

Carers Australia response to the Productivity Commission Carer Leave Inquiry Position Paper: *‘A case for an extended unpaid carer leave entitlement?’*

28 March 2023

1. Introduction

Carers Australia welcomes this opportunity to respond to the Productivity Commission’s Position Paper ‘A case for an extended unpaid carer leave entitlement?’ (Position Paper)¹. However, before we can address the draft findings, draft recommendations and information requests, we must raise a number of fundamental concerns.

We draw attention to the Commission’s three features of their structure and operations which underpin the effectiveness of their contribution to public debate and policy formulations – independence, transparency and community-wide perspective². In particular, that processes are to be transparent and ‘provide for extensive public input and feedback through hearings, workshops and other consultative forums, and through the release of draft reports and preliminary findings.’ While acknowledging the Commission’s deadlines, **we do not consider that extensive public input has been provided for and there remains a need for supported broad consultation with lived experience carers³ and employers more broadly on such an important piece of work to gather a truly ‘community-wide perspective’.**

A four-week period for written submissions is not an adequate amount of time to allow for interested parties to consider the Position Paper, Supporting Papers, consult widely with stakeholders, members and most importantly, seek input from lived experience carers. It also appears that Public Hearings were only held on 20 March with three separate appearances, which was also not appropriate time to have worked through the Position Paper, proposed model and, in our case as a peak organisation, seek input from members or carers. Carers Australia and our members – the carer organisations in each state and territory – have requested during development of the Issues Paper, when initial submissions were being considered to assist in informing the Commission’s draft recommendations, at our appearance at the recent Hearing, and again when the Position Paper was released that there was a need for more engagement opportunities.

In addition, individuals were not enabled to make submissions or provide ‘brief comments’ as there were no *Easy Read* versions of any documents made available for this consultation, noting the Issues Paper previously and the current Position Paper incorporates high level employment and legislative concepts which will be unfamiliar to many people. Even for potential respondents, carers or employers, who have greater familiarity with these issues, more accessible community-based and widely advertised opportunities to provide input should have occurred in our view.

Without the provisional model receiving widespread contribution from carers, the noted lack of available data specific to this issue, and that information requests clearly outline the Commission’s need for input, including on

¹ Australian Government, Productivity Commission ‘A case for an extended unpaid carer leave entitlement? Position Paper’, February 2023 [[accessed online](#)]

² Australian Government, Productivity Commission ‘How we operate’ webpage [[accessed online](#)]

³ Carers Australia uses the term ‘carer’ as defined by the Australian Government [Carer Recognition Act 2010](#) (the Act), where it should not be used broadly and without context to describe a paid care worker, volunteer, foster carer or a family member or friend who is not a carer. The terms ‘informal carer’, ‘unpaid carer’ or ‘family and friend carer’ are also often used by organisations, government and the community to describe a carer. Carers Australia may use these terms to assist in providing context and to differentiate between other types of care.

the durations of leave carers are most likely to access, it perplexes us as to how the Position Paper can make clear statements on what carers want or don't want. For example:

"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." (p1)

"And importantly, extended unpaid leave is not the highest priority for the majority of carers" (p2)

"Extended unpaid leave will always be unsuitable or inaccessible for many carers." (p.2)

We also draw attention to misrepresentation of the Aged Care Royal Commission's recommendation, which the Position Paper states within the Executive Summary as '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' (our emphasis). This is reflective of the Productivity Commission's Terms of Reference, but not of Recommendation 43 of the Royal Commission's Final Report⁴ which was in fact not explicit to carer of older people:

"By 30 September 2022, the Australian Government should examine the potential impact of amending the National Employment Standards under Part 2-2 of the Fair Work Act 2009 (Cth) to provide for an additional entitlement to unpaid carer's leave."

We have raised several times with Government that the Productivity Commission's remit (per the Terms of Reference) for this Carers Leave Inquiry is a missed opportunity due to the narrowed focus to carers of older people, and a lack of recognition of the contribution of carers of people under 65 years of age (most carers).

Carers Australia strongly recommends that the Carers Leave Inquiry be extended by Government, to allow for appropriate consultation with lived-experience carers and businesses.

