



Older Women's Network NSW Inc. submission to:

Australian Law Reform Commission

Grey Areas— Age Barriers to Work in Commonwealth Laws

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The Older Women's Network NSW Inc. (OWN NSW) welcomes the opportunity to respond to the important issues raised in the Australian Law Reform Commission Issues Paper on barriers to older people and employment. We are particularly concerned about the barriers experienced by older women, and the cumulative and structural discrimination impacting on capacity and increasing vulnerability to poverty, social exclusion and homelessness.

This submission is divided into three sections, Section 1 discusses the framework for analysis, Section 2 examines older women and the barriers and opportunities to employment and Section 3 focuses on some strategies for improving capacity.

Section 1 Framework for analysis

A gendered difference in ageing

OWN NSW adopts the principle that ageing is experienced differently according to gender and that good policy and legal protection is based on an understanding of this difference. This submission focuses on several 'grey areas' of particular concern to older women and utilises a gendered analysis. The World Health Organisation for example, proposes policy-makers apply a dual perspective to their decisions that takes both gender and age into account to 'systematically eliminate inequities based on gender and age and their interaction with other factors such as race, ethnicity, culture, religion, disability, socioeconomic status and geographic location' (World Health Organisation, 2007:7).

Two recent reports adopt this approach. The first report, *The Disappearing Age* (McFerran, 2008) criticized the failure of the domestic violence sector to identify the vulnerability of older women to violence. The report also criticised the failure of the aged sector to identify the different experiences of violence between older women and men. Similarly, in the report *It Could be You; female, single, older and homeless* (McFerran, 2010) OWN NSW criticized the failure of housing and homeless policy to consider the difference experiences

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between the genders, leading to a failure to anticipate the accommodation risk to ageing single women, particularly as a result of losing their jobs.

The differences between older men and older women are stark. To paraphrase the Australian Human Rights Commission (Cerise et al 2009) unlike most men, most women accumulate poverty over their lifetime. That there is 'diversity between the life experiences of older men and women' has been recognised by the Advisory Panel on the Economic Potential of Senior Australians in their Ageing Agenda (2011:7).

Capacity as a Principle

We would agree with the principles proposed by the ALRC but would add one further principle, namely capacity. We understand capacity to operate on a number of levels, including capacity to continue in employment and capacity to protect oneself from discrimination and adverse treatment. This principle should specifically apply to women in lower skilled and less secure employment. The principle of capacity, we believe, was demonstrated in our report on older women at risk of homelessness.

When consulting on the issue of violence against older women, the homeless sector in NSW brought to our attention their concerns with the rising numbers of older women homeless for the first time, and seeking access to the very limited support provided by the sector for older women. Australian crisis accommodation provision has historically been focused on younger women with dependent children, younger people and homeless men. There have been no funded services for older women. Consequently, the finding that older women were outnumbering older men in crisis accommodation is all the more remarkable, and suggest a real failing in our understanding of risk and in our future planning for the emerging homeless populations.

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Losing the job: Occupational health crisis

The literature review for the report, *It Could be You; female, single, older and homeless* (McFerran 2010) suggested that the economic impact of divorce often results in women falling out of home ownership, being consigned to part-time work in order to care for dependent children, older people and those with disability and being concentrated in low paying gendered work. When these conditions are coupled with the mismatch of affordable housing supply for single people the result is large numbers of ageing, single women renters being at real risk of homelessness. Further, as interviews with a number of older homeless women revealed, the key trigger for homelessness was losing their jobs.

The most common experience was of a long working life in factories, service industries or administration, and that this type of work often contributed to an occupational health crisis for women in their forties or fifties. This crisis then seriously affected their capacity to continue working.

Health in ageing is clearly a critical factor in remaining productively employed. The evidence is that the health of many mid-aged women up to the retirement years will remain good and may even be improving.

