carers who have access to flexible work arrangements are able to provide 10 hours of care each week and part-time employed carers 15 hours each week (ABS 2019a, HILDA waves 5 to 20).

Working carers of older people access a variety of leave types and flexible work arrangements. Special working arrangements — particularly working from home — have become more common in recent years, as the COVID-19 pandemic brought widespread changes to work patterns (PC 2021).

Some employees already have access to extended periods of unpaid carer leave. For some, carer leave is provided for in their enterprise agreement. For example, the Carers Victoria enterprise agreement provides 10 days unpaid carer leave. But this is an isolated example — very few enterprise agreements (which cover about 35 per cent of employees) (DEWR 2022, p. 5) contain an entitlement to extended unpaid carer leave. The Commission randomly sampled 500 enterprise agreements (of the 8638 federal enterprise agreements current as at 30 June 2022) and none of the sampled agreements contained an entitlement to extended unpaid carer leave.

Other employees have access to extended unpaid leave because their employer voluntarily grants it on request (to care and for other reasons). For example:

- Carers NSW reported that four employers accredited through its 'Carers + Employers' network offer carer leave in excess of the NES entitlements, with most offering unlimited unpaid carer leave (sub. 20, p. 16).
- Coles told the Commission that it has a policy of allowing up to 12 months of unpaid leave to its salaried staff for a range of reasons, including caring for older people.

But few employees choose unpaid leave. Fewer than 3000 carers of older people took unpaid leave for 30 days or more, either as a block or in smaller increments, in 2018 (Productivity Commission estimates based on HILDA wave 20).

There is little information available about how many employers offer extended unpaid carer leave via a workplace policy document, employment contract or on request by an employee. That said, access to extended unpaid leave is more likely to be available to people working in the public sector and in large companies, and for highly paid workers and permanent full-time employees. This is because the benefits to employers of retaining these workers are likely to be higher.

Adequacy of leave entitlements for supporting employees with caring responsibilities

Participants had mixed views about the adequacy of the leave entitlements for supporting employees with caring responsibilities. Representatives of working carers mostly argued that existing entitlements in the NES are insufficient to meet working carers' needs (box 6). Lived Experience Australia, for example, said:

The existing leave entitlements for carers are primarily intended for brief periods of care to deal with an illness or unexpected event or emergency. However, we know that informal carers struggle to balance their work and caring responsibilities. (sub. 1, p. 4)

A survey conducted by Women Lawyers Association of Queensland found that 75 per cent of those who responded considered the current leave entitlements inadequate for those who have caring responsibilities for older people (sub. 4, p. 3). Dementia Australia also reported that many carers were forced to resign rather than take leave or request flexible working arrangements (sub. 12, p. 11).

Some pointed to the lack of employed carers as evidence that current arrangements are inadequate. Others noted that working carers trade off their leave entitlements to care and, in many cases, do not take sick leave when they need to because they have no leave left, or so they can accumulate leave to care and to deal with care emergencies. Not taking leave to rest and recover from illness can then affect their health, wellbeing and ability to care.

Carers whose care responsibilities are continuous and intensive often find the current leave entitlements inadequate for reconciling their work and caring commitments. Given informal carers have relatively high rates of disability and poor health, it is important that they have leave available so they can look after their own health and wellbeing.

Employer groups, on the other hand, argued that existing leave entitlements were adequate, and there was not a strong case for a new entitlement for extended unpaid leave for carers (box 6).

A wide range of participants also told us that employment entitlements are not generally well known or understood. Ways to improve working carers' knowledge and understanding of relevant leave entitlements are discussed in section 8.

Box 6 – Participants' views on the adequacy of leave entitlements for carers

Older Persons Advocacy Network:

The current carer leave provisions within the NES are inadequate to support longer term care of older people by family, relatives and friends ... While there are some employers providing access to extended unpaid carers leave the fact that this is not available to all employees across Australia provides a strong impetus for including within the NES. This should be a right for all employees who are employed full or part time. (sub. 15, p. 2)

Circle Green Community Legal:

Clients of our service utilise existing leave and flexible work provisions in the NES to care for an older person and others with care needs. The lack of workplace engagement and secure employment for informal carers indicates existing carer employment entitlements are insufficient in supporting informal carers. (sub. 11, p. 2)

Carers NSW:

Carers NSW has heard from many carers that the current combined nature of paid sick and carer leave has limited their ability to manage their own health and wellbeing. Many carers report using all of their sick and carer leave entitlements to provide care, leaving them with no sick leave to meet their own health needs. (sub. 20, p. 11)

Women Lawyers Association of Queensland:

Given the demands of caring for older people, unpaid leave or flexible working arrangements are frequently adopted by those women working in law who have multiple caring responsibilities, of which caring for older people is one. Paid personal/carer's leave is inadequate to meet these needs, forcing women to take other forms of paid leave (usually annual leave) or unpaid leave. ... [T]he current entitlements do not take into consideration the nature of ageing and the requirement for informal carers to provide support for not only health related matters, but also general living requirements – for example, cooking, cleaning, personal hygiene and care needs, transport to routine medical appointments (only available during business hours) and attending to shopping. (sub. 4, pp. 3–4).

Women, Work and Policy Research Group:

The current leave arrangements have some limitations that create barriers to access ... People with care responsibilities are more likely than those without care responsibilities to work part time. Consequently, carers of an older person (or a person with a disability or chronic illness) are likely to have their 10 days per annum reduced on a pro rata basis, so that the actual days of paid leave they have access to per year is less than 10. In addition, a considerable proportion of carers provide care for more than one person. For example, many carers combine the provision of support for an ageing relative, family member with a disability or chronic illness, with the care of dependent children or grandchildren. Consequently, the amount of paid leave is inadequate to meet their care responsibilities. (sub. 28, p. 3)

Ai Group:

... the [Fair Work] Act currently provides considerable measures to support informal carers look after the frail and elderly, including through provisions directed at paid and unpaid leave

Box 6 – Participants’ views on the adequacy of leave entitlements for carers

and flexible work arrangements that specifically contemplate the needs of carers ... we are not convinced that creating a new statutory entitlement providing for an extended absence from paid employment is the most appropriate arrangement. (sub. 34, pp. 2–3)

ACCI:

... in the vast majority of circumstances, the existing leave entitlements are adequate for undertaking caring responsibilities of older people, when they arise unexpectedly or sporadically (sub. 35, p. 9)

Flexible working arrangements

Many participants argued that strengthened flexible working arrangements are the most appropriate tool to help employees better balance work and caring commitments. ACCI, for example, said:

... the appropriate solution is not the expansion or introduction of new employee entitlements, but instead the promotion of flexibility in working arrangements and better empowering employers and employees to work together to better balance work and non-work commitments. Agreed flexibility to accommodate caring is a powerful tool which needs to be considered as it offers far more bespoke, personally targeted and relevant flexibility than any general regulation or rule ... Enhancing the flexibility of the workplace relations system resolves the tension between employees’ work responsibilities and other obligations, without imposing unnecessary costs on employers. It is conducive to more harmonious workplaces and mitigates risks of dis-employment effects for prospective employees. Flexibility is also the best mechanism for accommodating diverse and unexpected caring demands placed on employees. (sub. 35, pp. 4-5)

Flexible working arrangements are most needed and frequently requested by carers, but inflexible employers and lack of understanding of the caring role hampers access to these (Carers Australia, sub. 36, p. 15). We heard from some carers about the barriers they face to accessing flexible working arrangements. For example:

For myself, I need to be able to work from home so that I am there to monitor the person I care for and help if needed. I need the opportunity to accrue flextime (TOIL) [time off in lieu] to cover ‘bad’ mornings or doctor’s appointments. I need understanding and the flexibility to be put into a role where I can be ‘late’ to work and allowed to make up the time at the end of the day. I need to feel as if I’m trusted, not as if I’m being monitored. (Carers Tasmania, sub. 37, p. 18)

The Australian Nursing and Midwifery Federation reported that:

Despite a clear desire amongst caregivers for flexible working arrangements, respondents [to a survey of ANMF members with carer responsibilities] commented that workplace flexibility was difficult to obtain. Many respondents indicated that they were denied flexible working arrangements and were instead forced to reduce their hours of work, accept casual work or cease employment entirely. (sub. 39, p. 14)

Carers' responses to surveys also suggest that they are not always able to access flexible work.

- In 2018, the most common reasons why informal carers could not make more use of special working arrangements were having inadequate paid leave, work commitments, barriers to flexible work due to the nature of the job and inadequate work arrangements (ABS 2019a).
- In 2022, 23 per cent of carers reported not having flexible working hours, 46 per cent had somewhat flexible hours and 31 per cent had very flexible hours (Schirmer, Mylek and Miranti 2022).

A number of participants said that the right to request flexible working arrangements was limited by the lack of a right of appeal.² They expressed concern that an employer could refuse an employee's request for flexible work arrangements and the employee would have no means to appeal the decision.

This is no longer the case, as there have been a number of relevant legislative changes (box 7). The changes give employees recourse if their application for flexible work is denied, and so are likely to make it easier for working carers of older people to access flexible work. But, because they will only take effect in mid-2023, their real-world impact is yet to be determined.

There is also scope for governments to do more to improve employers' and employees' understanding of flexible work entitlements (section 8).

Box 7 – Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022

On 6 December 2022, the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* received the Royal Assent. This Act makes a series of changes to the *Fair Work Act 2009*, including amendments to the National Employment Standard that provides a right to request flexible work arrangements. These amendments will commence on 6 June 2023.

The amendments strengthen employers' obligations to provide flexible work. Employers will only be permitted to refuse requests for flexible work if they have:

- discussed the request with the employee
- genuinely tried to reach an arrangement that would accommodate the employee's circumstances and not been able to come to an agreement
- considered the consequence on the employee of refusing the request for flexible work, and
- reasonable business grounds for refusing the request.

The amendments also empower the Fair Work Commission to resolve disputes regarding flexible working arrangements where a request has been refused (or not responded to), and the employer and employee have attempted to resolve the dispute and have not been able to do so at the workplace level.

² Circle Green (sub. 11, p. 2); JobWatch (sub. 17, p. 3); NACCHO (sub. 5, p. 5); SDA (sub. 38, p. 7).

4. Our approach to entitlement design and assessment

The Commission approached the assessment of the economic and social costs and benefits of an extended unpaid leave entitlement to informal carers of older people in the same way it would consider any new policy. We considered an entitlement (and other policies to support informal carers) in the context of improving the wellbeing of the community as a whole (that is, by considering the interests of all Australians). We also took into account recent policy developments in support of informal carers of older people, and the planned and enacted reforms in the aged care sector (as there are many changes in play following the recommendations of the Royal Commission).

Questions this inquiry sought to answer were:

- to what extent would an entitlement to extended unpaid leave address the reasons for governments to support informal carers?
- what design features would maximise the outcomes of an entitlement for extended unpaid carer leave?
- to what extent would an entitlement to extended unpaid leave result in better outcomes than under current arrangements?
- are there any potential undesirable consequences from an entitlement for extended unpaid carer leave?
- are there better ways (than an extended unpaid leave entitlement) to support informal carers of older people?

In the context of designing and assessing an entitlement to extended unpaid carer leave, the key steps we took included estimating:

- the number of employees who would be likely to use an entitlement
- the share of those employees likely to use an entitlement who would have otherwise stayed in paid work and the share expected to exercise their right to return to their job
- the potential impacts, positive and negative, on older people who would receive informal care, carers and their employers and taxpayers.

We also looked at the distributional effects and implications of an entitlement to extended unpaid carer leave.

Potential objectives of an entitlement

The concerns raised by the Royal Commission point to increasing workforce attachment of carers and assisting carers to better balance paid work and care as potential objectives for an entitlement to extended unpaid leave. Having access to leave to undertake caring responsibilities is important for providing employees with choices about the amount of care they provide, while also allowing them to remain connected to the workforce. As the Women, Work and Policy Research Group explained:

Better access to leave would support [informal carers] with more options, such as taking a break from work, and this has the potential to reduce the speed with which they are forced to make work-related trade-offs, such as reducing hours, finding a new job that is more flexible and closer to home (often not commensurate with their skills and experience), or leaving the labour market altogether. (sub. 28, p. 4)

The Australian Government, when announcing this inquiry, said that access to a minimum entitlement could relieve some of the burden on formal carers and help reduce future demand for formal aged care services.

Other objectives for an extended unpaid leave entitlement (and for other supports for informal carers) suggested by participants to this inquiry included:

- improving the wellbeing of the people who are being cared for (via the quality and amount of care provided and allowing older people to stay in their homes for longer)
- improving the wellbeing of carers
- changing societal norms about caring and addressing gender inequalities (box 8).

Box 8 – What participants said about objectives for an entitlement ...

