

Submission to the Inquiry by the House of Representatives Standing Committee on Employment, Workplace Relations, Skills and Training into the operation and adequacy of the National Employment Standards

Prepared by Dr Alexandra Heron (alexandra.heron@sydney.edu.au) and Professor Marian Baird (marian.baird@sydney.edu.au) of the University of Sydney Business School.

To: Dr Carina Garland MP, Chair
House of Representatives Standing Committee on Employment, Workplace Relations, Skills and Training's Inquiry into the National Employment Standards (NES)

TABLE OF CONTENTS

1. Summary
2. Introduction
3. Current arrangements
4. The nature of informal eldercare and the impact on work
5. The significance of informal eldercare
6. What is informal eldercare and who performs it
7. Issues with current arrangements for carer's leave
8. Unpaid parental leave
9. Recommendations

1. Summary

Marian Baird and Alexandra Heron are industrial relations scholars who have collaborated on many projects in the past on women and employment. They both work for the School of Work and Organisational Studies in the University of Sydney Business School. The focus of this submission is primarily on carer's leave and secondly, the eligibility criteria for unpaid parental leave.

We are making this submission because we consider the provision of informal eldercare is a nearly invisible issue in Australia. By informal eldercare we mean the various and varied forms of support provided informally to older Australians by family, friends and neighbours. However at least 20.5 percent of women aged 45-54 and 14 percent of men provide care to older Australians and those of younger ages with disability (ABS 2024a and Figure 2 below). We consider that the full range of support provision to older Australians is often not fully captured in datasets despite the increasing demand which informal eldercare makes on the time and energy of older workers and older women workers in particular (see section 6 below). As family sizes decline and family members live further apart, more will be demanded of informal eldercarers. Eldercares by workers will only increase as workers work till later in life and older Australians live longer and hope to do so in their own homes.

Carer's leave currently is 10 days paid personal/carer's leave for permanent employees for caring and personal sick leave purposes. It accrues during each year of employment and accumulates annually. Unpaid carer's leave at two days per occasion needed, is also available, including for casual employees, but permanent employees may not access it until their accumulated paid leave has been used up.

Carer's leave needs to be better designed (that is more adequate and relevant) for the growing informal eldercare which employees perform (for example, taking an older person to routine medical or financial appointments) to make it fit for purpose. This will also promote gender equality by enabling older women and men to remain in the workforce while performing a vital societal function and will enhance the sharing of eldercare more equally between women and men.

We argue for several changes to be made, the most significant being the following:

1. More paid carer's leave is needed. **We recommend** a separate and additional entitlement specifically for carer's leave of 10 paid days non-cumulative leave available at the start of employment and annually thereafter, in a way similar to paid family and domestic violence leave (FDVL). We also recommend that this is in addition to paid personal/carer's leave which should remain available for caring but should be more available for use for an employee's own ill health.
2. Expand the occasions when paid and unpaid leave may be taken. **We recommend** that carer's leave is available for caring needs which cannot be managed other than during working hours, again modelled on the provisions of paid FDVL. This should be additional to the current situation when such leave may be taken, that is for illness, injury and emergency.
3. **We make further complementary recommendations** in section 9 below, to accompany both these changes to provide greater inclusivity including of Indigenous kinship networks and families of choice (Productivity Commission 2023).

For unpaid parental leave, our main recommendation is that the employment qualification periods for this entitlement and for paid parental leave be made the same by being reduced to those for paid parental leave so as to remedy clearly inconsistent legislation, to increase parental rights and to avoid confusion.

2. Introduction

This submission relates to personal/carer's leave and briefly to the unpaid parental leave arrangements in the National Employment Standards (NES). We primarily focus on carer's leave, as it relates to informal eldercare. Some of our suggestions, however, may be applicable to the care of younger adults and children with and without disability. We suggest that carer's leave be increased and changed as to when it may be taken, to make it more appropriate for the informal eldercare which employees provide. The motivation for suggesting this is that government policy encourages workers to continue working till later in life (Commonwealth of Australia 2015) and for women to enter and remain in the workforce (Commonwealth of Australia 2023a) while encouraging older Australians to age in their own home as they prefer to do while they can (Productivity Commission 2011, Lehnert et al. 2019).

The same group of people who are urged to work longer, also provide support to ageing family and friends who are living longer lives. Policy changes to facilitate this support have largely focused on spurring employers to take on older workers or for older workers to train or to work for longer, for example, by postponing the age at which the Age Pension may be claimed (Baird, Hamilton and Heron 2024). Informal eldercare is becoming an increasingly pressing obligation affecting older

workers particularly as so many women remain in the workforce later in life (Baird and Heron 2020) when previously they would have left the workforce and looked after ageing relatives and friends (and grandchildren). Changes to carer's leave are needed to recognise this new reality.

Our submission relates to the Committee's Terms of Reference in relation to how fit for purpose carer's leave is, the objects of the Fair Work Act 2009 which include promoting gender equality and productivity and economic growth, and the adequacy and relevance of carer's leave for informal eldercare.

