



Submission to the Productivity Commission Inquiry into Carer Leave, response to the Position Paper 2023

From: The Women, Work and Policy Research Group and the Work + Family Policy Roundtable

Productivity Commission
Locked Bag 2, Collins St
East Melbourne Vic 8003
28 March 2023

Dear Committee,

We write to you as co-Directors of the Women, Work and Policy Research Group at the University of Sydney Business School and co-convenors of the Work and Family Policy Roundtable. This submission was drafted by Associate Professor Myra Hamilton, Professor Marian Baird, Alex Heron, Alison Williams, Professor Sara Charlesworth and Associate Professor Elizabeth Hill on behalf of the Women, Work and Policy Research Group, University of Sydney and the Work + Family Policy Roundtable.

Established in 2006, the goal of the Women, Work and Policy Research Group is to build equitable workplaces and sustainable careers for women. Through our research we aim to expand knowledge and research expertise on women and work in Australia and the Asia-Pacific region. Ongoing public and policy debates about family leave, industrial relations, access to childcare, declining birth rates and low levels of female representation on company boards, highlight the need for quality research in this field. Further details can be found here: <https://www.sydney.edu.au/business/our-research/research-groups/women-work-policy-research-group.html>

The W+FPR is a network of 35 academics from 17 universities and research institutions with expertise on work, care and family policy. Its goal is to propose, comment upon, collect and disseminate research to inform good evidence-based public policy in Australia. Our membership is on our website: <https://www.workandfamilypolicyroundtable.org/>. The W+FPR held its first meeting in 2005. Since then, the W+FPR has actively participated in public debate about work, care and family policy in Australia providing research-based submissions to relevant public inquiries, disseminating current research through publications for public commentary and through the media.

Please find below our responses to the Committee's information requests.

We refer to the Submission made by the Women, Work and Policy Research Group on 30 August 2022 to the Productivity Commission Issues Paper and draw on and elaborate on the matters of importance there in this response to the information requests made in the Commission's Position Paper.

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 duration of leave carers are most likely to want to access (for) extended unpaid carer leave***

Response

Currently, unpaid carer's leave is two days per occasion. We recommend that this extremely short period be lengthened as soon as possible, particularly given that about 23 percent of employees are in casual employment and therefore are without any paid carer's leave and rely solely on unpaid leave.¹ The demands that carers face are likely to require more than two days off work. For example, caring while a care recipient is rehabilitating and returning to living at home after a fall, assisting a care recipient move into residential care, spells where a care recipient with a mental illness requires greater support, or care for a relative at the end of life can require periods of weeks or months.² Internationally, a number of countries offer carer leaves that provide ***job protection for a period of 3-6 months***, and most are available annually or recurrently, with only one country (we believe) with a maximum lifetime period.³ In two cases (France and Austria), the initial period is for three months with a possible extension of three months.⁴ Several countries provide up to 12 months and several (i.e., Spain and Italy) provide two or more years.⁵

- ***How costly short-term leave is to businesses, and whether shortening the minimum leave duration would increase these costs significantly***

Response

There is limited data on the costs of carer leave for employers. However, the research that does exist, alongside the research on sick and parental leave, suggest that any costs to employers are likely to be outweighed by the benefits. Noting also that sick and parental leaves are usually paid. Unpaid leave does not have a direct financial cost on business.

Research suggests that the provision of (paid) sick and carers leaves have neutral or marginal costs for employers and that these are outweighed by benefits such as lower turnover rates,

¹ Australian Bureau of Statistics 2022, *Working Arrangements, 2022*, Cat No. 6336.0, Canberra.

<https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/working-arrangements/latest-release>

² Hamilton, M and Broom, A (2021) 'They died surrounded by family and friends (who could get leave from work if they needed)', Croakey, 22 March 2021

³ ICF and Cambridge Econometrics (2017) Study on the costs and benefits of possible EU measures on to facilitate work-life balance for parents and care givers (Final Report). Brussels, Belgium: European Commission, Director General for Justice and Consumers

⁴ Baird, M; Hamilton, M; Dinale, D; Gulesserian, L; Heron, A (forthcoming) 'Broadening our conception of leave: Leave to care for self and others over the life course' Chapter 25 in Ivana Dobrotić, Sonja Blum, Alison Koslowski (eds) Edward Elgar Research Handbook on Leave Policy

⁵ Bettio, F & Verashchagina, A (2012) Long-term care for elderly. Provisions and providers in 33 European countries. Luxembourg City, Luxembourg: European Commission.