Lived Experience Australia:

... this entitlement could increase the amount of care provided, the quality of care, and support to carers by granting a right to return to work after extended leave caring. (sub. 1, p. 3)

Commenting on the objective of mitigating demand for formal caring arrangements, the Department of Health and Aged Care said:

The introduction of policies that provide entitlements to paid and unpaid leave for carers of older Australians, and increased respite options may have the potential to achieve this outcome and go a long way to address carers (predominantly women) leaving the workforce or reducing work hours due to caring responsibilities. (sub. 24, p. 3)

The Australian Retailers Association:

... the policy intent of the proposed carer leave is to provide more support for informal carers, and that it will also likely boost women's workforce participation and improve employee retention. (sub. 14, p. 2)

The Royal Australian and New Zealand College of Psychiatrists said a minimum statutory entitlement for an employee to take unpaid leave for caring will:

... help relieve burden on informal carers. This will support the health, independence, dignity and quality of life of older Australians and their informal carers. (sub. 25, pp. 2-3)

Carers NSW:

... while enabling carers to sustain paid work and care is likely to have a positive effect on the economy and on the long-term sustainability of formal care service systems, the key aim of any such initiatives should be supporting the optimal health and wellbeing of carers and the people they care for. (sub. 20, p. 3)

The Women, Work and Policy Research Group:

... care responsibilities have an impact on informal carers' paid work, and some aspects of [their] caring responsibilities can involve temporary periods of intensive support and care that are extremely difficult to combine with paid work and for which longer periods of leave would be particularly helpful, such as rehabilitation support for an older relative to transition back home after a stay in hospital, or supporting an older relative at the end of life. (sub. 28, p. 3)

Box 8 – What participants said about objectives for an entitlement ...

Carers Australia:

Part of the purpose of extended unpaid leave is to help carers to adjust to a new caring situation or an escalation in an existing carer situation. Carers Australia has plenty of anecdotal evidence that many people become so overwhelmed by these challenges that they will quit their job fairly quickly. However, if carers are given enough time and opportunity to resolve these issues, it is highly likely that they will return to work even if they continue caring. (sub. 36, p. 21)

An entitlement to extended unpaid carer leave could reduce the costs to carers of returning to paid work and encourage women to maintain their attachment to the workforce. This in turn could improve gender equity, with benefits for carers and the community more generally. But at the same time, an entitlement could encourage some carers who otherwise would not have left paid work to take unpaid leave to provide care (and some of these may not return to the workforce). Extended breaks away from the workforce can lead to loss of skills and can affect the career prospects of employees. This points to the importance of finding a way to design an entitlement to extended unpaid leave so that it supports carers but does not contribute to workforce detachment.

Relief from the stress of juggling work and care, or from anxiety about finding a job after caring responsibilities are over, could have positive impacts on mental health. Merri Health identified this and other potential benefits to carers' wellbeing from an entitlement with a right to return to work.

Feeling forced to cease work because of caring responsibilities can increase carer's feelings of isolation and loss of their own identity and goals. Carers report that an opportunity to remain connected to work would improve their confidence and self-determination. (sub. 18, p. 15)

However, provided the challenge of combining paid work and care is not too high, remaining employed can have a positive impact on carers' wellbeing (and it can help carers with the additional costs of caring). Working can be a respite from caring responsibilities and help carers maintain social connections.

An entitlement to extended unpaid leave for carers could provide a signal that taking time out to care for older people is valued by the community and, over time, change societal attitudes about caring. Carers Australia said:

The [Victorian Equal Opportunity and Human Rights] Commission's research demonstrates a need to ... invest in strategies to transform societal attitudes towards unpaid caring and parenting, to adequately ascribe value to the 'second shift' many workers perform outside of their formal working hours. ... Employers have a vital role to play in facilitating a range of flexible employment practices, including leave for caring responsibilities and carer entry back into paid work. (sub. 36, p. 32)

However, while policies to address the gendered distribution of informal care could be justified on equity grounds, an entitlement to extended unpaid carer leave could also reinforce the gender gap in informal care. This concern was raised by a number of inquiry participants.³ For example, Anglicare Australia, noting that

³ Concerns were raised by the Australian Services Union (sub. 30, p. 1) and Carers NSW (sub. 20, p. 8).

women shoulder most of the responsibility for unpaid care work, raised concerns about the consequences of encouraging more women to take unpaid leave for the gender pay gap.

Encouraging more women to take unpaid leave to care for loved ones may have an unintended impact of widening the gender pay gap, as they miss opportunities for career advancement and salary increases available to male counterparts. Extended unpaid leave can also reduce women's superannuation balances, leaving them at risk of poverty as they age. (sub. 6, p. 1)

5. Entitlement design choices

Assessing the impacts of an extended unpaid leave entitlement to informal carers of older people in the NES is difficult without knowing what such an entitlement might look like. To facilitate further discussion and evaluation of an entitlement to extended unpaid carer leave, the Commission constructed a provisional model. Design choices were guided by the likely effects of different design features, and the need to avoid undesirable consequences. We aimed to maximise the benefits to carers and carer recipients, while minimising costs for employers and carers (long-term leave taking can have a negative impact on workers' wages and human capital). We considered the design of similar entitlements in other countries, and aligned the features of the provisional model with those used in the NES for other types of leave where possible. This is important because, as the 'safety net' of the Australian industrial relations system, maintaining consistency across each of the standards in the NES is important for ensuring their continued accessibility and clarity.

There is a lot of uncertainty about the impacts of various design choices of an entitlement to extended unpaid carer leave because the evidence is thin and measuring some impacts is challenging. For example, it is difficult to place a value on the satisfaction of caring for a loved one or the ability of someone to stay in their home for longer because they are getting more care from a friend or family member. It is also difficult to estimate the additional costs to employers of an entitlement to extended unpaid carer leave without granular information on how different types of employers might respond to such an entitlement and how different employees might use an entitlement, especially given the wide diversity of carers and care recipients and their needs.

Leave duration

The terms of reference to this inquiry (and the Royal Commission) did not specify what was meant by an 'extended period of unpaid leave'. Internationally, unpaid carer leave is available for periods ranging from 5 days to 2 years (box 9).

An entitlement of up to 12 months leave was suggested by a number of participants.⁴ This period of leave would cater to the caring durations of almost 14 per cent of working age intensive primary carers (ABS 2019a). It would also align with the duration of unpaid parental leave.

⁴ Green Circle Community Legal (sub. 11, p. 2); Australian Retailers Association (sub. 14, p. 2); Carers Australia (sub. 36, p. 15).

Box 9 – Internationally, the duration of carer leave entitlements varies widely

Many developed countries have carer leave entitlements embedded in national legislation and policies (see figure below). Over half of all OECD countries offer paid leave and almost one-third offer unpaid leave to care for older people (Rocard and Llana-Nozal 2022, pp. 46–47). Leave is typically available to care for a close relative who has experienced a loss of autonomy, is ill, dependent or vulnerable.

Entitlements vary across countries where combinations of paid and unpaid carer leave can be available. For example, either paid leave or social security payments based on a percentage of the carer's income are available in Japan, Slovenia and Sweden.

Leave entitlements vary in duration. In Germany, employees can access up to 6 months of unpaid continuous leave (including up to 10 days of paid leave), or they can negotiate a part-time work arrangement for up to two years whilst providing care. In Ireland, Hungary and Spain, employees are eligible for up to two years of job-protected leave.

Most countries in Europe provide both short- and long-term carer leave geared toward different care needs (Bouget, Spasova and Vanhercke 2016, p. 19). Typically, unpaid leave entitlements are longer than paid ones. In several countries, leave can be taken in blocks or shared between family members.

Several international jurisdictions have recently made, or are seeking to make, policy changes to support carers' participation in employment.

- In 2022, the European Parliament's Directive for Work–Life Balance for Parents and Carers came into effect across all members of the European Union. The directive sets out minimum requirements for paternity leave, parental leave and carer leave and flexible working arrangements for workers who are parents or carers.
- In the United States, the Biden Administration introduced a suite of measures to improve productivity and equality in the workforce. The Build Back Better Bill 2021 proposed to introduce 12 weeks of paid Family and Medical Leave as a national minimum standard. While the Bill was unsuccessful, it mirrors family leave entitlements currently available across 13 states and the District of Columbia.
- A Bill to introduce 5 days of unpaid carers leave is currently before the UK Parliament.

Box 9 – Internationally, the duration of carer leave entitlements varies widely

Days			Months			Years	
2 days Australia ^a	6 days Israel [*]	10 days Bulgaria Slovakia ^{**}	2 months Canada ^{**} Norway Poland ^{**}	6 months Austria ^{**} Denmark ^{***c} Germany Netherlands [*] Slovenia ^{**}	1 year Belgium France	2 years Hungary Ireland Italy ^{*d} Spain ^{*e}	Unspecified Lithuania ^f
5 days Finland [*] Greece Latvia Luxembourg [*]	7 days Estonia ^{**}	15 days Portugal	3 months Czech Republic ^{**} Japan ^{**} Korea Sweden ^{**} Switzerland [*] United States ^{**b}				

a. In Australia employees can access 2 days of unpaid carer leave. This leave is per care episode and is in addition to paid sick leave entitlements. **b.** In the United States 13 states offer up to 12 weeks of Paid Family Leave which can be used to care for any relative. **c.** In Denmark carers enter a contract with their municipality to provide care full time for 6 months with the option of extending for an additional 3 months. **d.** In Italy employees can access 3 days of paid leave per month. They are also entitled to 2 years of unpaid leave to provide long term care. **e.** In Spain employees can access 7 days of paid leave per year. They are also entitled to 2 years of unpaid leave to provide long term care. **f.** In Lithuania the duration of care leave is determined by health advice and agreement with the employer. * Employer paid leave entitlement. ** State paid leave entitlement. Countries in **bold type** offer an unpaid entitlement.

Sources: Eurocarers (2018), European Commission (2022), National Conference of State Legislatures (2020); OECD (2021); UK Parliament (2023).

The decision about the appropriate duration for an extended unpaid carer leave entitlement in Australia was guided by the need to balance two competing priorities — the period of leave that would be long enough to offer meaningful benefits to carers and carer recipients, but not so long that it would impose excessive costs on employers or carers. Data about work and care patterns provide insights on where this balance can be found.

Carers who provide many hours of care are likely to find extended unpaid carer leave most useful, as it would give them the time they need to care for their loved one. But these carers also provide care for long periods of time — most carers who provide over 20 hours of care per week do so for more than three years, and over a quarter care for up to three years (ABS 2019a). And after three years of caring, the likelihood of the carer returning to work is substantially reduced. Most carers who spend more than two years caring full time remain outside of the workforce and do not look for additional work. As such, the duration of extended unpaid carer leave should be shorter. Such a long period would offer limited benefit to carers in terms of workplace attachment and would substantially increase costs to their employers (who would be required to keep their jobs open for that time, and to bear the costs of any reduction in skills that occurred during the employee's absence).

Based on all these considerations, an entitlement of up to 12 months unpaid carer leave seems appropriate.

Unlike parental leave, we are not proposing that informal carers have the option to extend leave for an additional 12 months. It is unlikely that the right to extend the leave by an additional 12 months would increase workforce attachment (see supporting papers).

A minimum duration of leave

The duration of leave taken by carers of older people is likely to vary, and may often be less than the full entitlement.

Allowing extended carer leave to be used for shorter periods can mean that businesses face higher costs and have fewer options for covering absences. A minimum duration of leave would ease these concerns and is used in other countries to ensure leave is taken for extended caring needs rather than for other personal reasons.

The minimum duration needs to be high enough to allow for employers to use agency and casual labour or fixed-term contracts for it to effectively limit the need for them to use costly overtime to cover absences.

Where leave is unpaid, a minimum duration of leave may make the leave prohibitively costly for employees, especially those on low incomes, limiting their ability to use it. Most respondents to a survey by the Women Lawyers Association of Queensland said unpaid leave was 'unworkable', with the main reasons being that carers are not able to absorb the financial impact (sub. 4, p. 3). A minimum duration could also prevent employees from managing their paid and care work flexibly by limiting their choice in how to make use of the entitlement. The Women, Work and Policy Research Group submitted that flexibility in leave entitlements can improve gender equality outcomes.

... where leaves can be taken flexibly, men are more likely to use them, which is a useful consideration given the issues associated with creating an unpaid leave provision that is mostly used by women. (sub. 28, p. 8)

It would also be undesirable to prevent employees from accessing the leave for genuine caring circumstances that require shorter durations of leave, such as post-acute care and, for some people, palliative care. International evidence suggests that average carer leave taking is around 2-3 months (although some evidence is taken from paid leave schemes which tend to induce longer leave durations).

We are suggesting a 3-month minimum duration, but are seeking feedback on whether a shorter minimum duration may be a more appropriate balance between reducing costs to businesses and ensuring accessibility for carers (information request 1).

Catering to episodic care needs

Caregiving roles in the context of caring for older people are often described as episodic. A number of participants noted that the episodic nature of care for older people was incompatible with an entitlement that only allowed a single block of leave.⁵ Merri Health argued that imposing a single block of leave may actually prevent employees from using the entitlement when it is needed (sub. 18, p. 6).

There are likely to be benefits from allowing carers to stop and then subsequently recommence unpaid leave, as it could strengthen links to the workplace and improve the wellbeing of carers. However, it could be significantly more costly for employers. Indeed, it is unclear how an entitlement to extended leave could be designed in a way that meets episodic care needs and is cost-effective for employers. Compared to an entitlement to extended leave, flexible work arrangements are more suited to allowing carers to fulfill episodic care needs, and there is scope to help carers make greater use of such arrangements (section 8).

⁵ Arafmi Ltd (sub. 9, p. 27); Queensland Alliance for Mental Health (sub. 7, p. 6); Zonta Club of Toowoomba Garden City (sub. 10, p. 8).

Allowing employees to access extended unpaid carer leave again 12 months following its last use is aligned with unpaid parental leave in the NES and would improve workforce attachment for carers.

Notice periods

Notice requirements in the NES show an understanding of the costs to businesses of unexpected absences on balance with the practicalities of providing notice for unpredictable circumstances like care.