In the Women's Health Longitudinal studies (Department of Health and Ageing 2011) 87percent of women aged 59-64 said their health was good to excellent, with the majority reducing their levels of 'vigorous' activities such as strenuous sports (and the attendant injuries requiring time off work) but maintaining moderate activities or sports. Indeed, there is evidence that mid-age women (aged 45-60) are increasing their physical activity: 'Life events associated with mid-age women (45-60) *increasing* their physical activity included a major personal achievement, retirement, and death of a spouse' (Brown *et al*, 2007)

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As the majority of women interviewed for *It Could be You; female, single, older and homeless* (McFerran, 2010) were aged in their fifties, OWN NSW is concerned that these women represent a group of disadvantaged women at risk of occupational health crisis far greater than the evidence suggested by the studies quoted above, and that their capacity to protect themselves from the consequences of this crisis is severely limited.

Age discrimination

Many women interviewed suggested that health problems were compounded by an element of age discrimination as they struggled to find new work. This finding mirrored the Australian Human Rights Commissions findings on age discrimination: of 'unlawful stereotypes and assumptions about older women workers' concluding that there are significantly higher rates of under utilization of older women than men in the paid workforce (Cerise et al 2009)

It Could be You; female, single, older and homeless (McFerran 2010) drew attention to the gap between retirement ages for older Australians and suggested that a health crisis coupled with age discrimination were critical factors in forcing women albeit very reluctantly out of the workforce. A later Productivity Commission Staff Working Paper on labour force participation for older women (Gilfillian & Andrews 2010) found that this gap in retirement has narrowed with older women doubling their share of the hours worked, and the gap at retirement between men and women reduced to two years.

This trend is positive, but OWN NSW is concerned that the Commission Paper reported rates for women with 'higher educational attainment' are consistently higher than for those women with no post-school qualifications and that 'health status has a significant impact on the labour force participation of older women'. Once again, the concern is that less skilled women at risk of occupational health crisis are being disadvantaged.

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Insecure work

The ACTU report on its independent inquiry into insecure work in Australia reports that almost one quarter of all Australian employees are casuals, with women 'much more likely to be in casual employment than men' (ACTU, 2012:15) as are women who experience family violence (ACTU, 2012:43). The report notes the barriers to older workers in regaining secure employment. In one case study a forty year old women had forty jobs in twelve months. All the women interviewed for *It Could be You; female, single, older and homeless* (McFerran 2010) had been employed in areas of insecure work.

The consequences of losing the job

These findings flag the important issues of education, health and caring responsibilities as critical in terms of capacity or access to work, specifically as this affects certain groups of older women who are falling between the gaps.

This concern was reinforced by research by the Australian Council of Social Services (ACOSS). ACOSS found that while there had been a decline in social security reliance since the early 1990s, the strongest growth in Disability Support pensions was among older women, largely as a result of the closure of age pensions for women aged 60-63, and that major reasons cited were mental or intellectual disability (Davidson 2011).

This reflected the findings of *It Could be You; female, single, older and homeless* (McFerran 2010) as many women reported a deterioration in their mental health due to the anxiety of their lives and the risk of homelessness. It was significant that one older woman, now safely and securely housed noted;

I have always been prone to depression, but it could have been because of the marriage because I am not that depressed now.

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Being homeless was deeply shocking and depressing for many women interviewed. Many anticipated that they would always be able to work, and be able to financially support themselves. A third had lived in mortgaged homes before divorce. Many had been able to financially assist their children. Their own families were now unable (due their own housing pressures) or unwilling (due to internal family conflict, rejection of perceived failure or a number of other factors) to support their relative at risk.

Section 2 Older Women and Work: Barriers and Opportunities

Concern for the potential costs of a dependent aged population has led governments to examine to policy options that encourage older people to participate in the workforce and remain economically independent for as long as possible. The argument is generally couched as follows; 'Increasing the employment participation of mature age people (aged 50 years and over) is an important way of lessening the economic challenges of an ageing population. It will increase the ability of people to fund their own retirement and lessen reliance on Government pensions. Further a higher proportion of mature age people in employment will increase the Government's revenue base, as well as potentially lowering the costs associated with ill health' (Productivity Commission, 2011).

This section of this submission looks at research findings focusing on older women workers and one particular sector of the workforce, those working as care workers in the community aged care sector.

Care Workers in Community Aged Care

Martin and King, 2008 estimated that there were approximately 74,000 care workers employed in the community services sector providing services to older people in their homes. Paid care work is one of the fastest growing sectors of the workforce with both the number of people receiving the services of paid carers and the number of paid carers rising dramatically in recent years (Meagher & Healy, 2005, 2006).

