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The Executive Director
Australian Law Reform Commission

Re: Grey Areas - Age Barriers to Work in Commonwealth Laws
Discussion Paper

Thank you for the opportunity to comment on your discussion paper.

There are a number of points where your discussion intersects with proposals that Carers Australia have recently suggested in relation to all carers. These include: the right to request flexible work; other changes to the Fair Work Act leave provisions to more appropriately reflect carers needs; and the actual administration of the '25 hour rule'.

As you have noted, the likelihood of a person providing care to someone else increases with age.¹ However, the intensity of care can also be very significant for young carers and many other carers. Carers Australia supports your call to amend s65 of the Fair Work Act 2009 (Cth) to extend the right to request flexible working arrangements to all employees who have caring responsibilities.² However, the current arrangements that generally require 12 months continuous employment with the employer before having a right to request flexible working arrangements also seriously restricts the capacity of carers wishing to re-enter the workforce while maintaining their caring role.

We support Proposal 2-6 concerning the development of guidance for negotiating and implementing flexible working arrangements, but again would want to extend these to all workers. I have attached a copy of the Carers Australia submission to the Fair Work Act Review for your information. Please note that we suggested not only extending the coverage of s65, but also inserting a

¹ Australian Law Reform Commission, *Grey Areas – Age Barriers to Work in Commonwealth Laws* p49.
² Ibid – Proposal 2-5.

definition of carer into s12 and reviewing the paid and unpaid personal/carer's leave provisions of the Fair Work Act to more accurately reflect the actual needs of carers.

There are indications that the suggestion to extend the scope of s65 will be seriously considered.³ However, our comments in relation to the leave provisions appear to have been brushed aside without serious consideration of the difficulties these currently cause for many carers.⁴

In relation to the '25 hour rule' and the extent of care required to qualify for Carer Payment, the Guide to Social Security Law is somewhat contradictory. Whilst the definition of 'constant care' refers to care being provided on a daily basis for the equivalent of an ordinary working day,⁵ there are also rules regarding a review of qualification if 'a carer ceases care for more than 25 hours per week to participate in training, education, employment or voluntary work'.⁶ Carers Australia supports your proposal 5-3. We think it is particularly important that the subtlety of this message is understood, administered and conveyed to customers by Centrelink.

As you have noted, the Guide also gives an example of employment within the home not impacting on carer payment,⁷ provided it can be easily interrupted to provide care and attention when required. Changes in the use of technology, particularly the widespread use of internet capacities open up a wide range of opportunities for carers to combine employment, training, volunteer work or educational pursuits from home with their ongoing caring responsibilities. Where such an arrangement is taken up, it has significant short and long-term benefits for the carer in allowing them to maintain a connection with the workforce, keep up skill levels, increase their educational qualifications and have an outside interest and the chance of interactions with a wider group of individuals. We support your proposal 5-4 to include additional examples of allowable activities and to give occasional increases in these hours for short periods.

³ Department of Education, Employment and Workplace Relations, *Towards more productive and equitable workplaces: An evaluation of the Fair Work legislation* http://www.deewr.gov.au/WorkplaceRelations/Policies/FairWorkActReview/Documents/Towards_more_productive_and_equitable_workplaces.pdf Recommendation 5, p99.

⁴ Ibid, paragraph 5.2.12, p 104.

⁵ Department of Families, Housing, Community Services, and Indigenous Affairs, *Guide to Social Security Law*, 1.1.C.310 http://guidesacts.fahcsia.gov.au/guides_acts/ssg/ssguide-1/ssguide-1.1/ssguide-1.1.c/ssguide-1.1.c.310.html

⁶ Ibid 3.6.4.70 http://guidesacts.fahcsia.gov.au/guides_acts/ssg/ssguide-3/ssguide-3.6/ssguide-3.6.4/ssguide-3.6.4.70.html

⁷ Ibid.

I do hope these comments will be useful.

Yours sincerely

A handwritten signature in blue ink that reads "Aresswell". The signature is written in a cursive style with a blue ink color.

ARA CRESSWELL
Chief Executive Officer

21 November 2012