Having a notice period for extended unpaid carer leave seems reasonable on the basis that the leave is intended for planned periods of caring rather than emergencies. However, whether it is possible for informal carers of older people to provide notice depends on the spontaneity of care needs either in the onset or intensification. As pointed out in a number of submissions, providing notice of an intention to take leave to care for an older person (and predicting the amount of leave needed) can be difficult for carers. Carers Australia, for example, said that ‘many carers report that they underestimated both the intensity and length of time they would be required to provide care’ (sub. 36, pp. 5–6).

Employees taking extended leave may also find they do not need as much leave as they applied for. For example, in cases where the person being cared for recovers, goes into residential care or passes away, being able to re-negotiate the period of leave would be beneficial.

Notice periods clearly benefit businesses, but may not be straightforward for carers. To balance these considerations, the Commission is proposing:

- a notice period of 4 weeks
- employees to advise the duration or expected duration of leave
- employees be allowed to return from leave early with 4 weeks’ notice.

Who should be eligible?

NES entitlements (and international carer leave entitlements) have a range of eligibility requirements to ensure the entitlement is in keeping with its objectives.

Some eligibility requirements can follow existing precedents for consistency, including limiting the age of the care recipient according to the definitions of an aged person used by the Department of Health and Aged Care in administering formal aged care. The aged care system provides support to:

- people who are 65 years or older
- people who are 50 years or older if they identify as an Aboriginal or Torres Strait Islander person
- prematurely aged people who are 50 years and over (45 years and over for Aboriginal and Torres Strait Islander people) (sub. 24, p. 5).

The Commission’s provisional model of carer leave would allow employees to access leave to care for people in these groups.

Closeness to care recipient

Most NES care-related entitlements require the recipient to be a member of the employee’s immediate family or household. Under section 12 of the Fair Work Act, ‘immediate family’ includes a spouse, de facto partner, child, parent, grandparent, grandchild, or sibling as well as a child, parent, grandparent, grandchild or sibling

of a spouse or de facto partner (current or former) of the employee. This is similar to most international carer leave entitlements (Bouget, Spasova and Vanhercke 2016, p. 18).

There are some concerns about this definition excluding groups of carers from accessing care-related entitlements, including people whose care relationships traditionally depend more on kinship and community (such as some Aboriginal and Torres Strait Islander people), and LGBTIQ+ people who may receive care from their family of choice where they have strained relationships with their immediate family (NACCHO, sub. 5). In 2018, about 5 per cent of all primary carers cared for someone who was not their partner, child, parent or household member (ABS 2019a).

In designing an entitlement to extended unpaid carer leave, aligning eligibility requirements with other care-related NES entitlements is important. Consistency in the NES is important for providing both employers and employees with clarity around their minimum rights and obligations and reducing administrative burden.

This does not preclude employers from offering extended unpaid carer leave to employees who provide care beyond their immediate family or household. There may also be a case to consider expanding definitions of caring relationships in the NES more broadly (section 8).

Length of service

A number of NES entitlements have eligibility requirements about length of service. For example, at least 12 months of employment with the current employer is required for employees to access unpaid parental leave. Restricting eligibility for the entitlement to employees with at least 12 months employment with their current employer could increase the likelihood that leave-takers return to work (because they are more likely to have formed a genuine workplace attachment before leaving).

Requiring employees to have worked for their employer for 12 months prior to being eligible to take leave would prevent employees from getting access to an unpaid leave entitlement immediately after starting work with a new employer. This would reduce the risk that employers hire and train someone, only to have them take extended leave shortly thereafter. While it is not clear whether the risk of this sort of behaviour is significant for an unpaid entitlement, the possibility of it occurring is heightened in tight labour markets where changing jobs is less onerous.

Should casual employees be excluded?

Several entitlements in the NES are not available to casual employees (who instead receive extra pay). However, unpaid parental leave is available to casual employees where they have worked at least 12 months with their employer and have a reasonable expectation of continuing employment.

Some participants argued that excluding casuals from carer leave would have the perverse effect of excluding carers (Carers NSW, sub. 20, p. 7; Women Work and Policy Research Group, sub. 28, p. 6), as many carers use the flexibility of casual work to help balance their caring responsibilities with paid work. About 24 per cent of primary carers are employed casually (Productivity Commission estimate based on HILDA wave 20) which is slightly higher than for all employed people (Wilkins et al. 2021).

The nature of casual work with 'no firm advance commitment to ongoing work' (FWO 2023a) is incompatible with an extended unpaid leave entitlement because essentially it is a right to return to work after a long period of absence. In practice however, casual workers can become 'regular' employees by working on a 'regular and systematic basis' (FWC 2023). Data from the HILDA surveys shows that well over half of all casual employees have been with their employer for a year or more and over two-thirds work regular hours (Wilkins et al. 2021, p. 72). It is reasonable for regular casual employees to expect ongoing engagement with their employer, including in the form of a right to return to work after an absence.

It seems appropriate to maintain the precedent set by unpaid parental leave in the NES and allow casual employees who have worked with their current employer for at least 12 months, and have a reasonable expectation of continuing employment, to access extended unpaid carer leave.

Should small businesses be exempt?

Some participants expressed concern that an entitlement to extended unpaid carer leave would have disproportionately high costs on small businesses. Some called for small businesses to be exempt from providing an extended unpaid carer leave entitlement (for example, Australian Retailers Association, sub. 14, p. 1). The argument for an exemption for small businesses is that they face disproportionately higher costs, but the evidence for this is not clear.

All NES leave entitlements apply to small businesses (currently defined as those with 15 or fewer employees). In 2020-21, small businesses employed over 5 million people, making up 42 per cent of employment in the private sector (ASBFEO nd). To exempt small businesses from providing their employees with certain entitlements would deny those entitlements to a significant proportion of the workforce.

An exemption for small businesses would not be in keeping with the NES and lacks a clear evidence base.

Evidence requirements for accessing extended unpaid carer leave

Evidence requirements for carer leave already exist in the NES and could apply to an extended entitlement to unpaid carer leave. While the Fair Work Ombudsman does not provide an exhaustive list of the types of evidence that are acceptable, examples provided include medical certificates and statutory declarations. Otherwise the evidence must be able to convince a reasonable person that the employee was genuinely entitled to carer leave (FWO 2023d).

In the case of extended leave to provide care for an older person, options include:

- a carers card or receipt of the carer payment or allowance
- a disability assessment showing sufficiently high care needs
- a home support or comprehensive assessment showing sufficiently high care needs
- a medical certificate stating the need for care.

There is some concern about an evidence requirement for carers where it would rely on the willingness of the care recipient to obtain and provide evidence for their care needs, or where it might require the disclosure of private and medical information about the care recipient (Carers NSW, sub. 20, p. 11). Concerns were also raised about the medicalisation of evidence requirements as care needs can frequently be non-medical, such as transport, translation or social support. The deliberately broad definition of evidence provided by the Fair Work Ombudsman would allow carers to avoid this concern by enabling the use of a variety of different evidentiary documents.

Summing up

The key aspects of a provisional model for an extended unpaid carer leave entitlement and the rationales behind the design features are set out in table 1. The entitlement is designed so that it can be used in a range of different circumstances (figure 7).

The Commission is seeking feedback on the provisional model design as well as how it could improve support for informal carers.

Table 1 – A provisional model for an entitlement to extended unpaid carer leave to care for an older person

Features	Specification	Rationale
Leave period	<ul style="list-style-type: none"> • Up to 12 months • Minimum of 3 months • To be taken in one block • Minimum of 12 months between leave periods 	<ul style="list-style-type: none"> • A 12 month entitlement captures about 14 per cent of full- and part-time employees who provide intensive care • A minimum duration of leave would prevent short-term leave taking (which can be costly to employers) • 12 months between leave periods promotes workplace attachment • Early return provisions cater to changes in employee circumstances
Notice period before leave	• 4 weeks	• Reduces cost to employers by giving them time to plan while allowing for the sudden onset of care needs
Notice period before return	• 4 weeks unless a shorter period is agreed by the employer	• Reduces cost to employers by giving them time to plan while allowing for the sudden reduction in, or cessation of, care needs
Eligibility	<ul style="list-style-type: none"> • Ongoing employees and regular casual employees with at least 12 months of service with an employer • Applies to employers of all sizes 	<ul style="list-style-type: none"> • Similar to parental leave • 12 months service prior to leave promotes workplace attachment and increases the likelihood of a return to work
Purpose	<ul style="list-style-type: none"> • To provide care for an older immediate family or household member • ‘Older person’ defined as 65 years and over, or 50 years and over for Aboriginal and Torres Strait Islander people⁶ 	• Consistent with other care-related entitlements in the NES
Evidence requirement	• Must be able to convince a reasonable person that the employee is genuinely entitled to the leave (for example, by providing a medical certificate, statutory declaration or assessment report)	• Consistent with other NES entitlements

⁶ The aged care system also provides some support to those who have prematurely aged. That is, people aged 50 years or over or 45 years or over for Aboriginal and Torres Strait Islander people whose life course, such as active military service, homelessness or substance abuse, has seen them age prematurely.

Figure 7 – Entitlement use could vary depending on personal circumstances and care needs



Draft finding 1

An entitlement to extended unpaid leave for carers of older people should be designed to maximise the net benefits to the community

The design of an entitlement to extended unpaid leave for carers of older people should be guided by the objective(s) of an entitlement, evidence about the costs and benefits and likely impact of different design features and the need to avoid (or at least reduce) potential undesirable consequences.



Draft finding 2

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

The design features of the Commission’s provisional model of extended unpaid carer leave for carers of older people are:

- unpaid leave for 3–12 months (with the employee to specify the duration at the outset) with access to another period of leave 12 months after the last use
- a notice period of 4 weeks
- available to employees with at least 12 months of continuous service
- applied to businesses of all sizes and to regular casual workers
- evidence requirements in line with other National Employment Standards.



Information request 1

The Commission has put forward a provisional model for an entitlement to extended unpaid carer leave to care for an older person. We would like feedback on its features, and the costs and benefits of the provisional model. We are particularly interested in:

- the durations of leave carers are most likely to want to access extended unpaid carer leave
- how costly short-term leave is to businesses, and whether shortening the minimum leave duration would increase these costs significantly
- the potential costs and benefits of taking carer leave as a reduction in working hours over an extended period, rather than as an absence from work.
- whether there are ways to design the entitlement to avoid potential negative effects, including on the recruitment and career progression of carers.

6. Assessing the potential effects of an entitlement

How many employees would use an entitlement?

The Commission estimates that, in total, between 7000–17 000 employees would use an entitlement each year (box 10). This equates to between 3 and 7 per cent of the population of working-age carers of older people. While these estimates are approximate, they align with estimates of the number of users of similar entitlements in other countries.

Box 10 – How we estimated the potential uptake of extended unpaid carer leave

Demand for extended unpaid carer leave was inferred from two data sources:

- ABS Survey of Disability, Ageing and Carers 2018 (SDAC)
- Household Income and Labour Dynamics in Australia Survey (HILDA, waves 5 to 20).

To estimate the number of potential leave takers using historical data, it was necessary to make a distinction between two types of potential leave takers.

- People who continued in paid work when there was no entitlement, but who would instead have taken extended unpaid carer leave if there was an entitlement
- People who quit their job when there was no entitlement but would have instead taken extended unpaid carer leave if there had been an entitlement.

The motivations for, and benefits of, taking unpaid leave differ for each group. The entitlement would benefit the first group by giving them an opportunity to provide a greater level of care with the assurance

Box 10 – How we estimated the potential uptake of extended unpaid carer leave

that they can return to their job. Those in the second group who are considering possibly returning to work would benefit from the assurance that they can return to their job after an intensive period of care.

People who were working and might have taken up an entitlement

SDAC asks primary carers, other carers and non-carers if they would take up unpaid leave to provide care. Responses to this question, scaled to the Australian population, indicate that about 4000 carers and 4000 non-carers would have liked to have made more use of unpaid leave in the previous 6 months to help care for someone aged over 65.

The estimate of 4000 carers is a lower bound because it includes those people who were in paid work, had not taken extended unpaid leave in the last 6 months and would have used the entitlement in a 6 month period in 2018 had it been available.

The estimate of 4000 non-carers is added to the first estimate to give an upper bound of 8000 leave takers. The group of non-carers contributes to the upper bound because they are less likely to become leave takers. For example, these employees usually lived too far from the older person to be their carer but would temporarily relocate to be their carer if they used the entitlement.

The estimate for the number of people who continued to work but would have taken the entitlement if it were offered in 2018 is between 4000 and 8000, with a mid-point of 6000 people.

People who quit their jobs but would have taken up an entitlement instead

The Commission used the HILDA survey (over the years 2005 to 2020) to identify the upper and lower-bound estimates of the number of people who quit their jobs in 2018 but would have used the entitlement were it available.

An upper-bound estimate of about 9000 employees includes those people who were the main carer to a parent, parent-in-law or spouse aged 65 and over, and voluntarily ceased working in their job for a reason other than pregnancy, for example because they were dissatisfied with this job or because they got another job elsewhere.

The lower-bound estimate of 3000 is people who ceased working in their job 'to stay home to look after children, the house or someone else', suggesting that they quit their job *because* of their caring responsibilities. Unlike the upper-bound estimate, the members of this group are highly likely to take extended unpaid carer leave, and would have had their caring responsibilities front of mind when deciding to quit their job.