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Ninety percent of care workers are women. The majority are older workers, 73 percent of care workers were 45 years and older, compared to only 38 percent who are 45 and older in the labour force overall (Meagher and Cortis, 2010: 2). Many care workers come to care work as older workers, bringing with them extensive experience in both the paid workforce and as informal, unpaid carers for family and friends. Around 65 percent of care workers have cared informally for older relatives or friends with a disability, with almost half, 47 percent currently caring for one or more older relatives (Mears and Garcia, 2011). If care for children is included, this percentage reaches over 95 percent of care workers have past experience as informal carers.

Informal Carers and Paid Employment

Over 90 percent of the care provided to older people and those with disabilities is provided by informal carers, mostly women. Research has demonstrated that for many informal carers paid work is very important, both because of economic security and the impact on emotional and psychological well being. However, juggling paid work with informal caring responsibilities is very difficult and many informal carers give up paid work (Schofield, 1998). Watson and Mears, 1999, found that women working full time and carrying a major responsibility for caring, had chosen to change jobs, had foregone opportunities for training and promotion, cutback on working hours and chosen to work in less demanding jobs in order to gain the flexibility to enable them to stay in the workforce and care.

It is also very difficult for carers juggling paid work and care to access formal services. In some cases working carers are deemed ineligible for support services (this particularly applies to co-resident carers). And although it is possible in many workplaces for carers to take Carers Leave, many carers are reluctant to take this leave because they fear they will be perceived as less committed workers.

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However, when caring responsibilities change or cease, many of these carers want and need to re-enter the workforce. After time out of paid work fulfilling caring responsibilities, re-entering the workforce is not straightforward. Informal carers returning to work are concerned their qualifications and skills are out of date and they may have lost confidence in their abilities and report being told they are too old. 'I can't overestimate the effect of being told that I was not too old for the job' (Encel, 2004:35).

Returning to the workforce is not easy. For example, the National Carers Association found that very few carers successfully access labour market programs after a period of time away from paid employment. In 1994-1996, only 18 from a total of 170 who received workforce re-entry training successfully achieved employment (National Carers Association, 1997).

Informal Carers and Paid Care Work

More and more people, mostly women, are becoming involved in caring for older people and those with disabilities, both as informal and formal care workers. Informal carers have a vast repertoire of skills, knowledge and experience that can be readily transferred and drawn on in the paid care sector.

Care workers reported that they had taken on care work as they felt confident this was work they could do. As mentioned above, many care workers were also informal carers. 96 percent of care workers reported that their family responsibilities fitted well with working hours (Mears and Garcia, 2011). One of the major attractions of care work was that it was part time, they could return to work at their own pace, or combine paid care work with their informal caring responsibilities.

Care workers drew on skills and knowledge accumulated as informal carers. Indeed for many care workers, care work provided a transition for informal carers into paid work (Mears and Garcia, 2011).

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Some had chosen to work in aged care because they felt there would be no age discrimination.

I thought I'd re-skill myself in an area where there won't be any age discrimination, because I was sick of age discrimination. I wanted to work in a field that didn't have age discrimination attached to it.

Problems with Employment in this Sector

However, the employment conditions are poor, most particularly the remuneration. There are also barriers to promotion in this sector that discriminate against older women and trap care workers in a sector of the workforce that is categorised as low skilled.

Remuneration

The pay is very poor. Those working as care workers are paid \$A19 per hour (Mears and Garcia, 2011). This pay rate does not recognise the past experience of the women doing this work or the complexity and importance of the work. In addition, many care workers reported that they were not given sufficient hours to make enough money to meet living expenses. In order to get the work done, most care workers work unpaid overtime. Many, particularly sole breadwinners, were forced to take on a second job, often working for other community care providers or in residential care.

Barriers to promotion

There are few promotion opportunities (Mears and Garcia, 2011). One barrier to promotion for most care workers is that a university degree, or equivalent, is required for promotion to care manager. In a study of 22 care workers and 12 care managers (Mears, 2006) it was found that almost all of the 22 care workers were interested in promotion (several had already applied, unsuccessfully). However, none of these care workers had the requisite formal qualifications. All these women had left school having completed Year 10 (or

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equivalent), gone straight into the workforce, working in jobs classified as unskilled or semi-skilled. All had been informal carers for family and friends and had moved in and out of the paid workforce. They had come to care work as older workers (aged 45 years and older) with 30 years paid and unpaid work experience. They found themselves as older workers with a lifetime experience caring, working as care workers, ineligible for promotion to care management. Lorraine's story was typical.

