Information Paper

Proposals for Commonwealth Age Discrimination Legislation

Comments

1 Foreword

The Foreword presents the legislation as part of a general commitment to allow all people in Australia to participate in Australian life, and that negative stereotypes should be avoided in order to make this happen. It proposes the legislation as a way of eliminating age stereotyping that prevents people from equal participation in society. While some mention is made about other Government initiatives that help address age related discrimination, more could be said about initiatives needed to support the proposed legislation’s effectiveness, such as raising awareness, supporting and financing complaint structures and special projects designed to address age discrimination.

This would also acknowledge that all agencies/sectors have a role in making the legislation effective rather then just the Human Rights and Equal Opportunity Commission (HREOC).

2 Relatives and Associates (section 2.2.3)

This section refers to the way people are treated because of the age of a person they are representing. The Commission is concerned about the treatment of children and young people who care for and undertake language translation for adults on a range of family matters. It is unclear whether this section protects children and young people in these situations.

3 Prohibition of Age Discrimination (section 3)

The Information Paper proposes that age discrimination be prohibited on the bases of age in relation to access to premises, places and transport, among other areas of public life. However very little detail on this proposed area of prohibition is included elsewhere in the papers.

Access to places the general public is invited to enter, such as Shopping Centres, should be covered by this legislation. Shopping Centres are considered public places by children and young people, an image that Shopping Centres encourage. It is also a place young people gain employment as well as access supermarkets, entertainment, banks, the post office and Police services. It is unclear as to whether or not places like Shopping Centres are covered by this part of the proposed legislation.
4 Definition of ‘Employment’ (section 4.2)

Consideration should be given to including private as well as public full-time employment in the definition. This can support the notion that age discrimination is a concern in both the private and the public sectors, especially since such a large proportion of the population is employed full-time in the private sector.

The Commission’s view is that the definition of employment should include any form of unpaid work. The extension of the definition to cover unpaid work helps people, at any age, have the opportunity to participate as fully as they are able within the community. This is understood to be consistent with the Commonwealth Government’s initiatives to promote volunteering.

5 Exemptions and Positive Discrimination

Where the rationale for a specific exemption is presented as being protective of a particular age group, it is unclear why a specific exemption is required and why the general exemption for “positive discrimination” measures cannot be relied upon.

Under the United Nations Convention on the Rights of the Child (UNCRC), Australia shows its commitment to implement international good practice in promoting the safety, welfare and well-being of children and young people. This includes making decisions that affect children and young people guided primarily by what is considered to be in the best interest of children and young people. Making whole sections of the law exempt from the proposed legislation incorrectly implies that all the laws and decisions made in these areas will always be in the best interest of children and young people, merely because they fall into these topic areas, such as in the areas of migration and family and community services.

The areas of law suggested to be exempt from the proposed legislation may diminish the credibility of the Commonwealth as a good ‘role model’. It may be difficult to ask private sector organisations, for instance, to put aside economic efficiencies, for example, that may underpin current age distinctions if the Commonwealth does not do so in significant policy areas.

Furthermore, if it is proposed that there be a power to prescribe exceptions to the exemption in respect of acts done to comply with State laws (see Information Paper, p.41). It is unclear why this same power is not proposed with respect to Commonwealth laws and programs.

These principles apply to the following areas proposed for exemption:

i. Youth Wages, Job Training and Younger Workers (section 4.5)
Since the Government wishes to maintain special provisions for youth wages in order to "protect young people’s competitive position in the labour market", the Commission cannot see why this is not covered by the proposed, general “positive discrimination” (section 9) exception. That is, it is unclear why exempting all wages earned by young people in Australia from charges of discrimination is necessary.

Allowing positive discrimination provisions to determine situations when a lower youth wage is appropriate for a particular job will help young people (individually and as a group) as well as employers benefit from lower youth wages. It will also be consistent with Australia’s commitment to UNCRC.

Requiring positive discrimination provisions to interpret appropriate discrimination in this area could also help the labour market stay responsive to the latest issues and research on increasing young people’s participation in the labour force. Additionally, it may also help reduce the burden on the proposed advocacy service for young people in employment.

ii. The Award and Workplace Agreements (section 4.7). These agreements are meant to reflect fairness in the workplace. To be consistent with the aims of the legislation (see Forward), agreements made regarding the work environment of young people should reflect non-discriminatory principles. The growing amount of time Australians are spending at work makes it increasingly important for people to feel fairly treated in their workplace.

iii. Exemption for Insurance (5.3). The practice of making young people pay a higher price for some insurance, such as car insurance, discriminates against young people unfairly.

It works against the principle that the cost of insurance is spread across the lifetime of a person. For example, older people don’t pay more for health insurance even though they engage health services more often than young people.

