

Appendix Five

The COTA National Seniors Partnership Submission on the Proposed Introduction of Federal Age Discrimination Legislation

COTA National Seniors Partnership Submission

Mature aged workers' participation in the workforce is one of the keys to maintaining and increasing productivity. Age discrimination is a major barrier to mature age people remaining in or re-accessing the workforce. The Government's commitment to introducing federal age discrimination legislation is welcome, but we have expressed a number of concerns in response to the Attorney General's proposals, including:

- **By exempting much Commonwealth legislation from the provisions of age discrimination legislation, the Commonwealth provides a negative role model to the community.** Leadership is required to change entrenched attitudes and behaviours. Any public education campaign will be undermined by the Commonwealth's own reticence in embracing its own age discrimination laws. The Commonwealth must demonstrably support this legislation by minimising exemptions. The default setting should be that the age discrimination shall apply and that exemptions shall be minimised and exceptional.
- **The proposed legislation perpetuates and supports age discrimination.** Chronological age should not be used as a proxy measure for competence. All Commonwealth legislation and regulations should be reviewed and amended to eliminate their discriminatory provisions. Good cause must be shown in cases where age is maintained as a criterion for denial of access to an opportunity available under federal law. Exemptions should be the rare exception, not the rule.
- Age discrimination must not be the "poor cousin" of HREOC – it must be viewed as being equally important as all other forms of discrimination. The Act will need to be administered by its own Deputy President/Commissioner, and adequate resources must be made available for public education and other supporting measures. Again, this will demonstrate the government's commitment to this legislation.
- The new arrangements in regard to enforceable determinations through the Federal Court **need to ensure that complainants are not disqualified from taking cases forward due to cost or other barriers.** Older people may well be discouraged from seeking redress through the Federal Court due to costs and other barriers. The proposed legislation does not address this issue.

- Additionally, **a whole of government approach is needed** to address age discrimination. Individual departments should not be allowed to maintain discriminatory practices through seeking exemption for each “special case” as the result will be that the many and various exemptions will undermine the totality of the legislation and its intent. The Commonwealth government needs to be seen to lead by example.
- We endorse the conclusion of the Victorian, South Australian and Western Australian Equal Opportunity Commissions and the Australian Employers Convention that:

These issues cross-cut portfolios...To successfully address structural barriers (to age discrimination) the restrictive boundaries of individual portfolios must be overcome.¹ (Parenthesis added.)

And the comments of Age Concern England:

The action of government departments in tackling age discrimination themselves will be an important part of the tone and approach of Government. If government departments are perceived to be reluctant in their approach, and/or arguing for exemptions, this is likely to impede the effectiveness of measures designed to combat discrimination in employment and health and social care. The government will need to be seen as leading by example.²

Our full submission to the Attorney General is on our home page www.cota.org.au
We note that the Human Rights and Equal Opportunity Commission has made a number of comments that are similar to those in our submission, as have other organisations and individuals.

1 The Victorian, South Australian and Western Australian Equal Opportunity Commissions and the Australian Employers Convention. *Age Limits: age-related discrimination in employment affecting workers over 45*. March 2001, p. 23.

2 *Age Discrimination Policy Position Paper*. Age Concern England. September 2002, p. 9.