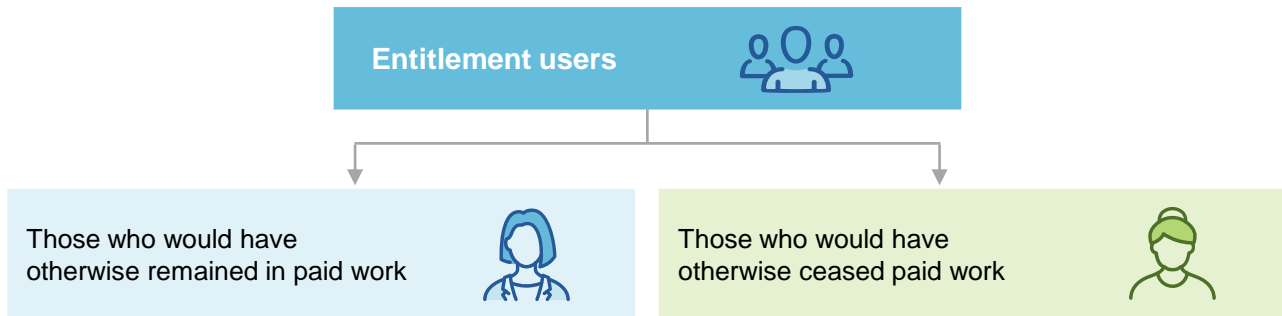
The estimate for the number of people who quit their job but would have taken the entitlement if it were offered in 2018 is between 3000 and 9000, with a mid-point of 6000 people.

Overall estimates

Combining the two sets of estimates (of employees who continued to work and those who quit their job) gives a range of between 7000 and 17 000 and a mid-point of 12 000 potential leave takers each year. This is equivalent to about 5 per cent of working-age carers of older people, and less than 0.1 per cent of all Australian workers. And as about half of the employees who would use the entitlement would have left their jobs to provide care if they could not take extended leave, only 3500 to 8500 potential users of the entitlement would be providing additional care because of the entitlement.

Two main groups of employees would use an entitlement to extended unpaid leave to care for an older person each year (figure 8).

Figure 8 – The two groups of entitlement users



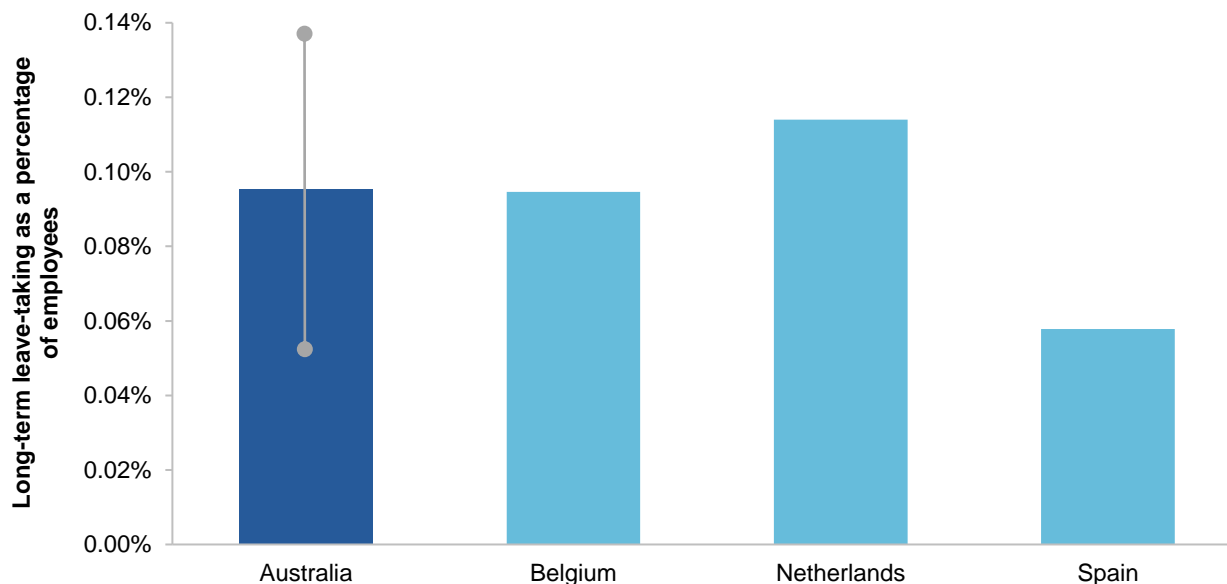
About half of the entitlement users would have continued working in their job in the absence of an entitlement. The other half would have ceased paid work anyway, so the benefit of an entitlement to this group would be a right to return to their jobs. And overall, almost two-thirds of entitlement users would actually exercise their right to return.

The estimates are subject to considerable uncertainty because it is difficult to know how employees would behave if they had access to an entitlement to extended unpaid leave. Several other factors make the future uptake of an entitlement even more uncertain.

- Long term demographic changes (if they continue) suggest that a larger share of the workforce could use the entitlement. As the population has aged, workforce participation among people (especially women) aged over 50 has increased and, at the same time, the age at which people have children has increased. These factors all point to more demand for informal care of older people falling on people in paid work.
- Post-2018 changes to workplace practices and regulation could reduce use of an entitlement. Since the COVID-19 pandemic, many more people have access to home-based work, which may allow them to better balance work and care and reduce the need for extended unpaid carer leave. The upcoming changes to the right to request flexible working arrangements may also have a similar effect (box 7).
- Uptake of the entitlement may be limited by workplace culture. Employees may be reluctant to make use of an entitlement if they fear that doing so will have consequences for their career. For example, the Women Lawyers Association of Queensland used a survey to inform its submission to this inquiry, and 25 per cent of respondents to the survey indicated that they had not disclosed their caring responsibilities to their employer and cited 'the stigma of taking time off work' and 'limited career progression' as barriers using carer leave (sub. 4, pp. 5-6).

While some countries offer extended unpaid leave for carers, there is a paucity of data on the employees who take up unpaid leave or who return to their jobs at the conclusion of their period of leave (Rocard and Llena-Nozal 2022). That said, for those jurisdictions for which data about the take up of unpaid leave is available, the estimates for Australia are comparable with those of other countries (figure 9).

Figure 9 – Estimated uptake of leave entitlement, Australia and overseas^{a,b}



a. Estimated range for Australia is for 2018. Belgium estimate is for private sector employees in 2021. The Netherlands estimate is for 2019. Spain estimate is for 2019. **b.** Proportion of persons estimated to take unpaid leave for at least one month. Excludes carers exercising their right to reduce work hours in Belgium and the Netherlands.

Sources: Productivity Commission estimates based on ABS (2019a), den Dulk and Yerkes (2022), Eurostat (2022), HILDA (Release 20), Meil et al. (2022), Mortelmans and Fusulier (2022), OECD (2012), Statista (2022).

Impacts on employees

An entitlement would benefit the employees who would use it (entitlement users). Most employee and carer representatives were supportive of an entitlement.⁷ Noting the inadequacy of the existing entitlements in the NES, participants highlighted the benefits of an entitlement to extended unpaid leave. Carers Tasmania, for example, said:

We are supportive of the introduction of additional entitlements which may improve the capacity of carers to obtain and/or remain in employment and therefore provide an opportunity for increased financial stability, social connection, and a sense of satisfaction with employment. (sub. 37, p. 5)



Impacts on unpaid care leave users who would have remained in paid work in its absence

The impacts on entitlement users who would have remained in paid work in its absence requires some unpacking. As an entitlement would induce this group to temporarily cease paid work to provide more informal care, they would sacrifice the income and any non-pecuniary benefits they receive from their job to provide informal care to a household or family member.

⁷ Arafmi Pty. Ltd (sub. 9); Circle Green Community Legal (sub. 11); Australian Education Union (sub. 13); JobWatch (sub. 17); Carers NSW (sub. 20); Carers Tasmania (sub. 37); Shop, Distributive and Allied Employees’ Association (sub. 38).

This group are expected to benefit from the entitlement, as they would have voluntarily chosen to use it.⁸ The benefit would be that it would allow them an easier route back to the workforce, and give them certainty about the job they are returning to. In the absence of an entitlement, quitting their job would be too risky, because they may struggle, or be unable, to find suitable employment afterwards.

To better understand this risk, we looked at work outcomes between 2005 and 2020 for people with similar characteristics to our entitlement users — those who provided care to an older person and worked at some point in the preceding two years — and who were out of the workforce and did not return to work. 60 per cent of people who were looking for work after a period of providing care were able to find a suitable job within two years. This increased to 90 per cent for people who were persistently looking for work after taking a career break to care for someone (Productivity Commission estimate based on HILDA Release 20). In other words, most people who seek work after taking a break to care are able to find work eventually, but not always quickly.

Overall, for carers who would have remained in paid work in the absence of the entitlement, the benefit of a quicker and potentially less stressful return to work is set against the high personal cost of taking unpaid leave, and means that the net benefit of the entitlement to these carers is likely to be limited.



Impacts on unpaid care leave users who would have ceased paid work in its absence

The impacts on entitlement users who would have ceased paid work in its absence are more straightforward. The entitlement would facilitate an easier return to work for this group.

We looked at work outcomes between 2005 and 2020 for people with similar characteristics to our entitlement users — those who provided care to an older person and worked at some point in the preceding two years. In the absence of the entitlement, only 20 per cent of this group returned to work after 12 months. If an entitlement were introduced, it would:

- increase the proportion returning to work to 25 per cent
- increase the speed with which the original 20 per cent of carers returned to work (Productivity Commission estimate based on HILDA Release 20).

While the entitlement would increase the proportion of people who return to work, most (about three quarters) of the entitlement users who would have ceased paid work in its absence would not exercise their right to return. For this group, the benefits of the entitlement would be quite modest. It would give them peace of mind that they would not need to undertake a lengthy job search if they were to seek to return to paid work. This might be valuable to those who expect to exercise their right to return but ultimately do not, but less so to those who never expect to return. This reduces the average benefit to entitlement users.

Wider impacts on employees

The entitlement would have three other notable impacts on employees, one positive and two negative.

- On the positive side, it would benefit more employees than those who use it. The future is uncertain, so many employees are unsure about whether one day they will want to take extended unpaid carer leave. Having the option to take it could provide some peace of mind.

⁸ Some could feel that their choice was the result of societal or familial expectations rather than personal desire, and some participants expressed concern about the effects an entitlement would have on this group — Lived Experience Australia (sub. 1); Health Services Union (sub. 19); Australian Services Union Victorian and Tasmanian Branch (sub. 30).

- On the negative side, an entitlement would impose costs on employers (discussed later), and employers could pass some of these on in the form of reduced employment opportunities and lower long-run wage growth. They may also pass the costs on to their customers through price increases. This effect would be small, however, given the small number of entitlement users.
- The entitlement could also impose costs on entitlement users' co-workers (including managers). For example, they might be required to work more intensively to cover for the entitlement user. Some co-workers, especially those paid a salary, might work additional unremunerated hours. These costs are hard to measure, as administrative records do not usually capture actual hours of work by salaried employees nor work intensity.

Impacts on care recipients

The entitlement is not expected to have a large effect on the aggregate level of informal care provided to older people. It will not benefit older people whose carers would have ceased working anyway in the absence of the entitlement (estimated to be about half of all entitlement users). Their care would be largely unaffected by the entitlement, as they would have received full time informal care (and the benefits of that care) either way.

By contrast, the entitlement will benefit older people whose carers would have continued working. Although there is a degree of uncertainty, it is reasonable to assume that the older person would gain access to full-time informal care, when in the absence of the entitlement many would have been limited to informal care provided on a part-time basis alongside their informal carer's paid work commitments.

Increasing the amount of informal care could lead to more culturally appropriate and safe care being provided. This is particularly the case for many culturally and linguistically diverse older people who can struggle to find formal care that accommodates them in terms of their language, food and cultural activities. For many Aboriginal and Torres Strait Islander people, informal care means that older people do not have to move away from Country to access aged care services and can continue to contribute to their community, which can benefit the entire community.

Aboriginal and Torres Strait Islander Elders play a crucial role in community including preserving traditional knowledge and language, building inter-generational relationships, strengthening social cohesion and community resilience and helping to tackle community issues including health, education, racism and oppression. (NACCHO, sub. 5, p. 5)

Some older people may also experience anxiety over letting people they don't know into their homes over fears of discrimination or having to continually educate care workers. As stated by LGBTIQ+ Health Australia:

Within LGBTI populations, informal carers can provide more culturally safe care and help maintain essential social and community connections. Many LGBTI people experience isolation, especially throughout the COVID pandemic, and fear loss of contact with community members who will instinctively understand them without the need for continual explanation or education. (sub. 22, p. 2)

While policymakers should increase efforts to make culturally safe formal care available, informal care remains an important option for those who are concerned about the care provided in formal settings.

Impacts on employers

As with any workplace entitlement, an entitlement to extended unpaid carer leave would impose costs on employers. Employer representatives highlighted some of these costs. They argued that greater use of flexible working arrangements would be a more effective solution to helping employees undertake long-term caring responsibilities (box 11).

Box 11 – Employers highlight the costs of an unpaid leave entitlement

Employer representatives argued that an entitlement to unpaid extended carer leave would impose costs on employers, be of limited benefit to working carers, and that the existing provisions in the National Employment Standards were adequate for supporting working carers.

The Chamber of Commerce and Industry Queensland commented that its internal records have not reported any member enquiries seeking advice to respond to employees seeking time off work for providing care and support to an aged or frail person. (sub. 16, p. 3).

The Ai Group said:

Given that the vast majority of caring arrangements extend beyond 2 years in a wide variety of circumstances, employed carers need flexibility in the labour market rather than withdrawing from paid employment for extended periods on unpaid leave. This is best facilitated through the [Fair Work] Act's right to request flexible work arrangements which currently makes employees who meet the definition of a carer in the *Carer Recognition Act 2010* (Cth) eligible to make such requests.