Higher excesses, for example, could place the cost burden of bad drivers back onto the bad drivers, rather than onto others who have not been having accidents just because they happen to be of the same age.
iv. **Exemptions in Relation to Access to Health and Medical Goods and Services (5.6).** As the population ages, a concern is that resources will be directed towards aged care at the expense of children and young people. For this reason systems should be put in place to measure this type of equity. Systemic discrimination could work against children and young people when it comes to health care provisions. Australia’s commitment to UNCRC would require it to work against tendencies to reduce medical and health services for children as a result of the growing needs of the elderly.

v. **Migration (section 6).** Positive discrimination provisions allow children and young people to be discriminated against only when it is in their own best interest. This is consistent with UNCRC and with much of the Government’s policy in the immigration area.

vi. **Citizenship and Multicultural Affairs (section 6.5).** How programs are put together so that all age groups have access to English tuition need not be determined by the proposed legislation. Positive discrimination principles can apply to areas or specific programs which need to receive exemptions, such as the Adult Migrant Education Service.

vii. **Social Security legislation, Family and Community Services and related programs (section 6.6).** Since UNCRC upholds the need for the interest of the child to be the paramount consideration in issues that affect them, positive discrimination provisions should be used to assess when the discriminatory treatment of a child is appropriate.

If managing the number of requests for exemptions is a concern, nominated agencies, such as state community service departments, may be able to make positive discrimination judgements on a set of programs or procedures on behalf of, and in consultation with, HREOC.

viii. **Defence Legislation (6.7).** Positive discrimination provisions as well as the UN Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, should provide the necessary guidance needed for the protection of children and young people’s interests.

ix. **Corporations Act 2001 (6.9).** The law requires that young people be 18 years of age before they are eligible
to be a company director. This is felt to be protective of children and young people’s interests.

Some research has shown that outcomes for children and young people as well as organisations are improved with children and young people’s participation in the decision making of boards and committees. Making children and young people liable for the financial debts of companies however, is not a method of increasing children and young people’s participation. The Commission has found that their participation can be achieved in a number of ways and is ultimately guided by adults committed to children and young people’s participation.

The Commission is available to assist organisations in this area. Requiring children and young people to be 18 years of age before they are held financially accountable for the financial administration of a company upholds their best interests.

6 Young People and Goods and Services (section 5.7)

It is unclear as to why children and young people’s eligibility for a separate Medicare card and concession cards for national transport services fall outside the immediate scope of the proposed legislation. The two year time period for government services to review their legislation was created to address “timeframe” concerns.

7 Harassment (section 8.1)

Harassment should be included in the proposed legislation if the aims of the proposed legislation (see Forward) are to be achieved. Age based harassment could follow the same approach as sexual harassment, for example, be defined as an ‘unwelcome physical act, request, demand, remark or other conduct, that might offend, humiliate or intimidate a person; and/or refusal to respond favourably to such conduct, which might disadvantage the person refusing to respond’ p.38.

If age based discrimination is felt to be too vague a concept by business, special training/community education projects are required. The proposed legislation suggests HREOC to have this role as well as the role of discouraging ‘spurious’ complaints.

8 General Exemptions (section 9)

There are grounds for allowing exemption of religious groups on matters specifically related to traditional ceremonies. However, in regard to matters related to volunteerism and other practices that charitable bodies may
conduct that are a matter of public good and a matter of public participation, age based discrimination should only be allowed if it is permitted under positive discrimination provisions.

Volunteering organisations are in favour of prohibiting aged based discrimination. As volunteering is being publicly promoted it is increasingly becoming a matter of public as well as private concern. Those in the community who engage in volunteering should be provided the same protection and opportunity to participate in Australian society (see Forward) as paid employees they work alongside.

9 Human Rights and Equal Opportunity Commission Functions (section 11)

Given the responsibility of HREOC in other areas of discrimination, it makes sense that it is the body which promotes and administers the age discrimination legislation. The level of Government commitment to addressing age discrimination will be reflected in the funding of HREOC. This type of funding will greatly assist the legislation achieve its aims.

Children and young people face many barriers when complaining and so rarely complain to official agencies. It is unlikely that HREOC will be able to affect change for children and young people without undertaking a broader community awareness raising strategy that will involve working directly with children and young people. This will include consulting with children and young people on the development of complaint processes and resources, as well as working closely with their advocates, such as parents, schools, youth and child peak organisations, clubs, charities, government departments and Kids Help Line.

It is also suggested that children and young people be consulted on the granting of exemptions in respect to the proposed legislation and that consultations with children and young people are undertaken in relation to the review of the proposed legislation (11.2). UNCRC requires states to include children and young people in decisions that affect them.

The Commission can provide assistance and guidance to HREOC in this area.