3. Current arrangements

Current arrangements for personal/carer's leave: the Fair Work Act 2009 provides:

- 10 days paid personal/carer's leave for permanent and fixed term employees (part time employees receive this pro rata) which accrues during each year of employment and accumulates annually. It is available to use up to the amount which has accumulated, that is there is no annual cap on usage;
- unpaid carer's leave at two days per occasion needed, is also available, including for casual employees;
- permanent employees may not access unpaid leave until their accumulated paid personal leave has been used up;
- paid and unpaid carer's leave is restricted to illness, injury and emergency in the same way as sick leave is;
- these leaves are also only available to care for specified family and household members.

Current arrangements for unpaid parental leave: the Fair Work Act 2009 provides:

- eligibility under the NES for unpaid parental leave, requires 12 months service with an employer (and the same for casual employees employed regularly and systematically and who reasonably expect to continue in their employment);¹

Current arrangements for paid parental leave: the Paid Parental Leave Act 2010 provides:

- eligibility for paid parental leave requires employees to be employed for:
 - '10 of the 13 months before the birth or adoption of your child, and
 - a minimum of 330 hours, around one day a week, in that 10 month period'.²

We draw on academic research and a dual organisational case study on the provision of informal eldercare by employees in two large Australian organisations undertaken as a doctoral thesis by Dr Alexandra Heron, supervised by Professor Baird. We also draw on Professor Baird's writing with colleagues on paid parental leave.

¹ Fair Work Ombudsman, Parental leave best practice guide at, <https://www.fairwork.gov.au/tools-and-resources/best-practice-guides/parental-leave#unpaid-parental-leave-under-the-fw-act>

downloaded 9 Feb 2026.

² Centrelink, meeting the work test,

<https://www.servicessaustralia.gov.au/work-requirements-for-parental-leave-pay?context=64479>

downloaded 9 Feb 2026.

4. The nature of informal eldercare and the impact on work

Informal eldercare involves unpaid assistance to family, friends and neighbours in their older years (Burch et al. 2019) and often comprises varied and quite small jobs (Bowes et al., 2020). Eldercare goes beyond personal intimate care and assistance to include preparing meals, shopping, doing laundry, and helping with 'life administration' (Commonwealth of Australia 2024, para 2.14) especially health and financial matters. Arranging formal care is seldom asked about in surveys, and caregiver travel time to reach a care recipient and monitoring how a care recipient is going, even less so (Ces et al. 2017). Emotional care and support whether by visits or phone calls is also a significant task in eldercare (Davey and Keeling 2004, Ahmed and Floro 2020). The American Time Use Survey has an eldercare module which records several forms of companionship provision (BLS 2025). Capturing emerging forms of care is needed in national surveys, such as identifying and resolving problems for an older person regarding their digital devices (Gautun and Bratt 2023). Although less frequently acknowledged, much informal eldercare continues when a care recipient is in residential aged care (Keefe and Fauncey 2000, Hainstock et al. 2017, Heron 2023).

Internationally, employment participation and hours at work seem to be adversely affected at about 20 hours weekly of informal caring (Rocard and Llena-Rozal 2022). This appears to be true in Australia too with the Australian Bureau of Statistics (ABS) (2024a) reporting 'Less than half (45.4%) of primary carers providing more than 40 hours of care per week were employed, compared with 71.6% of those providing less than 20 hours of care per week'. Nevertheless, caring for an older person less than 20 hours a week, organising health and care arrangements, legal and financial matters, taking an older person to an appointment or dropping in to see how they are or how formal care arrangements are going, is vital to older people's wellbeing. Maintaining employees in full-time work while undertaking informal eldercare will help gender equality and spread the care load more fairly. These activities also contribute to helping older people stay at home for longer. Such activities contribute to maintaining the formal care system and have a strong societal value. Even relatively small amounts of care including tasks which may be done (such as much managing of finances or personal visits) in a caregivers' own time, can take away from the time and effort needed for career progression and obtaining work-related bonuses.

In research on informal caring in the Victorian public service, the authors refer to how, 'Careers stagnated again [after child rearing] when respondents took on care for their parents, partners and family/community members. For some respondents, this exacerbated their economic precarity and financial insecurity, limiting their superannuation in particular' (Dangar et al. 2023, p.28). Heron (2023) also identified a range of adverse impacts on the career and financial prospects of informal eldercarers (particularly those also caring for children) such as not seeking promotions or accepting lower level positions confirming other research (for example, Bauer and Sousa-Poza 2015). Enabling those performing even relatively 'light' eldercare obligations to do this without loss of income when such matters must be attended to in work time would benefit informal eldercarers. It would help retain them in employment especially full-time roles which are so vital to reducing the gender gap in superannuation and to maintaining earnings and career progression. There is also some evidence that paid carer's leave may increase the provision of informal caring (Kim 2023 for those of 45 and over and particularly where care is less than daily; Skira 2015 for intensive caring). Additionally, being able to return to work after a period of leave (whether paid or unpaid) will reduce work-related gender inequalities.