A draft provisional model requires focused discussions with businesses and carers, to work from a *draft* and workshop issues, common ground, and alternatives to consider - more than submissions on this Position Paper can provide for within four weeks. As the Productivity Commission puts it, '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.' One could argue extending the timeframe to allow for targeted consultations may also provide more robust data for modelling assumptions, and a more accurate reflection of the impacts or 'undesirable consequences.'

While acknowledging that the Terms of Reference were put forward by the previous Government, the Albanese government and Parliament more broadly have a clear focus on employment - the Jobs and Skills Summit, Senate Inquiry into Work and Care, Treasury's Employment White Paper Terms of Reference, current development of the National Strategy for the Care and Support Economy and establishment of a carer-inclusive workplace initiative to list just a few activities.

The Position Paper provides that:

"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)." (p.25)

⁴ The Royal Commission into Aged Care Quality and Safety, Final Report – List of Recommendations, February 2021, p.238 [[accessed online](#)]

What is unclear is if the policy developments and planned and enacted reforms across other portfolios as they relate to employment, and by extension poverty and the cost of living, have been accounted for.

2. Comment on the Productivity Commission's draft findings and draft recommendations

Our response is focused on the draft findings and draft recommendations to date as outlined in the Position Paper and supporting documents, informed by our members – the carer organisations in each state and territory. This should be considered with Carers Australia's broader recommendations and supporting evidence with respect to extended carer leave as provided in our response to the initial Issues Paper.⁵

In all cases, the issues we raise provide further support for extending the timeframe to allow for targeted consultations with and between carers, businesses and government, provide more robust data for modelling assumptions, and a more accurate reflection of the impacts or 'undesirable consequences'.

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

Carers Australia raises issues with the way these findings and how they are represented in the Position Paper from a deficit model – of the 'undesirable consequences' focus rather than the benefits to carers, care recipients, businesses and the community.

We also consider it inappropriate at this point in its Inquiry, whilst still gathering information and after only having released the provisional model for a brief period of 'consultation', the Commission concludes that:

"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."(page 2)

Supporting evidence for this conclusion is based largely on the Commission's modelling of the number of carers likely to access this entitlement using data from the 2018 Australian Bureau of Statistics' *Survey of Disability, Ageing and Carers (SDAC)*⁶ and drawing on some *Household, Income and Labour Dynamics in Australia (HILDA)*⁷ data. **Neither of these data sources explore carer perceptions of an unpaid leave entitlement, and we would request that the modelling done be released for transparency.**

The Commission draws on its knowledge of overseas examples of extended carer leave as evidence to support its conclusion:

"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

⁵ Carers Australia, Submission to the Productivity Commission Carer Leave Inquiry, September 2022 [[accessed online](#)]

⁶ ABS (Australian Bureau of Statistics) 2019a, *Disability, Ageing and Carers, Australia, 2018*, Data [accessed online](#) through TableBuilder.

⁷ The Productivity Commission cites [HILDA](#) data reports *Selected Findings from Waves 1 to 19*, 7

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.” (p.1)

This analysis suggests that the uptake of an entitlement to extended leave would be low. However, as we identify below, there are shortcomings in the questions asked and data subsequently extracted from the surveys which undermine confidence in the estimates. The large variations in the length of long leave available in the countries the Commission canvassed, the terms under which it is available (including paid and unpaid leave), and variations in other support available to carers and those they care for (including paid substitute care) do not support the level of up-take can be summarised in this way.

There are also inconsistencies in reasoning throughout the Position Paper, for example, each of the 21 countries identified to have introduced carer leave for two months or more, have adopted these entitlements as fair and reasonable despite the small uptake. Further, fewer carers who take up such an entitlement would mean less 'undesirable consequences' for employers if the Commission logic was applied.

We agree with the following elements of the provisional model:

- 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 NESSs.

However, as we have discussed in our responses related to duration of leave, we are of the view that a shorter duration of leave, perhaps between two and six months, may have a higher uptake, may better meet the requirements of carers most in need of extended leave to respond to major adjustments in their caring role, and may also put the carer in a position where they are able to make considered judgements about whether they continue to combine work and care once they have had time to consider all the options and access the range of supports they need to do so.

We further explore these issues in the next section regarding information requests and emphasise the need to frame the entitlement as a right to request extended leave, as is the case for flexible leave. The processes involved in resolving disputes between employers and employees should mirror the strengthened pathways available to both employers and employees under recent amendments to the *Fair Work Act 2009* with respect to flexible leave.

