



**Carers ACT response to the ACT Law Reform Advisory Council
Review of the *Discrimination Act 1991* (ACT)**

Community Consultation Paper

June 2014

Carers ACT acknowledges that modern day Canberra has been built on the traditional lands of the Ngunnawal people. We offer our respects to their Elders past and present, and celebrate the Ngunnawal people's living culture and valuable contribution to the ACT community.

Enquiries on this submission may be directed to:

Dee McGrath
Chief Executive Officer
T: 6296 9901
E: dee.mcgrath@carersact.org.au

Carers ACT
80 Beaurepaire Crescent
Holt ACT 2611
www.carersact.org.au

This document was prepared by:

Doris Kordes, Mental Health Carers Policy Officer, Carers ACT

©Carers ACT June 2014

Who is Carers ACT?

Carers ACT is a non-profit, community-based, incorporated association and registered charity dedicated to improving the lives of the estimated 43,000 carers living in the Australian Capital Territory.

These carers provide ongoing unpaid care for people with disabilities, mental illness, chronic conditions, who have palliative care needs, or who are aged and frail. Carers ACT currently provides direct support to around 8000 families through our counselling, information, respite support, education, social support and case coordination services. We continue to meet national accreditation standards for delivery of our services to carers at a high level.

Carers ACT has a constitutional mandate to represent the voices of carers to government and the wider community. We actively consult with a wide diversity of caring families on an ongoing basis to enable improved understanding of their needs, and enable better inclusion for them and the people they care for. Policy work in consultation, research and representation is kept separate from service delivery to ensure that the privacy of individual service recipients is respected. All carer participation in policy work is voluntary.

Carers ACT is a member of the National Network of Carers Associations, and works actively with other States and Territories to share knowledge and facilitate improved health and wellbeing outcomes for caring families.

Introduction

Carers ACT welcomes the opportunity to respond to the ACT Law Reform Advisory Council review of the *Discrimination Act 1991* (ACT). We commend the ACT Government for initiating an inquiry to take into consideration the scope and operation of the *Act*, including consideration of other developments in discrimination law in Australia, and for extending its terms of reference to consider and propose principles that could underpin complaint and enforcement mechanisms.

Carers ACT is the key organisation in the ACT providing specialist carer support services to the 43,000 carers in the ACT. We support carers through referral to services, provision of advocacy, counselling, information, respite, support, education, social support, and case coordination services. Our engagement with the many carers who have accessed our services over a period spanning more than 21 years and our membership of the national network of carers associations, have provided us with an evidence-based understanding of, and insights into, the interests and concerns of Australian carers. Accordingly, our response to the Community Consultation Paper prepared by the ACT Law Reform Advisory Council will focus on the question directly relevant to carers, in particular, Protected Attributes, Status as a parent or carer:

18. Should the *Discrimination Act's* existing attribute of 'status as a parent or carer' be amended? If so, how? For example, should the phrase 'status as a parent or carer' be replaced with 'family or carer responsibilities'?

The definition of 'carer' used in this submission is in accordance with the *Carer Recognition Act 2010* (Commonwealth) which states that:

(1) *For the purpose of this Act, 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.*¹

Workforce Participation of Carers

In 2007, Deakin University, Australian Unity, and Carers Australia collaborated on a project to measure indices of wellbeing among the Australian carer population.² The Survey Report notes that caring responsibilities impact on a person's ability to participate in the workforce:

- 75.5 per cent of the Australian population but only 59.9 per cent of carers were in full-time employment; and

¹http://www.comlaw.gov.au/Details/c2010a00123/Html/Text#_Toc276377311

²Robert A Cummins, Joan Hughes, Adrian Tomy, Adele Gibson, Jacqueline Woerner, and Lufanna Lai. 2007. *The Wellbeing of Australians - Carer Health and Wellbeing*, Australian Unity Wellbeing Index, Survey 17.1, Report 17.1, October 2007. Geelong: Deakin University.

- 74.2 per cent of Australians but only 57.4 per cent of carers were in part-time employment. 20.6% of carers were classified as unemployed.

The Report draws the reader's attention to the estimation by Access Economics (2005) of about \$1.36 billion of potential tax revenue that is lost in a year due to the limited workforce participation of carers.

One of the recommendations of the Report is that carers:

should be enabled to combine caring with their workforce participation, if this is their choice. We have recommended that the Federal Government address the need for carer-friendly workplaces, and that legislation is introduced Australia-wide to provide carers with the right to flexible working hours.

In its Research Report on the relationship between caring responsibilities and workforce participation, the Australian Human Rights Commission draws the reader's attention to the Australian Bureau of Statistics findings on the impact of caring in the workforce:

- when employed, female parents are more likely to work part-time than male parents; 66 per cent of employed females with children aged under six years worked part-time compared to 7 per cent of employed males with children of this age
- less than 23 per cent of female primary carers of people with disability, illness or frailty participate in full-time employment at any point across all age groups.³

In its submission to the Education, Employment and Workplace Relations Committee, Parliament of Australia Senate hearing on the *Fair Work Amendment Bill 2013*, Carers Victoria notes the disparity between carers and non-carers in workforce participation.⁴ This is attributed to the challenges of combining care responsibilities with paid employment, the lack of supports provided by employers such as flexible work arrangements, and the discrimination faced by carers. Carers Victoria notes that many employees are hesitant to disclose their caring role at job interviews, and many carers are forced to leave employment because they are not supported to meet their family or carer responsibilities.