5. The significance of informal eldercare

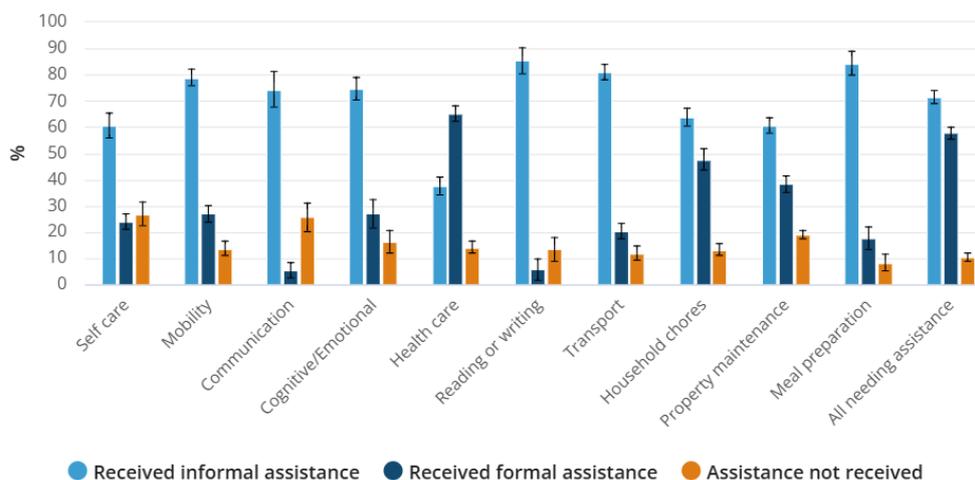
The importance of informal eldercare is profound for an ageing Australia. The Productivity Commission (2023) noted in its report on its examination of an extended unpaid carer’s leave,

‘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’ (p.iv).

Similar observations were made in the Productivity Commission (2011) report on caring for older Australians. Rocard and Llana-Nozal (2022) draw a similar conclusion about the importance of informal care in Europe. Population ageing has combined with people having fewer children, and families frequently living further apart. Women, who still perform the majority of informal care (see Figure 2 below) during most working age cohorts, are now working more and longer. These factors reduce the availability of informal eldercarers to provide support for older family and friends. Yet as Figure 1 shows informal care continues to be essential for those with disability and older Australians.

ABS (2024a) shows nearly 12 percent of the adult population (11.9 percent, an increase from 10.8 percent in 2018) provided informal care for an adult or child with a disability or an older person (of 65 and over) in 2022. Figure 1 provides a picture of where formal and informal care are distributed, the extent of unmet need and how much reliance there is on informal care. This is the case even for what the ABS (2024a,b) Survey of Disability, Ageing and Caring (SDAC) refers to as the core activities of self-care, mobility and communication. Self-care involves personal assistance such as helping someone shower and dress, mobility involves helping for example, someone to move around (including being seated and getting out of a chair) and help with transport. Communication involves needing assistance with comprehending and being comprehended by others in their own language. The SDAC also collects information on non-core activities such as a range of health care assistance, transporting someone, helping with paperwork, household jobs, a number of property maintenance items, preparing meals, helping people deal with their feelings, and assisting people maintain friendships and thinking through decisions (ABS 2024b).

Figure 1: Persons aged 65 years and over (living in households) who needed assistance with specific activities, assistance received by provider type, 2022



Source: ABS (2024a) Disability, Ageing and Carers, Australia: Summary of Findings

The principal purposes of the SDAC are to provide data about those with disability, those of 65 and more, and those who are *primary* carers³ (our emphasis). Primary (and secondary) carers are those helping with core, and so often also non-core, activities while 'other' carers include those under 15 helping with either core or non-core activities and also all those helping with non-core activities only who cannot be primary carers in SDAC (ABS 2024b). Much informal eldercare, however, does not involve core activities and some of this unpaid care work may not be captured by non-core activities.⁴ For example, companionship, travelling to and from a care recipient and assistance with an older person's use of their own digital devices are not asked about expressly. It is also uncertain whether arranging appointments, accompanying someone to such appointments, discussing health and financial advice, budgeting and monitoring formal care would be included by survey respondents under the non-core activity questions, such as health, or reading and writing which involves 'checking bills or bank statements, writing letters, filling in forms' (ABS 2024b). It is unclear how far data collections provide for the full range of eldercare supports provided informally (ABS 2024a,b, Household Income and Labour Dynamics Survey (HILDA) 2025). This may result in an underestimation of its extent, explored in section 6.

6. Who performs informal eldercare

Eldercare remains a gendered issue and is also frequently undertaken by older age groups (45-64) in Australia and overseas (ABS 2024a, Rocard and Llena-Nozal 2022, BLS 2025). Many informal eldercarers will also be in employment and continuing to work till later in life, and this is particularly true of women whose working lives have extended in the past 20-30 years (Baird and Heron 2020, Chomik and Khan 2021). About 12-17 percent of the adult population perform informal care here and in comparable countries. In Australia, as discussed above, informal care of those with a disability and older people is undertaken by nearly 12 percent of the population (ABS 2024a). In Europe there are varying estimates up to 17 percent (European Commission 2021). Details of informal eldercare by itself are collected in the US, where 14 percent perform eldercare, age 15 on (BLS 2025) which BLS (2025) finds increases to 27.9 percent for women aged 55-64 (for men the equivalent figure is 20.2 percent).