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

In addition to raising concern over the lack of transparency in this statement and data used to inform it, it is essential to raise that while extended leave may not be the highest priority for the 'majority' of carers, it is a very high priority for those who may need it.

Alternatives are to leave their jobs or retire early as pointed out by the Position Paper's evidence, at a key point in their caring journey, and subsequently may struggle to find employment when that point has passed, or in fact at all again.

As an example of unclear data use, the Commission references HILDA data in relation to people with 'similar characteristics' as carers of the aged to assess the risk of leaving the workforce to provide care.

"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." (p. 41)

A key point here is that, only 60% had found employment within two years, and we don't know long these people were out of the workforce within those two years. We also don't know if they would have not been out of the workforce at all if they had the option of an unpaid leave entitlement, or if the other 40% who were persistently looking for work after a career break (we do not know of what duration) still hadn't found it and for what reasons. The focus on data of people with similar characteristics is also not reflective of the diversity of carers, care recipients or caring situations.

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

We note the Position paper states that this is for 'reasons of equity and administrative simplicity, if there was a decision to amend the NESs to include an entitlement to extended unpaid carer leave, it would be reasonable to make it available to all carers'.

Carers Australia strongly supports this finding. As we remarked in our submission to the Issues Paper, the case for extended care leave is just as strong for carers of people under the age of 65 and it would be inequitable to confine such leave to carers of older people.

Additional consultation would also allow for exploring this, which would undoubtedly impact on the modelling, assumptions and robustness of the Commission advice to government, and inform further opportunities to support carers (in alignment with Draft finding 5).

- **Draft finding 5: Informal carers need timely and high-quality supports, and**
- **Draft finding 6: Working carers need access to flexible working arrangements**

Carers Australia strongly agrees with this Draft finding, as we have represented in several submissions over the past 12-months to government. **We continue to reflect that the need for three key pillars to be met in order to effectively support Australians with unpaid care responsibilities to meaningfully participate in the paid workforce:**

1. **Adequate substitute care**
2. **More flexible and inclusive workplaces**
3. **Improved interface with the income support system**

Further, the necessity of each of these pillars individually, however none are sufficient in themselves, in the absence of the other two pillars. We have also previously provided data to the Productivity Commission on carers and employment, including flexible working arrangements, and respite care access as reflected in results of the 2020 National Carers Survey⁸ and the 2021 and 2022 Carer Wellbeing Surveys⁹

Carers do need timely, high quality supports for themselves and those they care for. This is especially the case when it comes to access to paid replacement or substitute care (often thought of as respite care).

⁸ Carers NSW (2020). 2020 National Carer Survey: Summary report [accessed [online](#)]

⁹ Results of the 2021 and 2022 Carer Wellbeing Survey are available via the Carers Australia [website](#). The Carer Wellbeing Survey is a collaboration between Carers Australia and University of Canberra, funded by the Australian Department of Social Services

However, as canvassed below, in relation to carers of older people, substitute care through aged care Home Care Packages can involve long wait times and this is likely to remain the case while packages are capped in number, there are aged care worker shortages, and the population of people eligible for and needing such support is growing.

Carers Australia has been advocating for many years for the need for government to investigate barrier to accessing respite and have been calling for a robust investigation into respite care, including day centers, to occur across portfolios, systems, and settings. This is essential for Government to appropriately develop future policy and reform decisions for sustainable and equitable access to respite - regardless of location, type of caring role, circumstance, service system accessed or relationship to funding or portfolio.

We are pleased the recent of the Senate Community Affairs Inquiry into Work and Care recommends that:

"[T]he Australian Government review the accessibility, availability, and flexibility of respite care with a view to improving respite care options available to working carers and those they care for funded with a potential capital component in areas where supply is inadequate." (Recommendation 32)¹⁰

We strongly encourage the Productivity Commission to make a similar recommendation.

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

We agree with this recommendation and note that Carers Australia has recently engaged with the Department of Social Services to develop a carer inclusive workplace initiative, following the Jobs and Skills Summit outcomes¹¹ and the October 2022 Federal Budget.