Case study: Lorraine

Lorraine, 53, was born and grew up in Western Sydney. She is married, with two adult daughters, aged 25 and 28. In the past she had assisted her sister caring for her nephew and had been an informal carer for her father until he died and her adult daughter who was injured in a car accident. At present she cares for her mother. Lorraine left school at 15 having completed Year 10. She went straight from school into full time work as a teller in a bank. She married at 21 and took time out of paid work when her two children were born returning aged 28 to part time work at the bank when her daughters started school. At this time her father's health was deteriorating and she was assisting her mother to care for him and assisting her sister to care for her nephew who had cerebral palsy. She continued to work part-time until her father's death 10 years later.

At 38 she returned to full-time work in the bank, working her way up, until she became the branch manager. When she was 48 one of her daughters was badly injured in a car accident. She speaks of this accident as a turning point in her life causing her to reassess her future working life.

My daughter was nearly killed in a car accident. It was very touch and go and it changed my life. It just did, it changed. Up until then my job was the most important thing to me, but then after the accident I reassessed everything and I thought, 'I don't want to do this anymore. I want to do a job where I'm appreciated, where I can help other people more'. I know it

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probably sounds stupid, but it was like giving thanks for us getting her life back. So that's how I started out.

Lorraine worked part-time at the bank and cared for her daughter for a year while she recovered. She then returned to full-time work. After a few months she realised she was not enjoying the work. She reported that she was not interested in the continual quest for profits and the directives from management that she sell as many products as possible to her customers.

I got sick of being told to 'sell fries with that', that is to sell more and more services, when people came in just for their withdrawals. I just got tired of that. I wasn't interested anymore. I have always had a liking for the older people.

This realisation that she no longer enjoyed her work, coupled with her daughter's accident, led her to reassess her situation. She started, at first with little success, applying for jobs as a care worker but thought her lack of experience working in the sector, rather than her age, may have explained this lack of success.

Actually I applied to another organisation. I wasn't successful there either, probably because I hadn't had any experience. Or at least that's what I'm thinking. I don't think my age would have mattered in things like that.

Even though she was dubious about her chances of getting the job she was finally successful and as she reports below, delighted and surprised when eventually she was employed as a care worker.

And then I saw an advertisement for care workers and the way they had it advertised though it was more like they wanted a nurse. That's how it read. I thought, 'Oh well I've got nothing to lose', so I sent my letter off and at least I got an interview. After I got the job one of the

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other girls told me I was chosen out of 30 applicants. I felt really good. I did. I thought they must have liked something because to be chosen out of 30 applicants with not really any previous experience in that line of work. So I felt really good about that.

She commenced working part-time as a care worker when she was 50. She spoke of how caring for others had always been part of her life.

We had a very extended family and looked after them. I helped nurse them through sickness, cleaned their houses and looked after all my great uncles and aunties and grandparents as well. Then, later I cared for my nephew, my father and mother. I quite enjoyed it. So now I've come back and done a full circle. I've come back.

She completed a Certificate 3 at TAFE, her first formal qualification, in her first year of employment, with her employers' encouragement and support. She had applied, unsuccessfully, for promotion to care manager.

I'm not going through the interview and sitting down in front of 3 people or 4 people like last time. I mean I'm 53. That is quite intimidating for someone. My husband says I appear confident, but I'm not really. Especially when you've got people asking you questions. And I've been through it once before and didn't get it. I thought, 'Well I'll go for it and if I don't, I don't'. It didn't faze me. I didn't lose any sleep. But I'm not going through that again. You get too old and it is too hard. And they've got all my stuff on file anyway.

By contrast, the 12 care managers in this study had all worked as care workers, then sought promotion to care manager. Susan's story was typical.