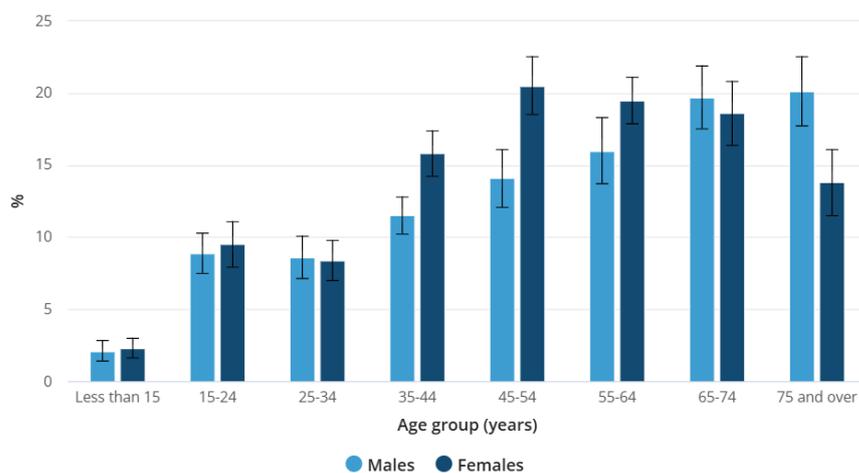
For the age group 50-64, Schirmer (2017) found nearly half that population provided parental eldercare in Australia's regions. Australian carers between 50 and 60, were probably providing care to a parent (Chomik and MacLennan 2014, citing Booth and Rioseco 2013). Using different measures of informal eldercare can result in different estimates: this matters for understanding the amount of support and care informal eldercarers contribute (Rocard and Llena-Rozal 2022). For example, in Australia, Cheng, Jepsen and Wang (2020) find between 2 and 3.5% of employees undertake informal eldercare, using data from HILDA with a more limited definition of informal eldercare (similar to the ABS (2024b) definition of core activities) and in this analysis restricted to parents only. Skinner and

³ A primary carer 'is aged 15 years or over; and provides the most informal assistance to a person with one or more disabilities, with one or more of the core activities of mobility, self-care or communication, and the assistance is ongoing or likely to be ongoing for 6 months or more (ASB 2024b).

⁴ Which depends on a survey respondent's understanding of a question.

Pocock (2014) used a broad one, examining all eldercaring relationships and found nearly 19 percent of employees and contractors provided this.

Figure 2: Proportion of all persons who provide informal care, by age and sex, 2022



Source: ABS (2024a) Disability, Ageing and Carers, Australia: Summary of Findings

In Australia in 2022 (ABS 2024a) more women in older age groups provided informal care than men. Those aged 45-54 (14% of men and 20.5% of women) and the 55-64 age group (16% men and 19.5% women) undertook informal care of older Australians and adults and children with a disability.⁵ In 2016, in Australia, just over a fifth of full-time women workers of 55-59 and nearly a quarter of part timers cared for an adult with some additionally engaged in childcare (male equivalent figures were 12 percent and 15 percent) (Chomik and Khan 2021). A similar situation occurs in the USA (BLS 2025) and in the European Union (European Commission 2021). Men tend to perform more care over 65. There are also an increasing number of eldercarers in younger age groups as people have children later in life. This is shown by the data on primary carers (4.5 percent of the population) in ABS (2024a). Though the number of informal carers is smaller in younger age groups (25-44), a higher proportion of women aged 25-44 care for a parent (63.6 percent) than for a spouse or a child. For men of this age the figure is 18.4 percent care for a parent.⁶ At ages 45-64 over a third of women (36.9 percent) engage in care for parents, slightly lower than for a child and much less than for a partner. Data for all carers by relationship or connection to the care recipient is not collected by the ABS in its Survey of Disability, Ageing and Caring (ABS 2024a.b). However, caring for an older relative or friend is likely to be significant for all carers including for older workers.

7. Issues with current arrangements for carer's leave

A number of problems exist with carer's leave in its current form, which we examine below before making specific recommendations for consideration by the Committee. These problems were inherent in how the provisions were originally created. Carer's leave has changed little in the past 20-

⁵ The difference to the American figures referred to above could result from a number of factors including a difference in how informal care is counted.

⁶ The statistics for men's informal care for spouses and children are much higher, than for care of parents but the ABS advises these need to be used with caution.

30 years and failed to keep pace with societal change. We draw on a number of reports which have urged alterations, to support our recommendations. Historically, carer's leave emerged from paid sick leave which had become common in awards for permanent employees during the 20th century. In 1993 the Australian Council of Trade Unions (ACTU) made a test case application which resulted in decisions in 1994 and 1995.⁷ These made paid sick leave available for a number of caring purposes to a limited range of people. The ACTU had originally sought a separate standalone five paid days for this purpose which did not accumulate annually and excluded casual employees (Weeks 1995). Together the decisions' impact meant that paid sick leave (aggregated with bereavement leave) was extended for use in the care or support of household or close family members who fell ill to an annual limit of five days. Indigenous kinship ties were not recognised as the ACTU had proposed (1995 decision, p.16) nor was paid leave extended to certain more regular casuals as the Human Rights and Equal Opportunities Commission (HREOC) had suggested (1994 decision, pp.11, 79). Some changes occurred in the following 10 years, including codifying the entitlement within legislation. The test cases mentioned above did not provide for unpaid carer's leave despite the ACTU advocating this. A further test case resulted in an agreement in 2004⁸ making available unpaid carer's leave of two days per occasion needed, once an employee had exhausted their accumulated paid leave and providing this also to casuals.