This initiative will include the development of resources for carers, including those designed to help carers talk to their employer about flexible work, and outline upcoming changes to flexible work provisions of the *Fair Work Act 2009* as identified by the Productivity Commission as focus areas.

With regards to the routine provision of fact sheets to carers at key points in time, such as when they contact the Carer Gateway, we also raise that there are organisations with which carers interact who should also make this information available, including but not limited to:

- members of the Older People Advocacy Network
- Dementia Australia
- Palliative care providers
- Centrelink in their interactions with people in receipt of the Carer Payment and Carer Allowance
- NDIS providers and other disability service providers
- Partners in Culturally Appropriate Care (PICAC) members
- Employment services providers in their interactions with carers
- Carer respite providers
- Any services that provide to vulnerable populations, including services to Aboriginal and Torres Strait Islanders and cultural and ethnically diverse groups.

¹⁰ Parliament of Australia, The Senate, 'Select Committee on Work and Care Final Report' March 2023 [[accessed online](#)]

¹¹ Australian Government, Jobs+Skills Summit: Outcomes, September 2022, [[accessed online](#)]

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

Carers Australia supports the recommendation that the care relationships used in the NESs which restricts carer leave to situations in which an immediate family member or member of a household¹² should be amended.

In terms of their relationship to the care recipient, while the definition of 'immediate family' is fairly extensive, it does not include broader family members who may in fact be immediate family from a cultural perspective, particularly for Aboriginal and Torres Strait Islanders. Further, this does not provide for the recognition of the diverse 'family of choice' that provides care to many older people, and is supportive of carers and care recipients that are within the LGBTI community.

We are of the view that the definition of a carer under the *Carer Recognition Act (2010)* should be incorporated into the standard, as this definition embraces individuals who are not family members and who may not be part of the care recipient's household but who nevertheless provide substantial care:

"A carer is an individual who provides personal care, support and assistance to another individual who needs it because that other individual:

(a) has a disability; or

(b) has a medical condition (including a terminal or chronic illness); or

(c) has a mental illness; or

(d) is frail and aged."¹³

4. Response to information requests

Carers Australia again raises the need for focused discussions with businesses and carers, to workshop issues, common ground, and alternatives to consider. In many of the cases, there is no easy answer to the question, especially in the absence of opportunities to appropriately explore carers' views.

It is also important to note that no one model will ever meet the needs of all carers. Nor should it be the goal to meet the needs of the most carers. What is needed is multiple options, including extended leave, and the ability for the carer to make a choice with the options available.

- **The durations of leave carers are most likely to want to access extended unpaid carer leave**

The Position Paper references the 2018 Australian Bureau of Statistics' *Survey of Disability, Ageing and Carers* data in relation to whether in the last six months carers would have liked to have made more use of unpaid leave to care for someone over the age of 65 and finds that about 4,000 respondents would have done so (p.68).

However, the duration of that leave is not identified. Nor was the question asked within the context of having the entitlement to such leave.

As is acknowledged in the Position Paper, to get a real sense of the value of such an entitlement for carers, carers would need to be asked whether they think they would access an entitlement to leave if it was available and the period/s of such leave under consideration.

While the 12 months unpaid leave after the birth of child is available, Carer Leave and Parental Leave do differ in some key respects. In addition to looking after a child who is totally dependent on a parent, it is to allow time for

¹² *Fair Work Act 2009* S96 [[accessed online](#)]

¹³ Australian Government Carer Recognition Act 2010, No 123,2010 [[accessed online](#)] (Emphasis added)

the child and the parents to bond. This is not the same for carer leave where the carer already has an established relationship with the person being cared for.

Carers who would most benefit from long leave are likely to be those who are coming into a new, intensive carer role or who have a sudden escalation in their caring role. These circumstances may involve changing their housing arrangements in order to be with the person requiring care; finding out about supports available both for them and those they care for, and accessing those supports. In such cases anything from 3 to 6 months may be adequate and indeed preferable to carers who cannot afford to take a year's unpaid leave and who cannot survive on the Carer Payment or even be eligible for it due to their financial circumstances.