Case Study: Susan

Susan, 53, grew up on Sydney's North Shore. She was single, with no children. In the past she has cared for her parents and at present is caring for an elderly aunt. She left school at 18 after completing her Year 12 and went on to university and completed a Bachelor of Arts and a Diploma of Education. On graduation, she worked as a teacher for 17 years.

She was in her mid-thirties when both her parents were seriously injured in a bus crash. She resigned from teaching, moved back into her parents' home and went onto the Carer Pension (now known as the Carer Payment). She cared for her parents full-time for 15 years. During this time, she completed a Diploma in Gerontology. After her parents died, she found herself wanting and needing to return to work. However, she had not been in paid work for 15 years and although she needed to work was not confident that she possessed the skills that would enable her to return to her teaching career.

I was a teacher. But the idea of returning to teaching after fifteen years out of the workforce was very daunting. I didn't even know how to turn on a computer.

At this time she saw an advertisement in the local newspaper for care workers. Susan was concerned that having been so long out of the workforce, her options for re-entering paid work were limited. Care work provided the opportunity to re-enter the workforce doing a job she 'knew she could do'.

I was a full time carer, a family carer for fifteen years. And then I had to go back to work after my parents died. So this was something I could do. I saw an advertisement. And after fifteen years out of the work force caring for my parents, it was not easy to go back to work. I needed to go back to work and I knew I could do this. And I like older people.

She applied for a job as a care worker and unlike Lorraine, her first application was successful. She worked part-time as a care worker for a year. She then applied for a promotion to care manager and again was successful. She had been working for 2 years full-time as a care manager when interviewed and saw a future career working in aged care. At this time she was also juggling care for her aunt, but did not anticipate becoming a full-time carer again.

The care managers in this study (Mears, 2006) had all been promoted from care workers to managers. These 12 women had left school having completed Year 12 and a university degree (or equivalent), then entered the workforce, generally in jobs classified as professional or managerial. They had also moved in and out of the workforce, juggling paid work with informal care responsibilities and had come to care work as older workers (aged 45 years and older), worked part-time as care workers, then had been promoted to full-time work as care managers.

Older women working as care workers in this sector are seriously disadvantaged and very vulnerable. The caring and community industries are traditionally low paid occupations and are also highly feminised. This is an issue of pay equity between the sexes, of paying men and women equally for work of comparable value - it is also about ending the penalty of low pay that women have always suffered simply because they choose to work in providing care (Broderick, 2009).

Section 3 Improving capacity

Training

Access to vocational training is a concern for many older women planning to return to the paid work force and or seeking promotion. For those who completed their formal education at year 10 this is a challenge to their confidence and self esteem. The funding model for vocational training starts at Certificate 3. Improved access to pre certificate education

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requires designated funding and would avoid the discrimination many women experience in their attempt to return to vocational training in later life.

Superannuation:

Case study

Thank you for your email and for bothering to address my concerns.

I just seem to have had bad luck with super. When my first 20 year marriage ended in 2000, after I had been a stay-at-home mum/part-time casual worker for many years, I did not get a half share of my husband's (substantial) super. When my second 15 year marriage ended last year, my husband had realised his super and invested it in a business venture that did not work, but I thought my super was safely mine, as my first husband's had been. My second husband got half of mine in the settlement because the law had, unknown to me, changed in the intervening time (I was actually overseas at the time of the change) and he was entitled to half my super, a change designed to protect women from the situation I faced at the end of my first marriage.

I am sixty. Like many older women I have found myself suddenly left in a very bad financial situation. Not one to moan, I got a good job and was putting away super while I could, as my contract expires soon (and you know how hard it is for older women to get work). Now the budget has delayed for two years the scheme to allow people over 50 with little super to salary sacrifice up to \$50000 to super. That's OK for 50 year olds but not those of us with one or two earning years left, many of us women. I wrote to my MP, Tanya Plibersek about this, and received a disappointing response that indicated that older women are as invisible to her as to the boys.

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The age barrier to employment is an issue for me. My position is a contract one which may be extended for one more year at the end of this year, and I have already found that my age has been a barrier to finding permanent work. That is why saving up super, while I am actually working, is so important to me.

However, I do not think I will take this any further. Mostly the law does now protect women; I just had bad timing, so I am just going to learn to re-adjust to a frugal lifestyle. I've done it before, as a single mother on postgrad student scholarship, so am quite good at it!