Carers ACT is also aware of carers' struggles with employers, including their experiences of discrimination. The Carers ACT advocate has considerable experience in supporting carers who have had difficulties with their employers because of their caring role such as, for example, being passed over for promotion directly because their manager did not think they would be able to commit enough to it because they were a carer. This view is backed up by the Australian Unity Index Survey Report, which notes that 'career progression may be more difficult for carers than the general population' (p. 34).

³Australian Human Rights Commission. 2013. *Investing in care: Recognising and valuing those who care*, Volume 1: Research Report, pp. 5-6.

⁴<http://www.carersvictoria.org.au/file-assets/policy-submission/fair-work-amendment-bill-submission/>

One of the repercussions of discrimination in the workplace may be a reduced family income: reduced participation in the workforce impacts on household income and subsequently this will affect families' abilities to pay for household essentials and medical expenses. In the long-term, it will also impact on superannuation and other retirement savings.

The Carers Advocate has provided the following three case studies for consideration as part of this submission:

I certainly got the impression that it was best not to discuss caring difficulties at work because it could have negative consequences for you. I have worked with three carers who have had to address the difficulties with their managers due to their caring role. For one carer we were able to negotiate the use of leave to create a part time work situation while the carer thought about a long term plan and has since decided to leave work and re-train through long distance study. The other carer made the decision that she would become a full time carer to give her time and energy to her child rather than her inflexible employer.

The third carer had already created a flexible working arrangement but her manager had decided that she should be more available for out of hours shift work and in other workplaces (further from home) in fairness to other workers in the department. These difficult work conditions, the carer felt, were as a direct result of having time off to attend to her caring role because it was on her return that her employer consequently attempted to make her work conditions so difficult that she would have to leave. No flexibility was negotiable with the immediate manager and so this was escalated to senior managers who found that the original arrangement was fair and workable given that other employees enjoyed the variety of workplaces and the overtime of shift work. The manager maintained that he did not believe the carer would be able to perform long term.

In each case it was the belief of the employer that the carer would not be able to work and maintain their caring role long term and this was not based on the performance of any of the working carers just on their managers' assumptions.

It is not surprising that, as they strive to negotiate the competing priorities of caring and work roles, many carers may face worry and uncertainty about their jobs directly as a result of workplace inflexibility and the real possibility of discrimination. In a survey of 4,107 carers, it was found that of those carers who were in employment, one-third experienced worry about losing their job.⁵

Question 18: Status as a parent or carer

In its evaluation of reform options for recognising and valuing unpaid caring work, the Australian Human Rights Commission recommends that:

- Legislation should be strengthened to recognise unpaid caring responsibilities and contain enforceable obligations.
- Greater recognition of caring responsibilities through legislation is an important mechanism

⁵Australian Unity Wellbeing Index, Survey 17.1, Report 17.1, October 2007.

for supporting unpaid carers.⁶

In 2012, the Commission recommended to the Senate Legal and Constitutional Affairs Committee that 'the Human Rights and Anti-Discrimination Bill cover discrimination on the basis of family responsibilities in all areas of public life and that discrimination on the basis of carer responsibilities be expressly covered' (p. 7).⁷

One of the options flagged for reform by the Commission is to:

Extend the prohibition of discrimination on the ground of family responsibilities to include carer responsibilities in anti-discrimination legislation (p. 12).

The prohibition of discrimination against employees with family and carer responsibilities is covered under the Fair Work Act 2009:

Discriminatory terms must not be included

(1) *A modern award must not include terms that discriminate against an employee because of, or for reasons including, the employee's race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin* (Division 3, Terms of Modern Awards, p. 202)

In addition, under this *Act* an employee may request flexible working arrangements if the employee is a carer (within the meaning of the *Carer Recognition Act 2010*).

In conclusion, Carers ACT supports the amendment of the attribute of 'status as a parent or carer' to 'family or caring responsibilities' on the following grounds:

- the term 'status' denotes a type of position whereas the term 'responsibilities' denotes the agency and activities that arise out of the role of being a parent or carer. As noted in the Consultation Paper, the *Discrimination Act 1991* (ACT) may 'fail to protect a person who is discriminated against because they have to attend to the *responsibilities* that flow from that status' (p.29)
- the amendment is in line with the reform recommendations outlined by the Australian Human Rights Commission (2013)
- the amendment is in line with the provisions listed under the *Fair Work Act 2009*.

⁶Australian Human Rights Commission. 2013. *Investing in care: Recognising and valuing those who care*, volume 1: Research Report, p. 6.

⁷As noted in the ACT Law Reform Council Consultation Paper, the Human Rights and Anti-Discrimination Bill continues to remain under consideration.