



# australian nursing federation

1 September 2003

Louise Gell  
Acting Secretary  
Legal and Constitutional References Committee  
Parliament House  
Canberra ACT 2600



**By Facsimile: 02 6277 5794**

Dear Ms Gell

## Re. Aged Discrimination Bill 2003

I write further to your invitation to provide a submission to the Senate Legal and Constitutional Legislation Committee inquiring into the Aged Discrimination Bill 2003.

The Australian Nursing Federation made submissions in regard to the Information Paper on the Proposals for Commonwealth Aged Discrimination Legislation, a copy of that submission is attached.

The Australian Nursing Federation is concerned that the discrimination that exists in relation to work and employee have not been satisfactorily addressed in this Bill.

For example the existing discrimination that supports remuneration based on the age of a person is exempted from the terms of the Bill, and as such will entrench discrimination that fails to remunerate young people on the basis of their skill and responsibility.

Casual employment is not covered by the terms of the Bill and given that there are increasing number of casuals in nursing, and in most occupational groups, this is a major deficiency.

Whilst we acknowledge that it was the intention of the Bill to strike a reasonably fair balance between the needs of the community, whilst at the same time ensuring a degree of flexibility, we are of the view that a failure of the Bill to positively address a range of important industrial matters raised in the Information Paper, means that the Bill will fall well short of its goal of removing discrimination from our community.

Yours sincerely

NICK BLAKE  
Federal Industrial Officer.

Encl

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11 February 2003

BY FACSIMILE: 02 6250 5968

Ms Catherine Hawkins  
Principal Legal Officer  
Attorney General's Department  
Civil Justice Division  
Robert Garran Offices  
National Circuit  
Barton ACT 2600

Dear Ms Hawkins

Re. Information Paper:  
Proposals for Commonwealth Aged Discrimination Legislation

The Australian Nursing Federation (ANF) is an organisation registered pursuant to the Workplace Relations Act 1996 and represents the industrial and professional interests of over 120,000 registered and enrolled nurses. We welcome the opportunity to provide comment on the information paper – **Proposals for Commonwealth Aged Discrimination Legislation.**

As an industrial and professional organisation primarily seeking to advance the working conditions of nurses, we will focus our comments on the proposals relating to Part 4 of the information paper – **Aged Discrimination in Work.**

- Point 4.1 Prohibition of aged discrimination**  
ANF generally supports the view that aged discrimination in employment should be covered by suitable commonwealth aged discrimination legislation.
- Point 4.2 Definition of 'employment'**  
ANF is of the view that the definition of 'employment' should include casual employees. This is of particular importance where casual labour forms a significant part of the occupational workforce, as is the case in nursing.
- Point 4.3 Unpaid work**  
People who contribute their services voluntarily, particularly where the provision of such services is intertwined with paid labour, should be subject to and protected by aged discrimination legislation. Voluntary labour in the health sectors has an important and long history and is characterised by skilled and committed individuals providing service for many years, often to the one establishment. As volunteers tend to be retirees and elderly persons the important services they provide should not be potentially compromised because of a lack of regulatory aged discrimination protection.

**Point 4.4 Contract workers**

ANF supports the governments' proposals that contract workers should be covered by the legislation. With the trend towards individual industrial arrangements in the various health sectors it is now becoming increasingly difficult for the ANF to identify when a nurse is contracted to provide a service or is a contractor for services. Accordingly, to avoid unfairness in the coverage and application of the legislation on what is arguably an artificial and irrelevant division, the legislation should cover contract workers.

**Point 4.5 Youth wages**

ANF does not support remuneration based on age. In nursing, salaries in industrial awards and agreements are determined on skill, levels of responsibility and experience.

**Point 4.6 Exemption for inherent requirements of the job**

ANF is opposed to exemptions for the reasons set out at Point 4.5.

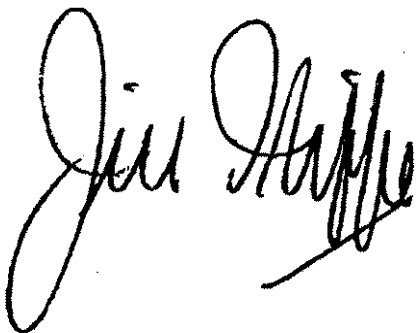
**Point 4.7 Acts done in accordance with industrial instruments**

Industrial provisions that recognise the need to compensate employees in older age groups, for example where employees are retrenched or otherwise terminated, should be exempted from the legislation. In so far as the acts relate to other industrial circumstances the protection of employment, industrial entitlements and the avoidance of discrimination should be the primary relationship between industrial instruments and the age discrimination legislation.

**Point 4.8 Vicarious liability**

ANF supports the Government proposals that the legislative scheme include 'vicarious liability' provisions. We also suggest that the legislation should include similar legislation as is current in NSW which protects the employee from being sued by their employer for the recovery of costs awarded against the employer.

Yours sincerely



**JILL ILIFFE**  
Federal Secretary