recruitment costs and absenteeism, less presenteeism (present at work but not fully functioning) and higher productivity than in firms that do not offer these benefits.⁶ Access to leave is understood in the research literature to enhance a carer-friendly culture in itself conducive to lowering carer strain which again promotes productivity.⁷ For example, in a recent US study of the (8 week) Paid Family Leave Act in the state of New York, Bartel et al found “no statistically significant or economically meaningful adverse impacts on employer ratings of employee performance in terms of attendance, commitment, cooperation, productivity, and teamwork” and employers reported improvements on some measures.⁸ The low projected number of carers likely to use the proposed longer unpaid carer’s leave (between 3 and 7 per cent of the population of working-age carers of older people or between 7000–17 000 employees each year)⁹ also suggests that the costs to employers will be minimal, particularly those that already have care-friendly/flexible workplace policies.

We are not aware of any evidence that suggests that shortening the minimum leave duration would increase costs to employers. While evidence on carers leave duration/use is limited, there is evidence from parental leave use and an international trend towards more flexible options to access parental leave so that couples may access the leave incrementally or combine it pro rata with part time work.¹⁰ In Australia, during the 2020 Senate Inquiry into the Paid Parental Leave Amendment (Flexibility Measures) Bill 2020, submissions from employers were supportive of the option of taking 30 days of parental leave pay flexibly, in periods of one or more days at a time, with the Australian Small Business and Family Enterprise Ombudsman stating in their submission that the change would have benefits for business, including “Improving a business’ ability to retain valued employees; Improved ability maintain relationships; Decrease in recruitment costs due to capacity to retain staff; and Decrease in employee turnover and resulting and training costs.”¹¹ The AI Group also supported the reform, noting that it would “need to consider the impact of employees taking flexible PPL on the varying capacities of business, including SMEs, to provide leave at particular times... [and] will require employers to manage and plan their operations and service requirements.... and this requires planning and sufficient notice.”¹² *Reducing the*

⁶ Hamilton, M and Broom, A (2021) ‘They died surrounded by family and friends (who could get leave from work if they needed)’, Croakey, 22 March 2021; Lovell, V (2004) No Time to be Sick: Why Everyone Suffers When Workers Don’t have Paid Sick Leave, Institute for Women’s Policy Research Publication #B242p, IWPR, Washington DC; Ann Bartel, Maya Rossin-Slater, Christopher Ruhm, Meredith Slopen & Jane Waldfogel (2023) The impact of paid family leave on employers: evidence from New York, Community, Work & Family, DOI: 10.1080/13668803.2023.2168516; Awuor, G., & Arellano, A. (2011). Costs and benefits of paid sick leave: Reviewing the research. Denver, CO: The Bell Policy Center. Mei-Lan Chen, MSN, The Growing Costs and Burden of Family Caregiving of Older Adults: A Review of Paid Sick Leave and Family Leave Policies, The Gerontologist, Volume 56, Issue 3, June 2016, Pages 391–396

⁷ Constantin, A; Hamilton, M; Zettna, N; Baird, M; Dinale, D; Gulesserian, L; Williams, A; (2022) Looking Beyond Hours of Care: The Effects of Care Strain on Work Withdrawal Among Australian Workers, International Journal of Care and Caring. 6(3): 318–334

⁸ Ann Bartel, Maya Rossin-Slater, Christopher Ruhm, Meredith Slopen & Jane Waldfogel (2023) The impact of paid family leave on employers: evidence from New York, Community, Work & Family, pp 11

⁹ Productivity Commission (2023) A case for an extended unpaid carer leave entitlement? Position Paper, Commonwealth of Australia.

¹⁰ Australian Human Rights Commission (2013) Investing in care: Recognising and valuing those who care, Volume 2 Technical Papers, Australian Human Rights Commission, Sydney. Available at: http://humanrights.gov.au/pdf/sex_discrim/publications/UnpaidCaringVolume2_2013.pdf

¹¹ Carnell, K (2020) Submission to the Senate Community Affairs Legislation Committee on Paid Parental Leave Amendment (Flexibility Measures) Bill 2020, Australian Small Business and Family Enterprise Ombudsman

¹² AI Group (2020) Submission to the Senate Community Affairs Legislation Committee on Paid Parental Leave Amendment (Flexibility Measures) Bill 2020.

minimum period would make it more possible for employees to maintain their connection to the workplace while also meeting their care obligations, reducing the need for employers to recruit new staff.

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

Response

Make it available to all groups of unpaid carers of a disability, chronic illness or frailty due to old age

We agree with the Commission's Draft Finding 4 (p. 50) that, '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*'. For further details see our submission in August 2022.