The regulatory effect on employers is an important consideration with an obligation to provide an extended leave entitlement attracting a range of compliance and productivity costs, not to mention the difficulty in sourcing replacement employees with equivalent skills. (sub. 34, p. 3)

And the ACCI said that:

- the existing entitlements are adequate for undertaking short-term informal caring responsibilities;
- a new entitlement will be financially and administratively burdensome for businesses, and the negative impacts on businesses would exceed any societal benefits; and
- improving flexibility in the workplace relations system and empowering employers and employees to agree to a flexible arrangement is a more effective solution for enabling employees to undertake longer-term informal caring responsibilities. (sub. 35, p. 4)

The Australian Small Business and Family Enterprise Ombudsman submitted that an entitlement to extended unpaid carer leave would 'present a disproportionate impost on the small business sector' as '[s]mall businesses do not have the resources of their larger counterparts to rapidly absorb changes in workforce availability' (sub. 26, p. 1).

The Australian Retailers Association indicated in-principle support for 'flexible leave arrangement[s] to enable carer leave' (sub. 14, p. 2), but proposed a model that would minimise the costs to employers (pre-determined and definite leave timeframe, unpaid, limited to care of older family members in the home, small businesses exempt, and in-concert with an award modernisation process).

If an employee took extended unpaid carer leave, their employer could handle their absence in a range of ways. Some examples include:

- replacing the employee, either by hiring a new employee (possibly on a temporary basis) or having existing employees work additional hours. Both options could be worse for the employer than if the employee had continued working. Hiring new staff involves hiring and training costs, and they could be less productive (at least in the short term) than the entitlement user because of disruption and inexperience. And there are costs involved in revising work schedules and tasks, and in getting existing staff to work additional hours, especially if the latter involves paying overtime.
- getting a service provider to complete the employee's tasks during their absence (for example, using an accounting firm to undertake an in-house accountant's duties for a period)
- choosing not to replace the employee and accept a saving in wages and a reduction in output. This would also usually make the employer worse off than if the employee had continued working, because the value of employees' output usually exceeds their wages (this is why they were employed in the first place).

Experience with leave entitlements overseas suggests that responses vary with the industry, labour market, and characteristics of the employee taking leave. Where a business has high turnover of relatively unskilled labour, the costs to employers are likely to be low. However, in more specialised businesses that rely on highly skilled staff, they could be higher.

A factor that would drive employer responses and costs is employers' perception of their ability to manage the uncertainty about whether the entitlement user is likely to exercise their right to return. Incorrectly assuming an entitlement user will not return could be costly, because a new position would need to be found for them should they unexpectedly return. Likewise, incorrectly assuming an entitlement user will return could be costly because the employer might find themselves short-staffed when they unexpectedly do not return. With experience, employers are likely to develop strategies, such as keeping in contact with entitlement users while on leave, to help them better gauge whether or not entitlement users will return to their jobs.

That said, this discussion overstates the costs that employers would face, for two reasons.

- First, it assumes that the entitlement user would have continued working in the absence of the entitlement. We estimate that about half of all entitlement users would have ceased working in the absence of the entitlement. In these cases, employers would still need to replace the employee or reduce output. The difference is that, in the absence of the entitlement, the employer would not need to facilitate a right to return. This means they could hire a new employee on a permanent (rather than temporary) basis.
- Second, employers could benefit if workers who would have otherwise left return to their jobs and overall staff turnover rates fall (although we estimate that only about one quarter of employees who would otherwise have ceased paid work would exercise their right to return). And the entitlement might induce a broader boost to employee morale.

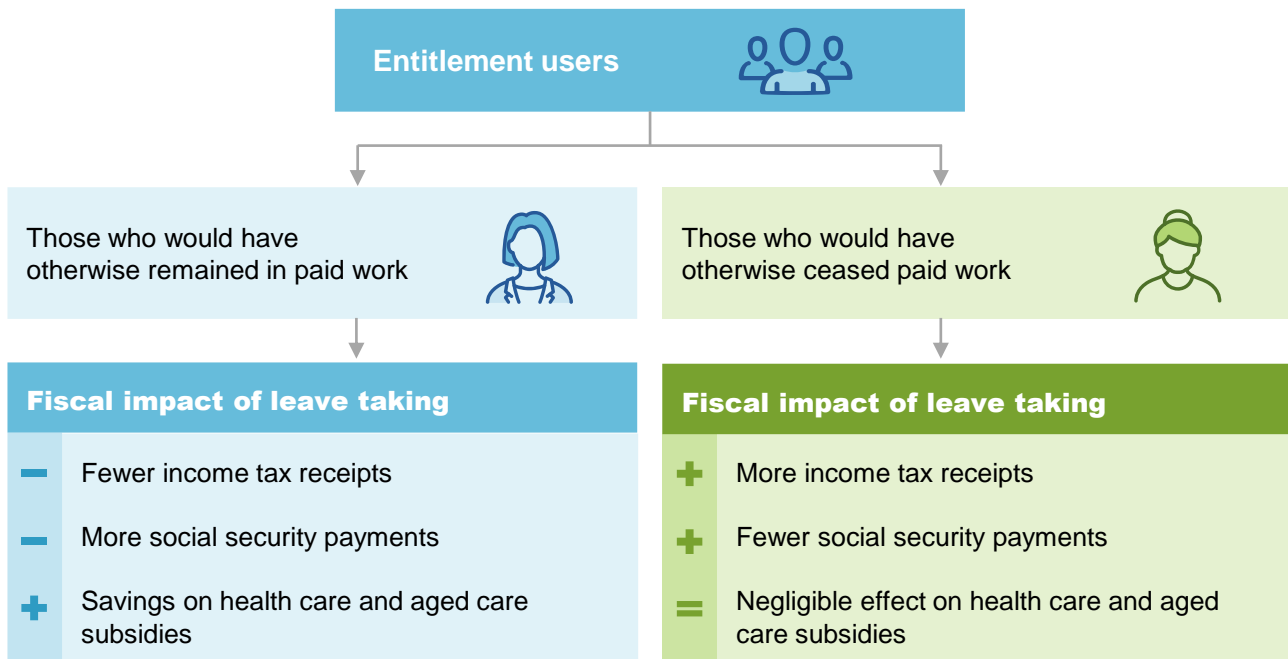
Evidence on the magnitude of the costs to employers is scant. Participants provided some qualitative evidence in submissions (box 9) and at the roundtable. And we are not aware of any studies of the costs to employers of similar entitlements in Australia.

The limited available evidence comes from studies of paid parental leave entitlements (taxpayer-funded, so unpaid from employers' perspective) in other countries. Studies of relatively unexpected increases to parental leave of 1–3 months found evidence of costs to employers, while studies of parental leave itself (typically a longer duration and taken with more notice) do not find evidence of costs to employers. The former studies are probably more reflective of the effects of extended unpaid carer leave, as it would typically be taken with much less notice than parental leave, and experience from abroad suggests a typical extended unpaid carer leave duration of around 2-3 months.

Impacts on taxpayers

An entitlement to extended unpaid carer leave would have mixed impacts on taxpayers. These would differ between those who would, in the absence of the entitlement, have remained in paid work and those who would have ceased paid work (figure 10).

Figure 10 – Fiscal impacts of the entitlement



Entitlement users who would otherwise have remained in paid work would temporarily cease paid work to provide more informal care. This would:

- reduce income tax receipts, as they would undertake less paid work
- increase social security spending, as some would become eligible for the Carer Payment, Carer Allowance and/or Carer Supplement
- slightly lessen the pressure on subsidised formal aged care and health care (a fiscal benefit), as informal care slightly substitutes for these services in the aggregate (Bergeot and Tenand 2021; Bonsang 2009; Charles and Sevak 2005; Lo Sasso and Johnson 2002; Van Houtven and Norton 2004; Weaver and Weaver 2014).

And some entitlement users who would otherwise have ceased paid work would return to work faster than they otherwise would have (if at all). This would:

- increase income tax receipts, as they would undertake more paid work
- reduce social security spending, as they would spend less time on the Carer Payment, Carer Allowance, and/or JobSeeker payment.

While in aggregate these impacts would be small, our analysis suggests that the net fiscal impact would probably be negative, in the order of hundreds or low thousands of dollars per leave-taker. This is because lower tax receipts and higher welfare payments are unlikely to be offset by reduced expenditure on formal care for older people. But this estimate is subject to uncertainty, as many of the relevant parameters are hard to estimate.

The long run costs are unlikely to be evenly shared across the economy

While the short run costs of an entitlement will fall on businesses, it is expected that over time employers would incorporate these costs into their practices around recruitment, remuneration of employees and pricing of their products. In the long term, the costs of the entitlement are likely to fall on workers in industries where use of the entitlement is more common, particularly on groups of people perceived as being likely users of the entitlement. As such, there is a risk that an entitlement might give rise to adverse consequences for the same people that it is intended to benefit.

The response from business is likely to be small, given the small number of employees who are expected to use the entitlement. But even if the costs to business are small, they are likely to be passed through to workers in two main ways — hiring practices and wage growth.

Employers could avoid hiring or promoting potential entitlement users

A number of participants raised concerns that, while there are Commonwealth, State and Territory anti-discrimination laws, there is still the potential for the entitlement to have negative effects on the recruitment and career progression of women. Merri Health said:

Carers worry about hiring discrimination and highlight the need for carers to know their employment rights. Merri Health staff suggest hiring discrimination against carers may be more likely to occur in industries which have demonstrated hiring discrimination against parents, due to carers appearing to be needing more time off work and flexibility versus employees without caring responsibilities. (sub. 18, pp. 9–10)

The Fair Work Act prohibits discrimination against employees on the basis of their family or carer responsibilities (s. 351(1)) and provides the Fair Work Ombudsman with authority to investigate allegations of unlawful workplace discrimination (s. 682(1)). However, some employers might feel pressure to find ways to minimise the costs arising from the entitlement. And there is some evidence that maternity benefit and parental leave affect the employment, salary and promotion opportunities of potential young mothers (Ginja, Karimi and Xiao 2023, p. 132; Gruber 1994, p. 639). An extended unpaid leave entitlement could also reinforce existing gender bias, particularly for women over 45 years of age, because they are most likely to take unpaid carer leave.

But again, the negative effects are likely to be small given the small proportion of all employees expected to take extended unpaid leave, although as noted earlier, this could change with population ageing and increased demand for informal carers.

Long-run wage growth may be lower in the industries where leave takers work

The costs to businesses of employing a worker will be indirectly increased by the costs of implementing the entitlement and the costs incurred when an employee uses the entitlement. These additional costs are likely to be passed on in the long run to employees through lower wage growth (Summers 1989) or to consumers through higher prices.

The effect on wage growth occurs over the long term, as employers take time to recoup increased costs through reduced wage growth (minimum wages may act to maintain wage growth in the short term). The

extent to which costs are passed on to employees can vary depending on the extent to which employees value the intervention.

Several studies show a positive correlation between a benefit provided to an employee and how much of the cost gets passed through to them. And it accords with economic theory, assuming workers place a higher value on measures that more directly benefit them (Coates, Mackey and Cowgill 2020).

As such, the long run costs of the entitlement are most likely to fall on other workers in the firms and industries where leave takers work, rather than being shared equally across the economy. This means that the decision to provide care may have spillover effects on others, and these could exacerbate existing inequality. That is, workers in low paid industries or workers in female-dominated occupations could be made worse off by paying for an entitlement to extended unpaid carer leave that many will not use. The size of this long-run effect will depend on factors such as the size of costs to business, the extent to which costs are passed through, and the number of entitlement users in a firm/industry.

The sharing of long-run costs in this way compares unfavourably to other policies to support carers (like financial support and government-funded services) where the costs are supported by general government revenue and shared more evenly across the economy.

Overall impact

An unpaid leave entitlement would give all employees the option of an approved absence from work to provide more care to their older relatives. Care recipients would benefit from greater levels of care from a family member. More care provided by a relative could also mean a higher quality of care. Trusting relationships between caregivers and care recipients are highly important to good outcomes and continuity of care.

Consistent with international experience, we estimate that only a small number of people would use an entitlement to extended unpaid leave. This reflects that a majority of carers of older people are no longer working or intending to return to work, and for those who are working, the majority would prefer flexibility to better manage care and work commitments. While the number of likely users is small in total, for those who would use an extended unpaid leave entitlement, the policy would clearly be of benefit to them and those they care for.

That said, an entitlement for unpaid leave for carers of older people would also have costs, particularly for employers. There would be additional costs to replace an absent worker, there might be additional wage costs, additional administrative burden and potentially lower productivity for those businesses impacted. The limited evidence, mainly from parental leave, suggests these costs could be material for those businesses affected. In aggregate though, and at the economy level, these costs would be small.

An entitlement would also have implications for taxpayers. There would be lower tax receipts and potentially higher welfare payments in the form of carers allowance, payments or supplements. Again, in aggregate these impacts would be small, but expected to be a net negative for the budget as lower tax receipts and higher carer payments would not be offset by a reduced need for formal care for older people.

As well as older people needing informal care, the other people who would benefit from an unpaid carer leave entitlement are employees for whom it would reduce the costs of searching for a job after an extended absence and the risk of under or unemployment after an extended absence. It could also maintain their connection to the workplace while they are caring.