1. No specific allowance for paid carer's leave is available which is separate from paid sick leave.

The current arrangement for carer's leave where an annual allowance is made which also includes sick/personal leave means that leave for both purposes can be inadequate. This is particularly the case for older workers who are more likely to need their sick leave to attend to their own health and are more likely to have informal care to attend to. Additionally, the combination of the two types of leave may discriminate indirectly⁹ against carers and women (Murray 2005). Changes in the amount of carer's/personal leave and separating the two leaves has been proposed in reports made over the past 20 years or so. Examples include those set out below.

a) The ACTU's test case application sought five days annually for carer's leave, which did not accumulate from year to year (see above). The combination of leaves was decided at this time. Unpaid leave is very brief as described above and has remained in this format for over 20 years.

b) The predecessor to the Australian Human Rights Commission (AHRC), the Human Rights and Equal Opportunity Commission (HREOC) published a report after extensive consultations recommending that personal/carer's leave should include an extra 10 days which did not accumulate annually.

'With projected care needs set to increase in line withdemographic change, older workers will increasingly be called upon to undertake unpaid care work, which for many will overlap with their longer working lives' (HREOC 2007, p. 85)

HREOC (2007) recommended for inclusion in the then statutory arrangements:

'a) That the Personal/Carer's Leave Standard be increased from 10 days to 20 days per

⁷ *Family Leave Test Case – November (1994)* 57 IR 121 and *Personal/Carer's Leave Test Case – Stage 2 – November (1995)* 62 IR 48.

⁸ From the conciliation on the *Family Provisions Test Case* (2005) 143 IR 245, see Appendix 2.

⁹ Indirect discrimination occurs if rules or policies generally applicable are particularly disadvantageous to those who have a characteristic protected in their jurisdiction unless such treatment can be justified under the relevant legislation. Combining sick and carer's leave may discriminate against women and carers.

annum with 10 days to be non-accumulative.

b) That the Australian Government consider introducing a new 12 month unpaid Carer's Leave Standard to be made available to employees who need to attend to the care of a seriously or terminally ill dependent. Like the Parental Leave Standard, this new Standard should be job protected and available to employees who have 12 months continuous service' (p.86, HREOC 2007).

c) The report of the Inquiry into Better Support for Carers *Who Cares?* conducted by the House of Representatives Standing Committee on Family, Community, Housing and Youth (SCFCHY) in 2009 (Commonwealth of Australia 2009) proposed the federal Government look into increasing paid and unpaid leave allowances for employees. Citing HREOC (which had made a similar submission to the Committee to that in its report noted above), the Committee urged the federal Government,

a) 'to evaluate the practicality of extending the NES covering employees' entitlements to personal/carer's leave and compassionate leave contained in the Fair Work Act 2009 to increase the minimum number of days of paid personal/carer leave to which an employee is entitled, and
b) provide an entitlement to a specified maximum amount of unpaid carer's leave to allow a carer to care for a seriously or terminally ill dependent' (Commonwealth of Australia, 2009, para 7.63).

It was concerned about recommending changes to paid and unpaid leave unless there was 'a full analysis of [the] economic impact or practicality' of doing this (Commonwealth of Australia, 2009, para 7.63).

d) The AHRC in its report, *Investing in Care: Recognising and valuing those who care* (AHRC 2013) suggested that reform choices included separating leave for caring from personal/sick leave, that eligibility for leave should extend to all employees and those in kinship relationships, and palliative care leave should be provided with a right to return to an employee's original job. (AHRC 2013, vol. 1, p. 43). It also suggested that the government via an independent body investigate a 'job protected unpaid employment break of up to 12 months, across the life course, to provide care for a person with disability or illness or frailty due to age or for palliative care' (AHRC 2013, p.14). The report also suggested considering payments to employers if extra carer's leave was legislated

e) The Productivity Commission (2023) recommended the federal government assess if there would be overall societal benefits in separating paid carer's leave from sick leave and also review its amount as currently there may be too little sick leave should a carer need this for themselves. It also recommended enabling employees to choose whether to use paid or unpaid carer's leave without first having to exhaust all their paid personal/carer's leave prior to accessing unpaid carer's leave (recommendations 4 and 5 pp.10-11).

f) The Senate in the final report of its Select Committee on Work and Care (Commonwealth of Australia 2023) also recommended (Recommendation 18, p.xvii) that the federal Government examine whether personal/carer's leave needed improving and if separate arrangements should be made for carer's leave.

2. Employees' right to carer's leave is limited: proposals for change

2 a) The carer's leave NES provision only enables employees to take paid and unpaid time off work where a care recipient is ill, injured or facing an emergency.¹⁰

This is the same formula as when an employee may take sick leave. It is not broad enough to cover the many informal eldercare tasks frequently undertaken by employees. Two large Australian employers (at least) (Heron 2023) enable (informally) the extension of paid carer's leave to cover taking a care recipient for a health appointment (and a financial one) and to move them into residential aged care. Heron (2023) found employees valued their organisations' extension of carer's leave. However, informal extensions such as these, even if known to employees, will remain discretionary rather than an entitlement to such leave without statutory change. The Productivity Commission (2023) refers to Carers NSW making a similar point (p.79).