Make the leave period, or part thereof, paid

We reiterate the importance of considering paid carer's leave, a claim we presented in our earlier submission. *We strongly suggest that the Commission consider recommending an extension to the period of paid leave.* In our view, increasing the current duration of *both* paid and unpaid carer leave in the NES is likely to avoid potential negative effects for carers' economic security. Carers are already much more likely than non-carers to experience financial hardship and to have low retirement savings,¹³ and unpaid leave is likely to exacerbate these unequal financial outcomes. As women are more likely than men to have care responsibilities, it is women who are likely to be affected the most by the reduction in income and retirement income associated with taking extended unpaid leave, compounding the existing wage and life-time income gap between women and men. International research¹⁴ also suggests that unpaid leaves have lower take up rates than paid leaves as carers must continue to work during periods of intensive care provision out of financial necessity, placing additional pressure on their health and wellbeing and the sustainability of the care relationship.

The current paid leave provisions are too short in duration. They provide only 10 days per annum and combine personal and carer leave. People with care responsibilities are more likely than those without care responsibilities to work part time.¹⁵ 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 can access 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.¹⁶ Consequently, the amount of paid leave is inadequate to meet their care responsibilities – and their own personal health needs.

Carers are also more likely than non-carers to themselves be living with a disability and chronic illness,¹⁷ which means that they have 10 days or fewer of paid carer/sick leave per annum to support them to manage both their care responsibilities and their own personal

¹³ AHRC (2013) Investing in Care, Vol 2, Australian Human Rights Commission

¹⁴ Rogero-García, J. & García-Sainz, C. (2016) 'Caregiver Leave-Taking in Spain: Rate, Motivations, and Barriers', *Journal of Aging & Social Policy*, 28(2): 98-112

¹⁵ AHRC (2013) Investing in Care, Vol 1, Australian Human Rights Commission

¹⁶ Carers NSW (2020), op. cit., p.18.

¹⁷ ABS (2018). Disability, Ageing and Carers, Australia: Summary of Findings. (abs.gov.au)

health needs. Carers have reported to us in our research that they use up all of their personal leave on their care responsibilities and have none left to use when they are unwell. Poor health of carers is also a driver of labour market exit,¹⁸ so the lack of leave to appropriately manage their own health needs is likely to be contributing to the labour market withdrawal of carers. ***Separating the periods of paid sick and paid carers leave would be likely to reduce these disadvantages experienced by carers.***

Internationally, many countries have longer carer leaves and almost all that do combine these with a shorter leave period with different conditions. In most countries, a shorter period (up to 30 days) of paid leave is combined with a longer period of unpaid leave. In most cases (with several exceptions i.e., Belgium and Austria, which provide 55 per cent wage replacement) extended leaves are unpaid but those on leave are eligible to apply for an income support style carer assistance payment for the duration of the leave.¹⁹ In Germany, they use a different model whereby employees may reduce their working hours to provide care for a period of up to two years. This is unpaid but half of their foregone earnings are advanced to them as an interest free loan to be paid back as an ongoing salary reduction.²⁰

Ensure that the leave can be used flexibly

Carers can face episodic demands on their time. We would also emphasise that flexibility of leave use is most likely to be of greatest use to unpaid carers. ***We recommend that the Productivity Commission consider flexibility in the use of any new leave provision.*** In most international cases there is some flexibility in the use of the leave, for example, most countries allow it to be taken full or part time and several allow the leave to be shared by multiple caregivers or taken concurrently.²¹ This provides more opportunities for carers to remain engaged in the workplace during periods of less and more intensive care. We know from international evidence on parental leaves that where leaves can be taken flexibly, men are more likely to use them, which is an important consideration given the issues associated with creating an unpaid leave provision that is mostly used by women.²² ***We also recommend that Commission consider ‘keeping in touch’ provisions*** like those available in the current Parental Leave Pay Scheme, so as to maintain the employee’s connection to their employer and to keep the employer informed of any changes in the employee’s care needs. Box 16 in the Position Paper notes some international examples.

Arrangements for short and longer term carer’s leave and flexible working need to be designed as an integrated package so they complement each other. They cannot be designed adequately in isolation from each other.

Accompany changes to leave provisions by an education and awareness campaign

Organisational culture change is essential to ensure that organisations view carers as available for career progression. This promotes workplace equality when it comes to both gender and

¹⁸ Carers NSW (2020), op. cit., p.33.