There will be other situations where the carer experiences high level of carer strain in combining work and care, especially if they are 'sandwich carers' who are providing care to a parent or other family member as well as caring for their own children. The widespread experience of carer strain is a major theme of research into carers, with 48% of carers nominating strain as a major challenge in the 2022 Carer Wellbeing Survey.¹⁴

In 2022 the Australian Research Council (ARC) Centre of Excellence in Population Ageing Research (CEPAR) examined the effects of carer strain on work withdrawal among Australian workers and found carers experience both 'time-based conflict' and 'strain-based conflict', and examined the extent to which caring interfered with work. Care intensity was defined as both care hours and care strain, and withdrawal from work was defined in terms of reduced time spent in paid work and withdrawal from career development and progression. Their analysis found that care strain is more strongly related to work withdrawal than care hours.¹⁵

Some carers reach a point where they feel they have to choose between work and caring and they don't feel they can abandon the caring role. **Shorter working weeks and more flexible working hours may not feel as if they will make a difference to carers who have reached a point of high carer strain, and this is one of the very reasons that a leave entitlement is an important choice that needs to be available.**

Extended leave, even unpaid and for a couple of months, can give carers time access what support they can access for themselves and the person they are caring for, the implications for the broader family circle, and enable a better balance between the pressures of work and caring. It may also allow for more constructive discussions with a workplace on return, related to flexible requirements. This is also a consideration for the next section on potential costs and benefits.

- **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**

There is no doubt that flexible working conditions in the form of flexible start/finish times, working from home, job sharing, working fewer days and flexible rosters benefit many working carers, albeit any employed person. However, **Carers Australia have had representation made to us that a reduction in working hours and other flexible options may not be of benefit to carers that have recently commenced a caring role, had a substantial change to the caring role, such as increased intensity, or when there are changes to existing arrangements in place such as service provision or the care recipients ongoing needs.**

In these circumstances, carers may need to renavigate how to accommodate their employment arrangements around care responsibilities, and with the needs and wishes of the care recipient. This may involve changes,

¹⁴ Op.Cit (9)

¹⁵ Constantin A et al (2022) 'Looking beyond hours of care: the effects of care strain on work withdrawal among Australian workers in' *International Journal of Care and Caring* Vol 6(3) [[accessed online](#)]

reassessment or first entry into formal replacement or respite care options accessed through Home Care Packages, day centers or other sources of replacement care. Such replacement care can be difficult to access.

For example, in order to access a Home Care Package or to receive a higher-level package the care receiver's needs must be assessed which can take a considerable amount of time. At 30 June 2022¹⁶ there were 49,717 people waiting for on a package at their approved level, and a further 40,777 seeking a package at their approved level who had not yet been offered one. The expected wait times between an assessment and actually accessing services is three to six months, although it is possible to get an interim package for people who have been assessed for a Level 2,3 or 4 package.

In the meantime, the carer may need to provide a substantial amount of increased care which prevents them from working, even flexible or reduced hours. It is also often the case that the flexibility required or able to be committed to is still unknown, including the duration and other relevant confounders which make it difficult to engage in meaningful and informed conversations, as well as commit to options. An extended leave entitlement as a *choice* would be highly valued in these circumstances.

Clearly the advantages of flexible working conditions for carers include that they may be able to remain connected to their workplace and continue to receive a wage even if it is somewhat reduced. Similarly, their superannuation entitlements, if they are eligible for them, will continue. It is also widely recognised that work can provide a valued break from caring and helps to reduce the social isolation experienced by many carers, especially those who are largely confined to providing daily care in the home.

The value to employers can be that they do not lose valuable employees even if those employees work shorter or amended hours, or indeed take extended leave and return. Depending on their business, they may not need to substitute for the working hours lost or reorganised as a result of providing flexible employment for carer employees. And if they do require backfill, this may be offset by the costs associated with the expensive and often time-consuming process of employing and onboarding another person.

In short, we agree with the Commission that flexible working conditions have great appeal to carers and benefits to their employers. However, for those who do have to take a period of time out to provide intensive care and/or restructuring their lives, it may not provide a solution at all and should not be seen as a replacement for the availability of extended leave.

- **Whether there are ways to design the entitlement to avoid potential negative effects, including on the recruitment and career progression of carers**

The Position Paper canvasses negative impacts or 'undesirable consequences' of the potential model of an extended leave entitlement on some employers, although notes that, based on the Commission's modelling of the likely up-take of the entitlement, these impacts would be very thinly spread.