Carer's leave needs to be appropriate throughout the life course (HREOC 2007) as informal eldercare encompasses a wider range of care tasks and support (as outlined above) than helping someone when they have fallen ill, are injured or during an emergency. As the Women Lawyers of Queensland submission (to the Productivity Commission) stated, 'Ageing is not an illness, injury, or emergency' (Productivity Commission 2023, p.79) indicating the deficiencies of that formula for informal eldercare. Workers face a range of potential informal eldercare obligations, for example, accompanying a care recipient during usual working hours to appointments or else to undertake matters for them (for example interviewing formal care options). A recognition of the need to have a wider definition of when carer's leave might be used, occurred in Commonwealth of Australia 2009 where the ACTU submission was referred to. It stated current carer's leave,

'... narrowly construes the range of situations for which employees with caring responsibilities need approved leave of absence. For example, routine medical appointments, general assistance such as shopping or travel, assistance with financial or legal arrangements and so on should be able to be counted as legitimate aspects of providing care and support to a family or household member' (p.211).

The Productivity Commission (2023) included in its Recommendation 4 (p.10) that as well as the matters noted above, the federal Government should also consider when paid carer's leave should be available, to see if there would be 'net benefits to the community' (p.10) by expanding its availability. They noted that leave currently might not be available for 'assistance with everyday activities or to organise formal care' (p.10). We propose that the formula used for when paid family and domestic violence leave may be taken under the NES, be replicated here (replacing 'is experiencing domestic violence' with a need to provide care, support or assistance). That provision states leave may be used where:

- (a) the employee is experiencing family and domestic violence; and
- (b) the employee needs to do something to deal with the impact of the family and domestic violence; and
- (c) it is impractical for the employee to do that thing outside the employee's work hours.¹¹

We recommend that this change be adopted and that leave for illness, injury and emergency should be kept. We propose additional non-cumulative leave for carers and access to the combined leave (expanded as proposed above) be continued.

¹⁰ S.97(b)(i) and (ii) Fair Work Act 2009.

¹¹ S.106B(1)(b) and (c) Fair Work Act 2009

While flexible working arrangements (FWA) can be invaluable in assisting informal eldercarers to undertake a number of care responsibilities not all workplaces do or can make these available and not all eldercare responsibilities can be discharged by their use. The Productivity Commission (2023) was positive about the impact of FWA for informal eldercare, particularly the new right to arbitration in the Secure Jobs Better Pay (SJBPA) Act 2022. This provides that the Fair Work Commission can make arbitrated orders in some circumstances, including in some situations where a flexible working request has been turned down.¹² Recent ABS data (ABS 2025a) however, reports that FWA in an employee's main job are slightly down on 2015 and Charlesworth et al. (2026) report that a number of other problems may exist with arbitrating such requests

2b) Carer's leave only provides for a restricted number of people (close family or household members) for whom leave (paid and unpaid) may be taken.¹³ This definition of the relationships which enable carer's leave to be taken conflicts with the wider definition in the Carers Recognition Act 2010 (Cth) (CRA). The CRA encompasses anyone who is a carer of defined groups of people regardless of family or household relationship. Commonwealth of Australia 2024 recommended expanding the defined group of care recipients to a limited extent, see Recommendation 1 (p.xv) which suggests changing from requiring a care recipient to be 'frail and aged' to 'frail and/or aged' and adding 'experiencing alcohol or other drug dependence'. Productivity Commission (2023) also recommended that the federal government examine how care recipients are currently defined in the NES to 'better reflect the diverse caring relationships of Australian families, friends and communities' including Indigenous kinship relationships (recommendation 3, p.10).

We recommend below that all employees have the right to an additional non-cumulative annual allowance of paid carer's leave, available at the start of employment and then annually, relying on the longstanding evidentiary provision in the Fair Work Act 2009 to protect employers from unjustified claims. This states,

'An employee who has given his or her employer notice of the taking of leave under this Division must, if required by the employer, give the employer evidence that would satisfy a reasonable person that:

(a) if it is paid personal/carer's leave--the leave is taken for a reason specified'¹⁴

Tying a definition of who may seek carer's leave to the type of issue a care recipient has may result in disagreements for example as to who qualifies as 'aged'. It may also result in intrusive demands for employees to evidence exactly what a care recipient's issue is. Expressly recognising that care recipients may have several carers as recommended in Commonwealth of Australia (2024) is also essential.

3. Unpaid leave

The Productivity Commission (2023) examined the case for an extended unpaid carer's leave following the then federal Government's referral to it of this issue following a recommendation by the Royal Commission into Aged Care Quality and Safety (Royal Commission 2021). The Productivity

¹² Fair Work Ombudsman, 'Requests for flexible working arrangements fact sheet'

<https://www.fairwork.gov.au/tools-and-resources/fact-sheets/minimum-workplace-entitlements/requests-for-flexible-working-arrangements> (downloaded 25 February 2026).

¹³ S.97(b) Fair Work Act 2009 which excludes example an aunt or uncle unless they are a household member.

¹⁴ S.107(3)(a) Fair Work Act 2009.

Commission was unenthusiastic about creating this sort of leave. It provided a relatively inflexible model (1-12 months on four weeks' notice or as soon as possible, a further 12 months to be available, for all employees with 12 months service, employee stating for how long the leave was sought on application, evidence to be in line with other NES requirements) but it did not recommend that such an entitlement be created. It pointed out its design would not assist those needing short-term care leave from time to time.

