



Australian Government

Fair Work

OMBUDSMAN

Submission to the Australian Law Reform Commission discussion paper *Grey Areas – Age Barriers to Work in Commonwealth Laws*

Background

1. The Fair Work Ombudsman (FWO) is established by the *Fair Work Act 2009* (the FW Act) and is responsible for providing education, assistance and advice about the Commonwealth workplace relations system. In addition, the FWO is responsible for impartially enforcing compliance with the FW Act and fair work instruments.
2. During the 2011/12 financial year, the FWO:
 - a. Finalised 28 412 complaints and 6547 audits, recovering more than \$39 million for 18 497 employees.
 - b. Achieved court ordered penalties of more than \$1.5 million in 37 matters decided in 2011-12.
 - c. Provided education, assistance and advice for more than 772 409 clients through enquiries to the Fair Work Infoline.
 - d. Provided information and resources to more than 3.6 million visitors to fairwork.gov.au.
3. The FWO has been invited to make a submission to the Australian Law Reform Commission's (ALRC) inquiry into age barriers to work. The ALRC's background paper makes two proposals which relate to the functions of the FWO. These proposals are considered below.

Proposal 2-1

The Fair Work Ombudsman should undertake a national recruitment industry campaign to educate and assess the compliance of recruitment agencies with workplace laws, specifically with respect to practices affecting mature age job seekers and workers.

4. The FWO conducts targeted education and compliance campaigns in order to assist employers improve and maintain compliance with Commonwealth workplace laws. Targeted campaigns are a mechanism for providing information, assistance and advice to workplace participants and working with employers to rectify specific and systemic non-compliance.
5. The FWO conducts four national campaigns per year. In order to ensure that these campaigns provide the most benefit for the community, the FWO prepares a four year, evidence based, targeted campaign strategy focussing on high risk industries. The recruitment industry was not identified as a high risk industry during the FWO's intelligence analysis and therefore will not be subject to a national campaign.
6. However, the FWO will consider opportunities to address recruitment practices during targeted campaigns in priority industries.

7. Consequently, the FWO recommends that the proposal is amended to:

The Fair Work Ombudsman should address non-compliant recruitment practices affecting mature age job seekers and workers in the course of compliance and education activities.

Proposal 2-6

The Fair Work Ombudsman should develop a guide to negotiating and implementing flexible working arrangements for mature age workers, in consultation with unions, employer organisations and seniors organisations.

8. The FWO has published a Best Practice Guide on the use of individual flexibility arrangements (IFAs), which acknowledges the benefits of such arrangements to both employers and employees. The guide can be accessed on the FWO's website, fairwork.gov.au.
9. The FWO does not intend to produce a further best practice guide to negotiating IFAs, which is specific for mature age workers. However, the FWO will consider how best to market the existing Best Practice Guide and improve access to current guidance for mature age workers.
10. In addition, the FWO intends to publish example enterprise agreement clauses to assist employers to understand and implement strategies to engage and retain mature age workers. The FWO anticipates that this information will be published on fairwork.gov.au in early 2013.
11. Consequently, the FWO recommends that the proposal is amended to:

The Fair Work Ombudsman should promote guidance about negotiating and implementing flexible working arrangements to mature age workers and their employers.

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