Carers Australia acknowledges that some employers may face costs associated with finding a replacement for a carer on extended leave or redistributing that person's workload among other employers. Against this background, **we propose the leave entitlement should be framed as a right to request extended leave as opposed to an absolute right to take such leave, in the same way that flexible working arrangements under the NES are based on the right to request.**

¹⁶ Australian Government, Department of Health and Ageing, 'Home Care Packages Program Data Report 4th Quarter 2021-22, November 2022' [[accessed online](#)]

As with flexible working arrangements, employers would have the right of refusal but would have to establish a business case for such a refusal and dispute resolution could then follow the same path as for the new flexible working conditions standards and procedures.

With respect to negative impacts on carers regarding recruitment, we would hope that the vast majority employers are not so risk averse as to reject a well-qualified candidate, who happens to mention when they are being recruited that they are a carer, because there is a possibility, just a possibility, that they may want to access extended leave at some point in time, maybe. **We also highlight that at any time a current or potential employee may become a carer, for a short period or a longer duration.**

As the Commission identifies, the *Fair Work Act* prohibits discrimination against employees on the basis of their family or carer responsibilities and the Fair Work Ombudsman has authority to investigate allegations of unlawful workplace discrimination (p.46). However, it is true that covert discrimination can be very hard to prove.

With respect to impacts on a carer's career prospects as outlined within the Position Paper, if the entitlement includes the right to return to their previous position after taking leave, it *may* delay but not impede their career progression. There *may* be some short-term impacts, such as if the carer was on leave when a promotion became vacant. Their continuing caring role when they return to work *may* impact on their ability to take on a different role. However, the same holds true for people who go on parental leave.

A concern raised in some submissions in response to the Inquiries Issues Paper seems to suggest that long-term leave should be opposed if it has any impact at all on broad social goals such as gender workforce equality. We live in an age where balancing career and family is widely considered as desirable. Finding this balance can involve compromises and innovation. **These judgements seem to be made without taking any account of the needs and legitimate choices of individuals, often women, in responding to a loved one's need for care, or the diversity of the carer, older person or caring relationship.** Without access to such leave or even the availability to request it, they may be forced to make some very hard decisions unnecessarily and often in a period of broader personal and family crisis, including quitting their job - likely to have a much larger impact on their workforce participation and career advancement than taking a period of extended leave.

We also draw attention to this being out of step with the current work towards the National Strategy to Achieve Gender Equality, to 'guide whole-of-community action to make Australia one of the best countries in the world for a gender-equal society',¹⁷ and that gender inequality can be exacerbated by other forms of exclusion and disadvantage – such as not having choices.

- **The expected effects on carers of upcoming changes to the flexible working arrangements provisions of the *Fair Work Act 2009***

Carers Australia welcomes the amendments to the *Fair Work Act* to strengthen the employers' obligations when considering an employee's request for flexible working arrangements and, in particular, introducing dispute resolution provisions that empower the Fair Work Commission to make orders when an employer refuses an employee's request. This is something we have been advocating for a long time.

Some carers will take advantage of these new entitlements. However, there can be no confident prediction of how many carers against a background where carers are time poor and stressed, often socially disadvantaged and

¹⁷ Australian Government, Prime Minister and Cabinet, Office for Women 'National Strategy to Achieve Gender Equality' website [[accessed online](#)].

expected to advocate for themselves. Employers need to remember that caring is a relationship dynamic between at least two people who both have individual needs and rights. Past experiences in discussing their caring with employers or fellow employees, current or potential, may have been difficult and negative, and there is also privacy concerns that a carer may be considering and respect for the person being cared for. Stigma and discrimination are often a factor in the lives of carers, both towards themselves and the care recipient – particularly related to mental ill-health, alcohol or other drug issues, and dementia.

Under the NES amendments, if a request is refused after a genuine attempt between the employer and employee to agree (the employer being required to provide a written response detailing the reason and grounds for refusal or not responding to the employees request within 21 days), the process entered into if the employer or employee refers the dispute to the Fair Work Commission before reaching an arbitrated resolution can be long and very confronting¹⁸.

The employee also needs to take into account what the impact on their relationship with their employer will be if the parties go down this process for any length of time, and for if the decision is ultimately in favour of the carers request. We hope that the changes do further legitimise flexible working arrangements and act to discourage employers who may easily or routinely dismiss any request for a change in working arrangements.