The Productivity Commission found the extended leave they proposed would help some informal eldercarers but 'the number of carers who would benefit would be small and the net benefits to the community are expected to be modest at best' (Productivity Commission 2023, p.4). Of the small number whom they calculated would use an unpaid carer's leave of 1-12 months (7- 17,000 working carers) only about half would come back to their jobs not much increasing labour supply. We would suggest that a large number of those returning would be women whom such a right would benefit. As the Productivity Commission notes, adequate income while caring is the paramount need for informal eldercarers which can be addressed by increasing the amount of paid carer's leave. Nevertheless, we suggest that it is worth the Committee considering a flexible extended unpaid carer's leave, particularly as such arrangements are available for unpaid parental leave. Equity suggests that this should occur for carers of older people too, enhancing their choices especially as they might otherwise find it hard to re-enter the labour market if they left to provide care, particularly if they are older. Government could also consider paying a proportion of employers' costs for the availability of such leave given the society-wide benefits where it is taken up especially as the Productivity Commission (2023) indicates 'the costs for the average business [would] outweigh the benefits' (p.3). However, the low predicted take up of an unpaid leave entitlement would not make this arrangement a burden for the vast majority of businesses.

Evaluation of the impact of such a leave would be invaluable.

4. Casual employees

We understand that casual employees are outside the remit of the Terms of Reference of the Committee, even though they make up a fifth of employees (ABS 2025b). We model our principal recommendation below on an NES right (that to paid FDVL) which covers casual employees and does not require them to have had 12 months prior regular and systematic employment and reasonably expect to continue in their job. We respectfully suggest that this is included in any recommendation that the Committee decides to include in its report in relation to improving carer's leave.

8. Unpaid parental leave

Our concerns about the unpaid parental leave arrangements in the NES are that they do not provide the same qualifying period as is set out for paid parental leave in the Paid Parental Leave Act 2010. This can cause inequity between employees and injustice in individual cases. We note that the UK has made unpaid parental leave a right from the start of employment¹⁵ and although it is commonly used in different circumstances to the Australian entitlement, we suggest that the Committee

¹⁵ See Advisory, Conciliation and Arbitration Service, <https://www.acas.org.uk/parental-leave> (downloaded 18 February 2026).

consider recommending the NES entitlement to unpaid parental leave be made a right from the start of employment as well.

9. Recommendations

1. Expanding the amount of available paid carer's leave and situations when it is available.

This could be achieved by adapting the wording of the right to paid FDVL in the NES. Accordingly, we recommend:

- that an additional non-cumulative 10 day annual allowance be made for a specific paid carer's leave allowance,
- for situations when a caring matter must be dealt with and this can only be done during working time, as well as for illness, injury and emergency,
- a right from the start of employment,¹⁶
- available in full to part-time and full-time employees,¹⁷
- accumulated paid personal/carer's leave should continue to be available as currently for use by eligible employees for illness, injury and emergency but with a specific expansion for managing matters which can only be done in working hours.

2. A provision should be created for an **extended period of unpaid leave for caring purposes**.

Although the Productivity Commission in its inquiry into a proposal for this, found only modest benefits, would provide a wider range of choice to informal eldercarers linked to job security.

3. **Carer's leave should be available to all (including casual) employees** for caring for all family and friends subject to the usual evidence requirements. The need for informal eldercare will become greater as families shrink and become more dispersed. This will allow, as the Productivity Commission (2023) notes, for families of choice and Indigenous kinship ties.

4. Express provision that care recipients may have multiple carers should be made.

5. **We endorse the recommendation made by Emerita Professor Charlesworth and Dr Iain Campbell for improved information statements to be provided to employees, to be termed a Statement of Terms and Working Conditions (STWC)**. This would ensure that access to carer's leave is widely known about by employees. Where employees do not know of leave arrangements, they are less likely to use them (Bittman et al. 2004, Bernard and Phillips 2007, OECD 2020).

6. **We recommend that changes made to the NES should be subject to a major advertising campaigns by government**. Heron (2023) found internal employer publicity for organisational flexible working arrangements policy was very successful with company policy better known than the statutory right. This suggests the importance of awareness campaigns in highlighting the availability of rights, whether statutory or organisational, particularly when these change.

¹⁶ S.106A(2)(a) Fair Work Act 2009.

¹⁷ S.106A(2)(c) Fair Work Act 2009.

7. Changes to carer’s leave arrangements in the NES should be evaluated for their effectiveness at facilitating informal care.

8. We recommend that the entitlement to unpaid parental leave be made a right from the start of employment, or at the very least, match the shorter eligibility period for paid parental leave.

REFERENCES

Ahmed, T. and Floro, M.S., 2024, ‘Unpaid care to older persons and tradeoffs in time use: The experience of working-age women and men in the US’, *Journal of Family and Economic Issues*, vol. 45(1), pp.71-87.

Australian Bureau of Statistics (ABS) 2025a, ‘Working Arrangements’, August 2025, Catalogue 6336.0.

Australian Bureau of Statistics (ABS) 2025b ‘Job Mobility’ February 2025, Catalogue 6223.0.

Australian Bureau of Statistics (ABS) 2024a ‘Survey of disability, ageing and carers, Australia: summary of findings’,

<https://www.abs.gov.au/statistics/health/disability/disability-ageing-and-carers-australia-summary-findings/latest-release#carers>

(downloaded 16 February 2026)

Australian Bureau of Statistics (ABS) 2024b ‘Survey of Disability, ageing and carers, Australia: Methodology’,

<https://www.abs.gov.au/methodologies/disability-ageing-and-carers-australia-summary-findings-methodology/2022>

(downloaded 16 February 2026)

Baird, M., Hamilton, M., Heron, A. 2024, ‘Multigenerational Workforces and the Public Policy Context’ in: Baird, M., Hamilton, M., Williams, A. (eds) *The Multigenerational Workforce*. Palgrave Macmillan, Singapore.