Draft finding 3

Extended unpaid leave in the National Employment Standards is not the highest priority

Adding an entitlement to 3–12 months extended unpaid leave to the National Employment Standards is an option that could help support informal carers of older people to juggle expectations and demands of work and family. The number of carers who would benefit would be small and the net benefit to the community would be modest at best.

- Extended unpaid leave would not substantially increase the number of informal carers or the workforce participation of carers, or reduce the demand for formal care.
- The benefit to carers would be limited as unpaid leave comes at a very high personal cost and most carers prefer flexible work arrangements.
- The entitlement would impose costs on employers, which could be passed through to their employees in the form of lower wage growth and reduced employment opportunities.
- Upcoming changes to the flexible working arrangements provisions of the *Fair Work Act 2009* are expected to make it easier for carers to negotiate flexible work, perhaps obviating the need for change.

7. An extended unpaid leave entitlement for other carers?

The Commission was asked to consider whether extended unpaid carer leave should also be available to employees providing care to people with disability or illness. Answering this question requires information about the nature and intensity of caring responsibilities of ‘other carers’.

- There are roughly the same number of ‘other carers’ as there are carers of older people — about 425 000 primary carers of people aged under 65 in 2018. About 125 000 were caring for people aged under 15 years and 300 000 caring for people aged 15 to 64 years.
- The most common conditions for people receiving care are ‘mental and behavioural disorders’.

Using the method outlined in box 10, the Commission estimates that between 11 000 and 15 000 carers could take up an extended unpaid leave entitlement to care for someone under 65 years. Of these, about 7000 were employed in 2018 and expressed an interest in taking unpaid leave to provide care for someone aged under 65, and another 4000 to 8000 had left employment while providing care. They were either employed and expressed an interest in taking unpaid leave, or had left employment to care.

Some of the arguments in favour of extending an entitlement to unpaid leave to other carers are similar to those for an entitlement for carers of older people.

It could lead to better outcomes for the care recipient. The Commission has previously noted that ‘for some people with mental illness, the support they receive from family and friends is irreplaceable’ (PC 2020, p. 878). The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2022, p. 66) also noted that the best safeguard for people with disability living alone is to have formal care alongside support from family and friends.

An entitlement to unpaid leave would improve the attachment to the workforce for some carers of younger people. For example, in the Mental Health inquiry the Commission noted that intensive and episodic care responsibilities can affect a mental health carer’s ability to juggle caring with employment and education

(PC 2020, p. 874). For employed working-age primary carers of people with mental illness in 2018, 14 per cent had to leave work for at least three months to provide care (PC 2020, p. 882).

From a practical viewpoint, it is logical to extend the leave entitlement to carers of younger people with disability or illness because many other types of support are available to all types of carers. Paid carer leave, for example, does not factor in the age of the care recipient as long as they are an immediate family or a household member. Similarly, the Carer Payment (and Carer Allowance and Carer Supplement) is not restricted to carers of older people. Importantly, the *Carer Recognition Act 2010* (Cth) is not based on age. It covers carers of older people as well as carers of people with a disability, a medical condition and mental ill-health (box 1), as do similar Acts in the States and Territories.

There are divergent stakeholder perspectives on the merits of extending an entitlement to unpaid leave to other types of carers (box 12). Many carer groups supported an extension, while others were more ambivalent, suggesting that different types of carers have such different needs that different types of support would be more appropriate. Employer groups were largely against making extended unpaid leave available to other carers.

Box 12 – There are mixed views on extended unpaid leave for other carers

MS Australia supported an entitlement to extended unpaid leave (sub. 8, p. 5). MS Australia said ‘people do not neatly fit into one sector or another. Caregivers of people with chronic conditions such as MS often must assist in navigating all these systems — often at the same time ... One policy setting change can improve the lives of those taking on the daily care needs of people living with chronic conditions, ill health, age related needs and disability’ (sub. 8, p. 7).

Dementia Australia said ‘services and support should be needs-based rather than age-based, given that the degree of support required depends on the stage of the condition the care recipient is living with, rather than chronological age ... [T]he onset of dementia can be diagnosed with a variable age range, so ensuring that support is available for carers, regardless of the age of the care recipient, is essential’ (sub. 12, p. 19).

Carers Australia said that ‘... it makes no sense at all in terms of logic or social justice to confine an entitlement to extended unpaid carer leave to carers of older people, unless the intent is to artificially minimise the number of employees who have access to these provisions, which would be inequitable and overtly discriminatory’ (sub. 36, p. 34).

Other participants who supported extending the entitlement to other types of carers included Aged and Community Care Providers Association (sub. 29, p. 6); the Australian Psychological Society (sub. 27, p. 3); Carers Tasmania (sub. 37, p. 19); Circle Green Community Legal (sub. 11, p. 3); Darwin Community Legal Service (sub. 33, p. 2); Incontinence Foundation of Australia (sub. 2, p. 2); Mental Health Carers Australia (sub. 32, p. 1); NACCHO (sub. 5, p. 5) and the Women, Work and Policy Research Group (sub. 28, p. 5).

Lived Experience Australia said ‘the nature of providing informal care to a person with severe mental health challenges means that the current leave arrangements are quite inadequate and the proposed extended leave arrangements may not match their needs either ... leaving work completely and staying home with the person may not match their need or be in proportion to what is needed either ... different types of carers have sufficiently different needs to warrant different types of supports’ (sub. 1, pp. 4, 6).

The Australian Nursing and Midwifery Federation considered that paid and unpaid leave that can be ‘accessed in a flexible manner to allow caregivers the option of taking half/part-days to facilitate care

Box 12 – There are mixed views on extended unpaid leave for other carers

responsibilities’ is a higher priority than extended unpaid leave for carers of those with disability or chronic illness (sub. 39, p. 16).

The Australian Retailers Association did not support extending the entitlement (sub. 14, p. 2).

Ai Group said extending leave to other types of carers ‘would be a radical expansion of current entitlements’ (sub. 34, p. 11).

ACCI questioned whether there was evidence of a need for unpaid leave for other types of carers (sub. 35, p. 22).

Just as for carers of older people, carers of people with disability and illness have different needs in terms of length and frequency of leave. This variation means that a relatively defined entitlement to an ‘extended period of leave’ would be useful in some situations, but not in others. For example, a period of leave of up to 12 months does not fit with the needs of people who might care for a person with a long-term disability — though it might help them to deal with a crisis of limited duration that adds to the usual care needs. Similarly, care needs may be episodic rather than continuous over a defined period. However, carers in those circumstances might still choose to access an extended unpaid leave entitlement if one was available. The diversity of carers and care recipients and their needs therefore need to be taken into account in considering whether an unpaid leave entitlement should be extended to a broader group of carers.

The case to introduce an entitlement to extended unpaid leave for carers of people with disability or illness is similar to the case for creating such an entitlement for carers of older people. Because of this, if there was a decision to amend the NES to include an entitlement to extended unpaid carer leave, then for reasons of equity and administrative simplicity, it would be reasonable to make it available to all carers.



Draft finding 4

The case for an entitlement is similar for all carers

The case to amend the National Employment Standards to include an entitlement to extended unpaid leave for carers of people with disability or illness is similar to the case for creating such an entitlement for carers of older people.

For reasons of equity and administrative simplicity, if there was a decision to amend the National Employment Standards to include an entitlement to extended unpaid carer leave, it would be reasonable to make it available to all carers.

8. How else could carers of older people be supported?

More broadly than any consideration of extended unpaid leave for carers of older people, there is much that can be done to better support all informal carers. The Royal Commission found the aged care system:

... tends to provide reactive, inadequate and piecemeal support to informal carers. Often, it does not provide even these supports until the strain on a caring relationship has already reached crisis point. (RCACQS 2021, p. 203)

Participants emphasised that, in addition to leave, carers need access to a wide range of other supports to sustainably continue in their caring role. MS Australia, for example, said:

... the expansion and improvement of other carer supports and services such as the provision of assistive technology, carer payments, carer support, coaching and counselling, carer respite and carer-specific resources, can all make an enormous difference to alleviating the carer burden and enriching the caregiver experience. (sub. 8, p. 6)

Key issues raised by inquiry participants included:

- the adequacy of current financial supports for carers
- the availability of quality formal aged care services
- low levels of awareness of, and difficulties accessing, flexible working arrangements
- restrictive definitions of caring relationships in the NES.

Financial support

Financial support — both in terms of level and accessibility — is the most common unmet need identified by informal carers of older people (ABS 2019a). In 2018, over 20 per cent of informal carers of older people reported difficulty meeting everyday living costs. 25 per cent said the main financial effect of caring was extra expenses, and a further 18 per cent said the main financial effect of caring was that their income had decreased (ABS 2019a). And in 2022, a survey of nearly 6000 carers found that they were significantly more likely than the average Australian adult to experience a major financial stress event. Over half of surveyed carers reported regularly or always worrying about not having enough money (Schirmer, Mylek and Miranti 2022, p. 38).

Concerns about carers' financial security were shared by participants,⁹ with some saying that financial support was a more pressing need than extended unpaid leave.

... a legislated right to return to work will be helpful. But having enough money to live on while carrying out caring responsibilities is far more important. (Anglicare Australia, sub. 6; p. 1)

Rates of financial stress are highest for Aboriginal and Torres Strait Islander carers, carers of people with high needs, carers with multiple care responsibilities, and carers of people with terminal illness and/or mental illness (Carers Australia 2021, p. viii).

⁹ They included Australian Longitudinal Study on Women's Health (sub. 31); Dementia Australia (sub. 12); NACCHO (sub. 5); Royal Australian and New Zealand College of Psychiatrists (sub. 25); Dr Freda Hui-Truscott and Dr Mona Nikidehaghani (sub. 23) and the Women, Work and Policy Research Group (sub. 28).

Participants also raised concerns about income support arrangements, including about the adequacy of payments, the eligibility criteria and the 'paperwork' involved in accessing the payments (box 13).

Box 13 – Income support for carers – what participants said

Some participants said the level of income support payments for carers is too low.

Many carers rely on access to income support payments, usually the Carer Payment or the Carer Allowance, which often do not meet the high costs of caring for an older person. (NACCHO, sub. 5, p. 7)

In addition to the administrative complexities of applying for carer payments, if they were able to access the income supports, most respondents reported that the carer payment ... did not meet the needs [or] costs involved in providing care.' (Dementia Australia, sub. 12, p. 14)

Carer Allowance is less restricted, with no assets test and a much higher household income limit and no restrictions on participation in paid work. However, the payment is very low - \$136.50 per fortnight, about one seventh of Carer Payment and is not designed for income replacement but rather meeting the additional costs associated with care. (Women, Work and Policy Research Group, sub. 28, p. 7)

Participants also suggested that the eligibility requirements for income support payments were overly restrictive, preventing carers from getting the financial assistance they need (Carers Australia, sub. 36, p. 28; NACCHO, sub. 5, p. 7; Women, Work and Policy Research Group, sub. 28, p. 7). And people are not always aware of the complex eligibility criteria for income support payments until after they have made the decision to cease employment (Carers Australia, sub. 36, p. 28).

A number of participants suggested that the process of applying for income support payments is so difficult that it is prohibitive for some carers (Dementia Australia, sub. 12, p. 14; NACCHO, sub. 5, p. 7). The Quality Aged Care Action Group, Aged Care Reform Now and Carers' Circle said:

... there should be changes to the Carers' allowance to make it easier to access. Our members report that the hourly rate is extremely low and they have to jump through too many hoops to access it. Trying to navigate this bureaucracy while dealing with your loved ones care needs means that many people give up and suffer as a consequence. (sub. 21, p. 15)

In terms of eligibility for income support, a common concern is the '25 hour rule', which limits carers who receive the Carer Payment to work, study or volunteer for a maximum of 25 hours a week (including travel time).

In the Mental Health inquiry, the Commission said that 'the 25 hour rule should not continue in its current form' and that the 'costs of preventing a mental health carer willing and able to invest in their education are difficult to justify' (PC 2020, p. 920). This also applies to carers of older people, particularly if the policy objective of the proposed unpaid leave entitlement is to improve carers' attachment to the labour force. The Commission recommended replacing the 25 hour per week restriction on work, study and volunteering with a 100 hour per month restriction on work only (PC 2020, p. 922). More broadly, it found that:

The existence of a Carer Payment, Carer Allowance and Carer Supplement that all achieve similar objectives, but have some arbitrary differences in eligibility, contributes to an income support system that is complex and not well understood by carers. (PC 2020, p. 921)

In November 2022, the Australian Government announced it would establish an Economic Inclusion Advisory Committee to conduct an annual review of the 'adequacy, effectiveness and sustainability' of Government income payments, which is to be published at least a fortnight before each federal budget (Chalmers and Rishworth 2022). This Committee is likely to provide an avenue for consideration of, and potential changes to, income support payments for carers.

Access to formal care

Formal care helps to make caring sustainable ...

Informal carers, and the people they care for, would benefit from improved access to formal care and respite care. Accessible and high-quality formal aged care services would give carers more choice about undertaking their caring role (box 4).

... the support measures needed most by both employed carers and carers not in the workforce is affordable, substitute care of sufficient quality and quantity to enable carers to choose how they spend their time away from caring. (Carers Australia, sub. 36, p. 30)

Quality respite can improve carers' emotional wellbeing and physical health, both of which can be adversely affected by caring (box 14). It can also provide time for self-care, enhance autonomy and independence and offer carers a time of improved freedom or choice about what they are doing (RCACQS 2021, p. 208). Where respite helps carers to maintain their health, it may also help them to return to work, as women with better physical health while still caring are more likely to take up work when they are no longer providing care (Berecki-Gisolf et al. 2008).