5. Additional support for carers beyond those discussed in the Position Paper

- Access to substitute care and supports

As explored previously, substitute care is a major means of freeing up carers to participate in work. The Commission has identified some of the aged care reforms underway, but which are currently still in the design phase with respect to a new model for home care and community support. These include a new Aged Care Assessment Tool (ACAT) and an assessment process that is more carer inclusive and will take into account carers' needs for support in their own right through referral to the Carer Gateway providers.

Importantly, ACAT assessments take into account how much support is being provided by informal carers when assessing package support needs for older people¹⁹. However, we have had representation that this may result in carers needing to stay within the current caring role and situation to enable a certain package, and prevent them from engaging in employment. **Carers Australia believes home care assessments should be carer neutral and that the provision of replacement care should be considered (among other things) in the context of the employment requirements of carers to the extent possible.**

One form of replacement care which can help carers to remain in employment are day centres where the person being cared for can engage in a program of activities which enables them to connect with others in their situation (thereby reducing social isolation) and enjoy group activities while having their care needs attended to. Most day centres operate during week days, although we understand that many operate shorter days which may not be ideal for carers employed for a normal working day. Nevertheless, combined with flexible work arrangements, they may help carers to combine work and care if they are available, accessible and appropriate for the carer and

¹⁸ Australian Government, Fair Work Ombudsman, 'Secure Jobs, Better Pay: changes to Australian workplace laws' website [[accessed online](#)]. Last updated 7/3/2023

¹⁹ Australian Government, My Aged Care 'My Aged Care Assessment Manual For Regional Assessment Services and Aged Care Assessment Teams' Version 4.0 February 2023 [[accessed online](#)] p.120

care recipient. Unfortunately, we have found it hard to identify the number of day centres and their distribution across the country.

- **Disaggregation of sick leave and carer leave under Personal Leave Provisions**

As we did in our initial submission, we draw the Commission's attention again to the conflation of short-term Personal Leave of care leave and sick leave under the NES. We regard it as an anomaly in the context of short-term leave entitlements for carers, noting all other comparable countries we are aware of have separate entitlements for sick leave and carer leave. In addition, conflating carer leave with sick leave can produce negative impacts on the health and wellbeing of carers, many of whom need to use their own need for sick leave in order to provide short-term care.

We note the Senate Select Committee on Work and Care²⁰ recommendation that:

"The Australian Government consider the adequacy of existing leave arrangements and investigate potential improvements in leave arrangements in the Fair Work Act 2009, including separate carer's leave and annual leave" (Recommendation 18,8.111).

We recommend the Productivity Commission echo's this in the Final Report as another option to provide to carers, of which there should be several to recognise the diversity of caring.

- **Changes to the amount of work carers on the Carer Payment can undertake**

Another change which could assist carers to remain connected to the workforce involves the eligibility requirements for the Carer Payment Income Support Payment. Carers in receipt of this payment are subject to what is known as the '25 hour rule' which prohibits carers from engaging in volunteering, work or education for more than 25 hours a week (including meal breaks and travel time)²¹. As the Position Paper acknowledges, the Productivity Commission Inquiry into Mental Health recommended that the rule should be changed to 100 hours per month²², something Carers Australia has been advocating for over several years. **Formal support from the Carers Leave Inquiry recommendations would assist in the government's consideration of this simple change.**

In addition to providing a more flexible approach to the hours of care required, particularly when caring intensity can be episodic, this would provide greater flexibility for carers to take up job opportunities which are not tied to standard working week, such as those that involve rostering or shifts across retail and the care and support economy. It would also benefit carers wishing to take advantage of seasonal work, such as demand for more workers over the Christmas holiday period. In other cases, carers may be able to get short-term contract work if they can arrange for substitute care while they are employed.

- **Better support for carers seeking to re-enter the workforce**

In addition to practices and entitlements which allow carers to stay in work, assistance is needed to allow those who have needed to leave employment to re-enter. We have highlighted issues for carers in these circumstances through various [recent submissions](#).