Baird, M & Heron, A 2019, ‘The life cycle of women’s employment in Australia and inequality markers’, in RD Lansbury, A Johnson & D Van den Broek (eds.), *Contemporary Issues in Work and Organisations: Actors and Institutions*, Routledge.

Bernard, M & Phillips, JE 2007, ‘Working carers of older adults: what helps and what hinders in juggling work and care?’, *Community, Work and Family*, vol. 10, no. 2, pp. 139–160.

Bittman, M, Fast, J, Fisher, K & Thomson C 2004, ‘Making the Invisible Visible: The Life and Time(s) of Informal Caregivers’, in N Folbre & M Bittman (eds.) *Family Time: The Social Organization of Care*, Routledge, London, pp. 69–89.

Booth, H & Rioseco, P 2013, *Older Australians providing informal care: Fact sheet 11*, National Seniors Productive Ageing Centre, Canberra.

Bowes, A, Dawson, A & Ashworth, R 2020, ‘Time for care: exploring time use by carers of older people’, *Ageing & Society*, vol. 40, no. 8, pp. 1735–1758.

Burch, KA, Dugan, AG & Barnes-Farrell, JL 2019, 'Understanding what eldercare means for employees and organizations: A review and recommendations for future research', *Work, Aging and Retirement*, vol. 5, no. 1, pp. 44–72.

Bureau of Labor Statistics, US Department of Labor 2025, *Unpaid Eldercare in the United States – 2023-24 data from the American Time Use Survey*, news release 25 September 2025.

Cès, S, Mello, JDA, Macq, J, Durme, TV, Declercq, A & Schmitz, O 2017, 'A systematic review of questionnaires used to measure the time spent on family care for frail older people', *International Journal of Care and Caring*, vol. 1, no. 2, pp. 227–245.

Charlesworth S, Cooper R, Heron A and Vineburg H (2026) *Obstacles to a Right to Flexible Work? Arbitrating rejections of requests for flexible working arrangement*, Presentation at the Association of Industrial Relations Academics of Australia and New Zealand (AIRAANZ) 2026 in Sydney on 28 Jan 2026.

Chomik, R & Khan, FJ 2021, *Tapping into Australia's ageing workforce: Insights from recent research*, Centre for Excellence in Population Ageing Research, Australian School of Business, UNSW, Sydney.

Commonwealth of Australia 2024, *Recognising, valuing and supporting unpaid carers: inquiry into the recognition of unpaid carers*, House of Representatives, Standing Committee on Social Policy and Legal Affairs, Canberra.

Commonwealth of Australia 2023a, *Working future: the Australian Government's White Paper on Jobs and Opportunity*, Canberra.

Commonwealth of Australia 2023b, *The Senate Select Committee on Work and Care Final Report*, Parliament of Australia, Canberra.

Commonwealth of Australia 2015, *Intergenerational report 2015: Australia in 2055*, Commonwealth of Australia, Canberra.

Commonwealth of Australia 2009, *Who Cares ...? Report of the inquiry into better support for carers*, House of Representatives Standing Committee on Family, Community, Housing and Youth, Canberra.

Dangar K., Gunawansa M., Blackham A., Ruppanner L., Gaze B., Ainsworth S., Churchill B., Costa Rueda L., and Patrick C., 2023, *Caring and workplace gender equality in the Public Sector in Victoria: Final Project Report*, University of Melbourne.

Davey, J. & Keeling, S. 2004, 'Combining work and eldercare: A neglected work-life balance issue', *Labour, Employment and Work in New Zealand*, pp. 267-273, Victoria University of Wellington.

Gautun, H. and Bratt, C., 2023, 'Help and care to older parents in the digital society', *Nordic Journal of Working life studies*.

Heron, A., 2023. *Love's labours lost from view: Eldercare and the conundrum for policy makers, employees and their workplaces* (Doctoral dissertation, University of Sydney).

Household Income and Labour Dynamics Survey (HILDA) 2025, *Questionnaires Wave 25*, <https://melbourneinstitute.unimelb.edu.au/hilda/for-data-users/questionnaires-and-fieldwork-materials#questionnaires>

Lehnert, T., Heuchert, M.A.X., Hussain, K. and Koenig, H.H., 2019, 'Stated preferences for long-term care: a literature review', *Ageing & Society*, vol. 39(9), pp.1873-1913.

Organisation for Economic Co-operation and Development (OECD) 2020, *Who Cares? Attracting and Retaining Care Workers for the Elderly*, OECD Health Policy Studies, OECD Publishing, Paris.

Productivity Commission 2023, *A case for an extended unpaid carer's leave entitlement*, Inquiry Report no. 101, Canberra.

Productivity Commission 2011, *Caring for Older Australians*, Report No. 53, Final Inquiry Report, Canberra.

Weeks, P 1995, 'Major tribunal decisions in 1994', *Journal of Industrial Relations*, vol. 37, no. 1, pp. 95-118.