I have many frugal, hard working, female friends affected by this too. What to do? I am now less troubled by the money, than the realization that no one is on our (older women's) case!"

Comment:

Recent changes to the taxation law means that contributions to superannuation, as a salary sacrifice arrangement was reduced from \$50,000 to \$25,000 pa disadvantages some women for whom the opportunity to accumulate adequate superannuation over a working life has not been available to them. The problem stems from the fact that the workforce is treated as a homogeneous group and difference as a consequence of gender and opportunity is not allowed for.

Action: That the Taxation law is changed to favour increased contributions to superannuation taking into account age and opportunity of the contributor.

(Possibly a means tested arrangement)

Flexible working hours

Case Study

This case study concerns a senior Registered Nurse, in an aged care complex, employed full-time, aged 68, who was keen to continue working with reduced hours to pay off her mortgage and contribute more to her superannuation. The policy of the company, however, did not allow senior managers to work part-time. Eventually she resigned and experienced difficulty in obtaining employment despite having post graduate qualifications and excellent work histories.

At the time she left the workforce she had only been paid superannuation for 16 years. As an employee in the aged care industry her wages were fairly modest despite her qualifications and responsibilities. She had experienced a failed marriage, and years of caring for her parents, a situation that made it difficult for her to work full-time for a number of years. She was keen to remain in the workforce for several more years and sought reduced working hours in order to do this for as long a possible.

Comment

The capacity of women to contribute adequately to retirement savings is adversely affected over the trajectory of their lives by sex and age discrimination. Compounding this are the caring responsibilities women take on over a lifetime involving different types of care. The continuum of caring responsibilities in the lives of many women is supported by the statistics which demonstrate that approximately 25percent of all Australian women in their fifties are carers of other people (Cerise 2009).

Flexible work arrangement for carers of spouses, parents and others are not represented in the Fair Work Australia Act. The opportunity for flexibility in working hours would also increase employment opportunities for all older women.

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Action: Extend the flexible work arrangements, available under the Fair Work Act to for carers and older workers.

Assessing incapacity

The barriers to employment and the extent of women's disadvantage in the labour force cannot be fully appreciated until the underutilised rate becomes a key measure for improvement. While it is acknowledged from an economic perspective that even a small amount of paid work contributes to economic production the unemployment rate is a misleading indicator for assessing labour force participation rates. To have a clearer understanding both the unemployed and underemployed rate must be considered. The working poor need to be countered.

The ABS Gender indicators, Australia (Jan 2012) point out that given the high underemployment and unemployment rate, the labour force underutilisation rate has consistently been higher for women (20 – 74 year) than for their male counter parts. In the 2010 – 2011 period this was 12.5percent for women and 8.2percent for men. When cohort groups are compared the underutilisation rate for women was much higher for all age groups up to 54 years of age but the gap narrows for those aged 55 years and over, signalling, perhaps, that the caring role for some older women has ceased.

Action: That the labour force underutilised rate becomes a factor in assessing opportunities for employment and for contributing to retirement savings and becomes a target for improvement.

Improving Capacity: Work Bonus Scheme

The Work Bonus for aged pensioners as an incentive for aged pensioners to remain the paid workforce is welcomed but is also a barrier to employment. The opportunity to earn \$250

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per fortnight up to \$6500 pa will make a difference for many older women. The majority of recipients of the aged pension are women with minimum

The entrenched ageism in society, however, means that finding employment can be difficult and opportunities for casual work, or very part-time work, is no exception. The Work Bonus amount of \$6500 it will not take older women, solely dependent on the aged pension out of poverty. If women have the capacity, and opportunity, to earn more, and need to then they should be encouraged to do so.

Action: That the Work Bonus allowance be increased based on individual need (possibly means tested)

Conclusion

Our key recommendation is that the concept capacity is included as a framing principle for this inquiry. The material we have provided in this submission goes to that principle in different ways and any recommendations are reflective of that principle. We are concerned that the ALRC give careful consideration to legislation impacting on the specific barriers to older women remaining in work including the homelessness of single older women, the violence perpetrated against older women and the particular challenges faced by women in precarious and lower paid employment resulting in limited savings for retirement.

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