After financial assistance (discussed above), access to physical assistance and respite care were two supports most identified by carers as lacking. In 2018 about 14 per cent of carers of older people said they needed more physical assistance, and 12 per cent needed more respite care (ABS 2019a). About 37 per cent of informal carers of older people said they did not have a fall-back informal carer they could get help from.

Inquiry participants emphasised the importance of access to replacement care.

Access to timely adequate and appropriate formal care services, including services and supports that provide replacement care while a carer is participating in employment, is a key component of supporting carers to maintain employment and continue caring. (Carers NSW, sub. 20, p. 23)

Most help to me would be being able to access respite care and support. I work near full time hours as the sole income earner, I study full-time, have kids and I'm a full-time carer for my husband. I am running on empty. (Australian Nursing and Midwifery Federation, sub. 39, pp. 11–12)

More detail on formal care arrangements, including respite care, is available in the supporting papers.

Box 14 – The impacts of caregiving on health, wellbeing and social connection

There is a large body of evidence showing an association between informal caregiving and poor physical and mental health of carers. The evidence also shows that the greater the intensity and length of care, the greater the risk of burnout (Perry, Dalton and Edwards 2010; Thorson-Olesen, Meinertz and Eckert 2019) and social isolation (Hajek, Kretzler and König 2021).

In 2022, a survey conducted for Carers Australia¹⁰ found that carers were more than twice as likely to experience low wellbeing than other Australians. The risk of poor wellbeing was higher among carers with more complex, time-consuming or otherwise challenging caring responsibilities (Schirmer, Mylek and Miranti 2022, p. i).

Among carers of older people, 30 per cent said they felt weary or lacked energy due to the caring role, and 25 per cent said they often felt worried or depressed due to the caring role (ABS 2019a). For many carers, the COVID-19 pandemic added pressures. Many found themselves juggling additional care responsibilities and managing delayed or cancelled medical appointments, while having less social interaction due to care recipients being at high risk from COVID-19 (Schirmer, Mylek and Miranti 2022, p. 11).

Caring has been shown to have a negative effect on social connection (van den Berg, Fiebig and Hall 2014). Carers are three times more likely than other Australians to experience loneliness. Thirty five per cent of carers said they often or always felt lonely compared to 11 per cent of the general population (Carers Australia 2021). The effects of the COVID-19 pandemic seem to have exacerbated this problem. In 2022 reports of loneliness among informal carers increased from 35 per cent to nearly 40 per cent, with the effects of COVID-19 being particularly profound for carers aged 25 to 44 years (Schirmer, Mylek and Miranti 2022, p. 16).

... but it is not always accessible when required

Carers can face barriers to accessing formal services, even if the range of available services would meet their support needs. One reason for this is that the aged care system can be difficult for carers and care recipients to navigate.

Carers who cannot understand the system are likely to miss out on needed support.

Another barrier to accessing care is that many carers either do not self-identify as an informal carer or are not aware of the supports available to them. In 2018, nearly one quarter of informal carers of older people were unaware of the range of support services available to them (ABS 2019a).

Carers may also feel that asking for help is an admission of a failure to care, or failing to meet family expectations (FECCA 2015, p. 24). The concept of 'respite', for example, can resonate differently in diverse cultural contexts. About 87 per cent of informal carers of older people in 2018 had never used respite services, with most saying that they did not need nor want respite (ABS 2019a). This is despite a general acceptance that respite is necessary for carers to combine work with caring and to maintain the mental and emotional wellbeing of carers (which could also affect carers' return to work in the longer term). Culturally and linguistically diverse carers and care recipients can also have difficulty accessing culturally appropriate formal services.

¹⁰ The 2022 Carer Wellbeing Survey contains responses from 5992 Australian carers, with findings statistically weighted to be representative of Australia's carers based on information from the SDAC.

But the key barrier to accessing formal care is wait times. Currently, wait times to access services through Home Care Packages are lengthy — in 2021-22, the median time between approval and entry into a package was eight months for those assessed as needing Level 2 or 3 packages (SCRGSP 2023). On 30 June 2022, almost 50 000 people were waiting for a Home Care Package at their approved level (Department of Health and Aged Care 2022).

Even though there are limits on how much informal care can be a substitute for intensive formal care, many informal carers feel obliged to act as a stop-gap for older Australians while they wait to receive formal aged care services.

Currently the long waiting list for home care packages, and the adequacy of these packages mean that additional caring supports are required from family, friends, families of choice. (Older Persons Advocacy Network, sub. 15, p. 2)

Aged care package adjustments aren't agile enough to keep up with the fluctuating care needs of elderly people. (Merri Health, sub. 18, p. 11)

While a care recipient is waiting for the approved level Home Care Package, they are unlikely to be receiving all the care they need. This can precipitate a further decline in the care recipient's health and wellbeing and an escalation of their care needs. It can also increase the burden placed on their informal carers (affecting their health and wellbeing) and increase the likelihood that care recipients need to be admitted to residential care or hospital (RCACQS 2021, pp. 183–184).

Participants also reported difficulty accessing respite care, with the Quality Aged Care Action Group, Aged Care Reform Now and Carers' Circle saying that 'access to good quality, timely and local respite through residential aged care is virtually impossible' (sub. 21, p. 17).

Improvements to formal care will also support informal carers

Substantial reforms to Australia's aged care system are currently planned or underway. Of particular relevance to informal carers are planned changes that will expand access to home care.

A new Support at Home Program is proposed to commence in July 2024. It will replace the existing home support services, including the Home Care Package Program (which currently has limited funding based on a population-based quota system). While the proposed design for the Support at Home Program does not rule out a cap, the former government accepted-in-principle the Royal Commission's recommendation to provide 'demand-driven' access to aged care based on assessed needs. This change should help to reduce waiting times for home care, and make it easier for carers to support older people to remain at home.

There are signs that waiting times from Home Care Packages are beginning to fall. The median time between approval and entry into a Level 4 package (the highest level of care) was 12 months in 2020-21, but just one month in 2021-22 (SCRGSP 2023). Additional supports to help carers of older people are also being implemented, as recommended by the Royal Commission (box 15).

Box 15 – Additional supports for carers of older people

The Royal Commission into Aged Care Quality and Safety said ‘informal carers of older people should have certainty that they will receive timely and high quality supports in accordance with assessed need’ (RCACQS 2021, p. 207). To that end, it recommended reforms designed to equip carers with skills at an early stage in their caring role, and to provide access to timely, well-coordinated supports and respite. Recommendations included:

- a post-diagnosis support pathway to support people living with dementia and their carers and families (including regular planned respite for carers)
- a single streamlined assessment process for care recipients that includes assessment of the carer’s needs (and allows carers to request a reassessment)
- a respite supports category in the aged care program to improve the availability of respite for informal carers earlier and more often, in people’s homes, cottages and purpose-built facilities
- linking My Aged Care and Carer Gateway so there is a single system for carers to access respite care and information, training and support services. This includes allowing direct referral and information sharing between My Aged Care, assessment services and Carer Gateway, and requiring these services to identify the primary informal carer when assessing a person for aged care and establishing a community-based Carers Hub network.

The Australian Government accepted these recommendations, and announced several new supports for informal carers of older people in the 2021-22 Budget, including \$103 million for early referrals of carers to Carer Gateway services. From October 2022, carers will be directly referred from the My Aged Care assessment to either the Carer Gateway or National Dementia Helpline according to their caring responsibilities and circumstances.

Sources: Department of Health (2021a, 2021b); RCACQS (2021); SSCWC (2022).



Draft finding 5

Informal carers need timely and high-quality supports

Formal care and respite care services for aged care recipients play a key role in supporting their carers. Continued progress with current and planned reforms to increase access to, and reduce waiting times for, these services is essential.

Easier access to flexible work

Flexible work and unpaid carer leave can be interchangeable

As noted earlier, existing entitlements to flexible working arrangements can help employees with caring responsibilities to balance work and care, with many participants arguing that these arrangements are the most appropriate tool to help employees balance work and care.

In some cases, flexible work arrangements can also be an alternative to unpaid leave. This can be clearly seen in the case of purchased leave — an employee who purchases a month of paid leave would receive 11 months' pay over the course of a year, just as an employee who takes a month of unpaid leave would receive 11 months' pay. Other flexible workplace arrangements can have similar effects, albeit over shorter periods of time. For example, flexitime (whereby employees 'bank' extra hours which are then exchanged for time off) could allow a carer to work longer hours over several days in order to have a half day off to spend attending to the needs of a care recipient. In some countries, carers have the option of taking carer leave on a fractional basis — akin to part-time work in the Australian context (box 16).

Because of the potential for flexible work arrangements to effectively substitute for unpaid leave, the amendments to the Fair Work Act which strengthen the right to request flexible work arrangements (box 7) have the potential to reduce the need for an unpaid carer leave entitlement. Following these amendments, many potential users of the entitlement may find it is easier to access purchased leave or other flexible work arrangements to carve out the time needed for caring. It remains to be seen how many employees' needs could only be met through extended unpaid leave.

These amendments will commence in June 2023 and must be reviewed within two years. The review must commence by December 2024 and conclude by June 2025 and will consider all amendments made by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*. It will consider whether the operation of the amendments is appropriate and effective and identify any unintended consequences. This review will be an opportunity to evaluate whether the legislative change has been effective in improving carers' ability to access flexible working arrangements. An 'evaluation' is an opportunity to measure the impact of the reforms on the desired outcomes. A proper evaluation should be planned in advance — the evaluation of the changes to the Fair Work Act should be planned now — so that relevant evidence is collected to test the effects of the policy change.

Box 16 – Flexibility in managing the long-term care of older people

Most international models of extended leave involve the full suspension of paid work for a set duration of time. But in several countries, extended unpaid leave entitlements can be taken on a fractional basis. The ability to take leave on a part-time basis mirrors flexible work arrangements and enables carers to maintain an income and attachment to their workplace while also having appropriate time for their caring responsibilities.

- In Belgium, caregiver leave can be taken on a full-time or fractional basis (as a 50 per cent or 20 per cent reduction in usual working hours). Employees have the right to 6 months of full employment suspension over a person's career. Up to 12 months of caregiver leave can be taken if the employee takes leave on a half-time (50 per cent) basis.
- In Germany, employees have the right to partial caregiver leave, as well as the option to arrange a temporary part-time work arrangement. Paid caregiver leave is available for 10 days over a care-dependent's lifetime. Employees are also entitled to take up to 6 months of full or part-time unpaid care leave. Employees with longer-term caring commitments can enter into a *familienpflegezeit* (family caring time) arrangement with their employer. Arrangements are available for a period of two years and enable employees to reduce their work hours to a minimum of 15 hours per week. At the end of the two-year period, employees return to their previous work arrangements.

Sources: Eurocarers (2018); Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (nd); Koslowski et al. (2021).

An example of the data that should be collected to inform the evaluation comes from the Australian Workplace Relations Study, conducted by the Fair Work Commission in 2014 (FWC 2015). It asked both employers and employees about the extent of use of flexible working arrangements. Another data source that should provide insight would be the SDAC. However, the timing of the future SDAC surveys (beyond the one that is currently being undertaken) is uncertain: the ABS is funded to run the survey every 6 years, with the iteration to run the survey in the off-years (to make it 3-yearly) dependent on user funding. The SDAC is a reliable and useful survey, and the Commission supports the Australian Government guaranteeing 3-yearly funding for it into the future.

The legislated review will consider the whole suite of amendments made to the Fair Work Act in 2022, and will not be confined to considering the effects on carers. But carers are a particular group who may merit a dedicated review, especially considering the Commission is also recommending the Australian Government consider whether the definition of caring relationships in the NES should be expanded to better reflect the full spectrum of family relationships and caring responsibilities (draft recommendation 2).



Draft finding 6

Working carers need access to flexible working arrangements

Working flexibly is highly valued by carers and is a key factor in enabling them to manage their work and caring commitments. The changes to the flexible working arrangements provisions of the *Fair Work Act 2009* (due to commence in June 2023) are expected to make it easier for carers to negotiate working arrangements with their employers that will help them balance their work and care commitments.



Draft finding 7

Evaluation of the effect on carers of legislative reforms to flexible working arrangements

There would be merit in waiting to consider the effect on carers of the upcoming changes to the flexible working arrangements provisions of the *Fair Work Act 2009* prior to any decision on whether or not to introduce an entitlement to extended unpaid carer leave.

Information about flexible work

The Commission heard that flexible employment entitlements are not generally well known or understood. The Chamber of Commerce and Industry Queensland, for example, pointed to the need for ‘policies that increase knowledge and awareness of existing entitlements and how they can be used’ (sub. 16, p. 5). Carers NSW said:

Carers may be unaware of their entitlements or have limited understanding of the redress pathways available to them where they are unable to access these entitlements or feel discriminated against for doing so. Currently, there is no central place carers can access to fully understand their rights or redress pathways within the employment context. (sub. 20, pp. 9–10)

ABS data suggests that only 53 per cent of employed primary carers of older people were aware that their employer provided paid carer’s leave and only 37 per cent were aware they could access unpaid leave (Commission estimates based on ABS SDAC).

Carers are no different to the broader Australia population — many Australian workers struggle to understand their workplace rights and entitlements, especially those related to flexible work (PC 2015, p. 40). The Senate Economics References Committee found that ‘further work is necessary to develop greater awareness among both employers and employees regarding employee rights to access flexible work arrangements’ (2016a, p. 39).