¹⁹ Baird, M; Hamilton, M; Dinale, D; Gulesserian, L; Heron, A (forthcoming) ‘Broadening our conception of leave: Leave to care for self and others over the life course’ Chapter 25 in Ivana Dobrotić, Sonja Blum, Alison Koslowski (eds) Edward Elgar Research Handbook on Leave Policy

²⁰ Maetens A, Beernaert K, Deliens L, Aubry R, Radbruch L, and Cohen J (2017) ‘Policy Measures to Support Palliative Care at Home: A Cross-Country Case Comparison in Three European Countries,’ *Journal of Pain and Symptom Management*, 54(4), 523-529.

²¹ Baird, M; Hamilton, M; Dinale, D; Gulesserian, L; Heron, A (forthcoming) ‘Broadening our conception of leave: Leave to care for self and others over the life course’ Chapter 25 in Ivana Dobrotić, Sonja Blum, Alison Koslowski (eds) Edward Elgar Research Handbook on Leave Policy.

²² Baird, M; Hamilton, M; Constantin, A (2021) Gender equality and paid parental leave in Australia – A decade of giant leaps or baby steps?, *Journal of Industrial Relations*.

care responsibilities. These initiatives should not be confined to carers but be workforce wide and tailored to different sectors and their needs. The Position Paper supports publicising this information for carers (Draft Recommendation 1). ***We suggest that normalising flexible working including career progression for those working flexibly requires that flexibility is available throughout the workforce and used also by men.*** It also requires advice and assistance about how to approach a person's employer, about legal protections, and also the availability of effective advocacy if required. Unpublished research by the Women, Work and Policy Research Group in 2021 suggests this may particularly be the case for lower paid and casual workers as the Position Paper notes.

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***

Response

As the Commission notes in its Position Paper (pp. 57-58) it is important that a review of the *Fair Work Act Legislation Amendment (Secure Jobs, Better Pay) Act 2022* be conducted with a particular focus on the impact of the changes on carers, and that this review inform the development of reforms to carer leave.

- ***additional ways to support informal carers, beyond those discussed in this position paper.***

Response

Income support

We urge the integration of carer's leave with income support for carers. In Australia, new leave arrangements would need to be adequately integrated with the income support system. Particularly if the leave is unpaid, we urge the Productivity Commission to explore international models of providing assistance payments to carers during periods of unpaid leave to mitigate financial hardship. There are currently a number of barriers in the income support system for carers that would prohibit them from receiving Carer Payment while on unpaid leave to provide care:

- The carer and their partner must meet an income and assets test, which means that if one member of a couple took unpaid leave, they would only be able to draw on Carer Payment if their partner was on a low income and if they had low household assets. Currently a couple may only earn \$336.00 per fortnight before the taper rate begins to reduce the value of the fortnightly payment. The care recipient must also meet an income and assets test, which means that a carer who takes unpaid leave to care for a relative with income/assets that exceed the limits will not be entitled to Carer Payment during the leave period.
- Recipients of Carer Payment may only work up to 25 hours per week including travel time, which may place limitations on carers' capacity to receive Carer Payment if they are using unpaid leave flexibly to combine part time work and part time unpaid leave.
- 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.

- Recipients of Carer Payment (and Carer Allowance), and the person for whom they care, must both be ‘residents’ (i.e., citizens, permanent residents, or protected Special Category visa holders). They must both also be in Australia. This means that carers who are temporary residents, or who are citizens/permanent residents themselves but caring for someone who is not, would be entitled to unpaid leave in the NES but not entitled to Carer Payment while on leave. With 1 in 4 Australian residents²³ born overseas, many will have care responsibilities for relatives that are living in Australia on temporary visas or living abroad. Extended leaves will be particularly useful for groups with care recipients abroad,²⁴ yet Carer Payment will not be accessible to them.

Replacement/respite care

Appropriate replacement care has the potential to reduce the number of days a carer must take paid or unpaid leave. However currently, Australia’s aged and disability care, and respite care, systems are not designed in a way that supports carers to combine work and care. First, there are significant barriers in access to appropriate respite for carers. The reconfiguration of the disability and aged care systems – through the introduction of the NDIS in particular – made respite that met carers’ needs more difficult for many carers to access. The introduction of the Carer Gateway has improved things somewhat²⁵ by making respite available that is more focused on carers needs (rather than the needs of the older person or person with disability), but it can still be very difficult to find an appropriate, affordable, and flexible respite option. For those that do manage to access appropriate respite care, the services tend to be focused on facilitating short breaks for carers to focus on their health and wellbeing. It is not designed to provide the kind of time carers need to participate in paid work. This was exacerbated during the COVID-19 pandemic.²⁶ At the same time, home based aged and disability care services are not provided in such a way as they support carers to participate in paid work, such as providing alternative care for the blocks of time required to participate in paid work.²⁷