²⁰ Op.Cit (10)

²¹ Australian Government, Services Australia 'Caring for someone>Getting a Payment' webpage [\[accessed online\]](#). Updated 3/3/22

²² Australian Government, Productivity Commission, Mental Health Productivity Commission Inquiry Report Volume 3 No. 5, 30 June 2020, p.922 [\[accessed online\]](#)

Carers Australia strongly argue that carers are identified and included as a 'priority cohort' in work of Jobs and Skills Australia, given they are a population that experiences high levels of vulnerability, poverty and disadvantage²³. This follows advocacy for carers who had spent a long time out of the workforce to be specifically identified and provided with suitable support in the Workforce Australia initiative which replaced JobActive in July 2022.²⁴ At this point, we do not believe there are specific activities designed to meet the needs of carers.

What often distinguishes carers from many other disadvantaged groups is the amount of time they spend out of the workforce. In this context it is noteworthy that, as of December 2022, 303,520 carers relied on the Carer Payment for personal income with the average duration on the payment being six and a half years²⁵. Carers who have contributed the most hours and years of care are least likely to be in a position to transition with any ease to the job market. In 2018, 24% of primary carers had been caring for between 5 and 9 years and 29.9% had been caring for between 10 and 24 years.²⁶ It is not surprising then, that carers who leave work to care often remain dependent on income support for a very long time after their caring role has diminished or ceased - around two thirds of those on Carer Payment who are projected to exit over the next 10 years will move on to another income support payment, a substantial proportion of which will move onto a working age payment.²⁷

In Summary

Carers Australia strongly recommends that the Carers Leave Inquiry is extended by government, to allow for appropriate consultation with lived-experience carers and businesses.

There are a range of ways carers can be supported to combine work and care, but different kinds of supports will assist carers in different circumstances. Among this suite of supports, extended carer leave has a legitimate place. It will meet the needs of those carers who find themselves in situations and at a time where they cannot contemplate continuing work and care. These circumstances may pass. When they do, the capacity to return to their previous employment will mitigate against the risk of remaining unemployed in the longer term, diminished career prospects, and paying a high price for the time it has taken them to readjust to the caring situation.

²³ Carers Australia, 'Response to the Australian Government Department of Employment and Workplace Relations - Jobs and Skills Australia Discussion Paper' 10 Feb 2023 [[accessed online](#)]

²⁴ Carers Australia, 'Submission to the Department of Jobs and Small Business on the next generation of employment services' 3 Aug 2018 [[accessed online](#)]

²⁵ Australian Government, Data.gov.au 'Expanded DSS Benefit and Payment Recipient Demographics - December 2022' [[accessed online](#)]

²⁶ Op.Cit (6) SDAC

²⁷ Australian Government, Department of Social Services, 'Australian Priority Investment Approach to Welfare - 2017 Valuation Report', p102-3 [[accessed online](#)]

Information contact:

Carers Australia
Unit 2, 11 McKay Lane TURNER ACT 2612
Telephone: 02 6122 9900
or email policy@carersaustralia.com.au

About Carers Australia

Carers Australia is the national peak body representing the diversity of the 2.65 million Australians who provide unpaid care and support to family members and friends with a disability, chronic condition, mental illness or disorder, drug or alcohol problem, terminal illness, or who are frail aged.

In collaboration with our members, the peak carer organisations in each state and territory, we collectively form the National Carer Network and are an established infrastructure that represent the views of carers at the national level.

Our vision is an Australia that values and supports all carers, where all carers should have the same rights, choices, and opportunities as other Australians to enjoy optimum health, social and economic wellbeing and participate in family, social and community life, employment, and education.

This includes carers:

- Who have their own care needs
- Who are in multiple care relationships
- Who have employment and/or education commitments
- Aged under 25 years (young carers)
- Aged over 65 years, including 'grandparent carers'
- From culturally and linguistically diverse backgrounds
- Who identify as Aboriginal and Torres Strait Islander
- Who identify as lesbian, gay, bisexual, transgender, intersex (LGBTI+)
- Who are living in rural and remote Australia, and
- Who are no longer in a caring role (former carers).

Carers Australia acknowledges Aboriginal and/or Torres Strait Islander peoples and communities as the traditional custodians of the land we work on and pay our respects to Elders past, present and emerging. As an inclusive organisation we celebrate people of all backgrounds, genders, sexualities, cultures, bodies, and abilities.