A small number of dedicated sources of information on carers’ employment rights are already available. For example, Carers NSW has a fact sheet designed to help carers talk to their employer about flexible work (carers + employers nd). And the Carer Gateway contains information on working while caring, with links to information provided by the Fair Work Commission and the Fair Work Ombudsman (Carer Gateway 2023). Carers can also obtain information and seek advice about employment law matters from employment rights centres such as Job Watch (sub. 17) and Circle Green Community Legal (sub. 11) (though such centres are not available in every jurisdiction (Darwin Community Legal Service, sub. 33, p. 6)).

But each of these avenues require carers to be proactive in seeking out the relevant information and to know where to go to obtain it. This can be a substantial hurdle for someone who is already juggling work and care. It can also mean that those with the least initial knowledge of their employment rights (who are the least likely to know where to seek information) are the most likely not to avail themselves of those rights. This is of particular concern as people attempting to engage in the workforce while providing informal care often face ‘intersectional workplace disadvantage factors such as: gender, race, CALD background, and insecure work’ (Circle Green Community Legal, sub. 11, p. 2).

A better approach would be to proactively provide information on carers’ employment rights to working carers at times when they are already seeking out information or interacting with service providers. Recent changes to the referral processes for, and the services offered by, the Carer Gateway (box 15) should help to ensure that more carers receive support earlier in their caring journey. Their early interactions with the Carer Gateway are an ideal opportunity to provide them with information about flexible work rights and the types of flexible work arrangements that have been found to work well for other carers of older people. Any such information needs to be up-to-date, and include plain English explanations of upcoming legislative changes to the right to request flexible work. If the role of Care Finders is expanded to include support for carers (as envisaged by the Royal Commission), Care Finders would also be well placed to provide carers with information about flexible work.

But awareness of the ways in which flexible working arrangements can help carers to balance work and care also needs to extend beyond carers of older people. Broader change to attitudes in the workplace towards people accessing flexible working arrangements is required. The Age and Disability Discrimination Commissioner said:

... we do need more promotion, and this is where government can do communications campaigns and initiate national discussions around these issues, so that a parent returning to work will know: ‘I do have these rights’ and her coworkers and her immediate boss will know: ‘This woman was entitled to go off on leave. She is entitled to come back. She is entitled to flexibility’. (Senate Economics References Committee 2016b, p. 6)

Similarly, ACCI said that more should be done to address employees’ lack of knowledge about the existing entitlements and capacities under the Fair Work Act:

... the Fair Work Ombudsman should increase promotional efforts to make employees aware of these existing entitlements, given the substantial impact that it may have on allowing more employees to undertake caring responsibilities (sub. 35, p. 11)

Providing information to citizens affected by regulatory standards — in this case the NES — is an important role for governments. Unless those affected by the standards are aware of their rights and responsibilities under those standards, the objective of the standards is unlikely to be achieved. Employer organisations and unions — whose members would benefit from more widespread understanding of employment law — may also have a role to play.



Draft recommendation 1

Providing information about how to request flexible work to working carers

The Australian Government should ensure that carers of older people are provided with tailored information about flexible working arrangements and how to request them. This should include, at a minimum:

- developing fact sheets designed to help carers talk to their employer about flexible work. The fact sheets should take into account upcoming changes to flexible work provisions of the *Fair Work Act 2009*
- routinely providing the fact sheets to carers at key points in time, such as when they contact the Carer Gateway.

Expanded definitions of caring relationships in the National Employment Standards?

Carer leave in the NES is only available 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 are unable to access leave to provide care, and potential care recipients receive less care. For example, nieces and nephews are not guaranteed access to carer leave to care for aunts and uncles, even in situations where there are no other living relatives.

Concerns about the narrow definition of caring relationships were raised in submissions and consultations. For example, ACCI recognised that:

... there may be some familial arrangements which are not presently covered by these leave entitlements but perhaps should be discussed. (sub. 35, p. 10)

NACCHO illustrated some scenarios of care relationships that are currently excluded from eligibility, including where:

... the cultural definition of family is broader than immediate family and encompasses extended family and/or other community members (eg: Aboriginal and Torres Strait Islander people); and the older person does not have an established relationship with their family and has friends who form a 'family of choice' (eg: people who identify as LGBTQI+). (sub. 5, p. 5)

The SDA suggested that workers should be able to access carer leave when caring for anyone the worker provides care to, regardless of whether that person forms part of the worker's household or immediate family.

Families are not singularly defined. People may have different 'family' structures that don't fall into the traditional definition of immediate family and the provision of care to people they recognise as part of their family should also be supported. (sub. 38, p. 14)

Although the current NES eligibility requirements exclude a small number of carers, the carers who cannot access carer leave under the NES may be concentrated among certain cohorts. For example, many older LGBTQI+ people may not have biological children or are alienated from their families of origin (biological

family) so they rely on a family of choice. A family of choice is a group of people who have chosen to form a close, familial bond outside standard biological or legal ties, based on shared values, common beliefs, collective histories and mutual support. These arrangements can be an important source of support for people who, for one reason or another, find their family of origin unavailable or unsuited to provide emotional or physical support (such as the many LGBTIQ+ Australians who have historically found familial support withdrawn once their sexuality became known).

Likewise, many Aboriginal and Torres Strait Islander communities place great value on extended kinship ties that do not necessarily follow the definition of immediate family or household member, as articulated in the NES. Family relationships within Aboriginal and Torres Strait Islander communities can include extended family and community members and are sometimes not formally recorded. Caring is a cultural obligation which can form a part of these broader family and community relationships.

Caring relationships beyond strict definitions of immediate family and household are already recognised in other areas of law (box 17).

Box 17 – Other possible definitions of ‘care relationships’

Carer Recognition Act 2010

The *Carer Recognition Act 2010* (Cth) defines carers by the support, care and assistance they provide to another individual. It explicitly states that the relationship between the carer and care recipient does not make someone a carer.

Social Security Act

The *Social Security Act 1991* (Cth) determines eligibility for care-related payments. The Carer Payment does not require a specific relationship between the carer and care recipient, instead requiring constant care. In contrast, a person is only eligible for the Carer Allowance if they provide care in a private home to ‘a family member, or a person approved in writing by the Secretary as a care receiver for the purposes of [Carer Allowance]’. Family member is defined by section 23(14) of the Act, parts (a) and (b), to mean the ‘partner or a parent of the relevant person or a sister, brother or child of the relevant person’.

Secretary approval for care receivers is given on a case-by-case basis. Examples of other people approved as a care receiver may include a friend or neighbour, or any person who receives care on a daily basis in a private home. The care relationship is therefore defined by the level of care being provided rather than any specific definition of family. This would likely broaden access to the carer allowance to carers whose care relationships align with Aboriginal and Torres Strait Islander kinship or family of choice definitions.

Definitions used in other countries

Internationally, both paid and unpaid carer leave usually require the care recipient to be a member of the family and/or a co-resident. However, there are some examples of carer leave which allow for care relationships beyond this definition.

- Belgium provides leave for informal care to employees recognised as carers. Recognition is available to carers who have ‘a relationship of trust or a close, affective or geographical relationship’ with the care recipient.

Box 17 – Other possible definitions of ‘care relationships’

- Ireland provides unpaid carer leave to care full-time for someone. The care recipient does not need to be a family member or spouse, and can be a friend or colleague.
- In Canada, compassionate carer leave is available to care for a family member who has a serious medical condition with a significant risk of death. Family is defined broadly. ‘Children, stepchildren, parents, grandparents, spouses, common law spouses, brothers, sisters, step-brothers, step-sisters, aunts, uncles, nieces and nephews are all considered family members. The definition also includes those who are not related, but whom the employee considers to be like a close relative’.

Sources: DSS (2022); (2021), Citizens Information (2022), Province of Manitoba (2022), Rocard and Llena-Nozal (2022).

A broader definition of caring relationships is already used in parts of the NES.

- The right to request flexible working arrangements includes carers as defined by the *Carer Recognition Act 2010* (Cth)
- The newest addition to the NES — family and domestic violence leave — provides leave to deal with the impact of family and domestic violence for a close relative which includes ‘a person related to the employee by Aboriginal and Torres Strait Islander kinship rules’ (FWO 2023b).

An expanded understanding of care relationships for the purposes of carer leave would benefit those carers who are currently excluded from accessing NES carer leave entitlements and their care recipients, in particular Aboriginal and Torres Strait Islander and LGBTIQ+ older people. Such an expansion would, however, impose costs on employers, as more employees would take leave. Reviewing eligibility restrictions in the NES based on care relationships would allow an assessment of these costs and benefits and could improve the functionality of the NES for employees with caring responsibilities.

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

The definition of ‘carer’ in the National Employment Standards is used for both paid and unpaid carer leave. Changing this definition is beyond the scope of this inquiry.

But the current definition only guarantees carer leave to employees providing care for an immediate family or household member. This can mean that people whose care relationships are broader than their immediate family or household (such as nieces, nephews, people with Aboriginal or Torres Strait Islander kin relationships or families of choice) are unable to access leave to provide care, and potential care recipients receive less care.

To address this, the Australian Government should review the eligibility restrictions in the National Employment Standards which limit access to carer leave based on strictly defined relationships between the employee and the person they care for. The review should look at how to amend the eligibility restrictions so that they better reflect the diverse caring relationships of Australian families, friends and communities, and reduce the extent to which carers are excluded from accessing key workplace supports.

Other supports

There may also be other ways to improve support for informal carers, or to increase the value from existing supports. The Commission is seeking further information on the supports that would be of greatest value to informal carers, to older people who need care, and to the community more broadly.



Information request 2

The Commission has made draft recommendations designed to improve support provided to informal carers of older people. We are seeking further information on:

- the expected effects on carers of upcoming changes to the flexible working arrangements provisions of the *Fair Work Act 2009*
- additional ways to support informal carers, beyond those discussed in this position paper.

A. Public consultation

Following the receipt of the terms of reference on 23 February 2022, a circular was sent to identified interested parties.

An issues paper was released on 15 July 2022. The Commission received 40 submissions (table A.1) and 5 brief comments prior to the release of the position paper. The submissions and brief comments are available at www.pc.gov.au/inquiries/current/carers-leave/submissions.

Consultations were held with representatives from government agencies, industry groups, consumer and community groups, and academics and researchers (table A.2 and A.3).

The Commission welcomes further submissions on the content of the position paper, including responses to the information requests, draft findings and draft recommendations. Public hearings will be held in mid-March 2023. Further details on registering for hearings and making submissions can be found on the inquiry website.

The Commission would like to thank everyone who has participated in this inquiry so far.

Table A.1 – Submissions

Participants	Submission
Aged and Community Care Providers Association (ACCPA)	29
Aged Care Action Group, Aged Care Reform Now and Carer's Circle	21
Australian Industry Group (Ai Group)	34
Anglicare Australia	6
Arafmi Ltd	9
Associate Professor Elisa Klein	3
Australian Chamber of Commerce and Industry (ACCI)	35
Australian Education Union	13
Australian Longitudinal Study on Women's Health	31
Australian Nursing and Midwifery Federation	39
Australian Psychological Society	27
Australian Retailers Association	14
Australian Services Union – Victorian and Tasmanian Branch	30
Australian Small Business and Family Enterprise Ombudsman	26
Carers Australia	36
Carers NSW	20
Carers Tasmania	37
Chamber of Commerce and Industry Queensland	16
Circle Green Community Legal	11

Participants	Submission
Continence Foundation	2
Darwin Community Legal Service	33
Dementia Australia	12
Department of Health and Aged Care	24
Health Services Union	19
Iredale, Peni	40
JobWatch	17
LGBTIQ+ Health Australia	22
Lived Experience Australia Ltd	1
Mental Health Carers Australia	32
Merri Health	18
MS Australia	8
Mona, Dr Nikidehaghani and Freda, Dr Hui-Truscott	23
National Aboriginal Community Controlled Health Organisation (NACCHO)	5
Queensland Alliance for Mental Health	7
Royal Australian and New Zealand College of Psychiatrists	25
Shop, Distributive and Allied Employee's Association (SDA)	38
Women Lawyers Association of Queensland	4
Women Work and Policy Research Group	28
Zonta Club of Toowoomba Garden City	10

Table A.2 – Consultations**Participants**

Australia Institute (Centre for Future Work)
Australian Chamber of Commerce and Industry (ACCI)
Australian Council of Trade Unions (ACTU)
Australian Industry Group (Ai Group)
Australian Nursing and Midwifery Federation
Australian Services Union
Business Council of Australia (BCA)
Care and WorkMOD Creators – Macquarie Business School
Carers ACT
Carers Australia
Carers NSW
Carers Tasmania
Carers WA
Coles
Council on the Ageing (COTA)
Department of Employment and Workplace Relations (DEWR)
Department of Health
Department of Social Services (DSS)
Fair Work Commission
Fair Work Ombudsman
Heron, Alexandra (CEPAR)
Juniper Central
Macdonald, Fiona (Australia Institute)
National Aboriginal Community Controlled Health Organisation (NACCHO)
National Aged Care Alliance
Shop Distributive and Allied Employees Association (SDA)
Stewart, Andrew (University of Adelaide)
The Treasury
University of Adelaide
University of Sydney

Table A.3 – Roundtable

Participants

13 December 2022

Australian Industry Group (Ai Group)

Australian Chamber of Commerce and Industry (ACCI)

ARAFMI Ltd

Australian Retailers Association

Australian Services Union, Victorian and Tasmanian Branch

Australian Small Business and Family Enterprise Ombudsman

Carers Australia

Carers NSW

Dementia Australia

Merri Health

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