Recommendations

- Extensively investigate the provision of respite care to informal carers of older relatives and people with a disability or chronic illness who are living at home to see to what degree it is genuinely available. Currently the measure of unmet respite need

²³ Hamilton, M; Kintominas, A; Brennan, D (2018) The Temporary Sponsored Parent Visa, Migrant Grandparents and Transnational Family Life, Markets Migration and Care Project Policy Brief No. 2, October 2018.

²⁴ Hamilton, M; Kintominas, A; Brennan, D (2018) The Temporary Sponsored Parent Visa, Migrant Grandparents and Transnational Family Life, Markets Migration and Care Project Policy Brief No. 2, October 2018

²⁵ Carer Respite Alliance (2021) Repositioning Respite within Consumer Directed Care Systems. Carers NSW: Sydney. <https://www.carersnsw.org.au/uploads/main/Files/5.About-us/News/Repositioning-respite-within-consumer-directed-service-systems.pdf>

²⁶ Hamilton, M., Giuntoli, G., Johnson, K., Kayess, R., & Fisher, K. R. (2016). Transitioning Australian Respite (SPRC Report 04/2016). Sydney: Social Policy Research Centre, UNSW Australia; Hamilton, M; Crawford, T; Thomson, C; Jeon, Y; Bassatt, K (2022) New directions in centre-based aged care in Australia: Responding to changing funding models and the COVID-19 pandemic, Australasian Journal on Ageing; Hamilton, M (2020) ‘Carers need respite from care. COVID-19’s limiting the options & pushing many to breaking point’, Women’s Agenda, 4 May 2020; Hamilton, M (2018) ‘Is the NDIS supporting carers into work?’, The Conversation, 2 October 2018.

²⁷ Hamilton, M., Giuntoli, G., Johnson, K., Kayess, R., & Fisher, K. R. (2016). Transitioning Australian Respite (SPRC Report 04/2016). Sydney: Social Policy Research Centre, UNSW Australia.

in the ABS Survey of Disability, Ageing and Carers (SDAC) is limited in what it is able to tell us. Consider updating the respite items in SDAC.

- More closely investigate the barriers to the provision of residential respite in residential aged care facilities and how they may be ameliorated.
- Examine opportunities for funding longer blocks of planned respite that enable informal carers to participate in paid work, or prepare for participation in paid work (i.e. training, job search)
- Consider the creation of a new provision for short-term cottage-style care to provide appropriate, predictable and guaranteed time off for informal carers, for up to 4 weeks per year.

Definitions of care and a carer

We agree that the definitions of care relationships in the National Employment Standards (Draft recommendation 2 and pp. 65 and 62) need improvement. *We support the recommendation made by Carers NSW in their submission in response to the PC Issues Paper that the definition in the NES be amended so that it is consistent with the definition in the Carer Recognition Act 2010 (Clth),* that 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”²⁸

We also suggest that the definition of care is expanded so that it is clear that taking a care recipient to an appointment such as a medical or financial one which can only be done during working hours, is eligible for paid and unpaid leave. The definition could be similar to the provision in the Fair Work Act 2009 for domestic and family violence leave, that ‘it is impractical for the employee to do that thing (to care in this case) outside the employee’s work hours.’²⁹ Although many employees may use flexible working arrangements to deal with these appointments, in situations where this may not be available or appropriate, this will be a useful addition especially as many employers already have such use.

Casuals

The Productivity Commission should consider methods of making new leave arrangements available to casual staff – regardless of whether it is paid or unpaid. Large numbers of carers are in casual work because of the flexibility it can provide³⁰ or because more secure work is not accessible to them, and any new carer leave provision should not exclude this group of carers. We note the recent amendments to the Fair Work Act 2009 enabling casuals to take advantage of paid domestic and family violence leave,³¹ and recommend that paid carers leave should also ultimately be extended to all employees including casuals.

²⁸ Carer Recognition Act 2010 (Clth)

²⁹ S. 106B (1) (c).

³⁰ Deloitte Access Economics (2020) *The value of informal care in 2020*. Carers Australia, p. 25.

³¹ See for example, the explanation by the Fair Work Ombudsman here:

<https://www.fairwork.gov.au/leave/family-and-domestic-violence-leave>

(Accessed 10 March 2023).