



Level 10
30 Currie Street
Adelaide SA 5000

GPO Box 464
Adelaide SA 5001

Tel 08 8207 1977
Fax 08 8207 2090
TTY 08 8207 1911
Country Callers 1800 188 163

eoc@agd.sa.gov.au
www.eoc.sa.gov.au

12 June 2012

The Executive Director
Australian Law Reform Commission
GPO Box 3708
Sydney NSW 2001

Dear Sir/Madam,

Thank for you the opportunity to comment on the Grey Areas – Age Barriers to Work in Commonwealth Laws Issues Paper. The South Australian Equal Opportunity Commission (the Commission) frequently receives complaints from people who have experienced discrimination in the workplace on account of their age. In the last 12 months we have received 115 enquiries and complaints regarding age discrimination in employment and recognise that age acts as a barrier to meaningful participation in the workforce for many South Australians.

Insurance

Access to insurance, in all its forms, poses difficulties for many older people. Age barriers to insurance are in place from as early as 50 years old. At the Commission we have received calls from older South Australians who, once they turn 65, are unable to continue to hold income protection insurance through their superannuation scheme.

Case studies:

Caller is 59 and once he is 60 will no longer be able to access salary insurance through his superannuation scheme.

Enquirer has a constituent who has been refused income protection by SuperSA because they are over 65.

The *Equal Opportunity Act 1984* (the Act) includes an exemption that allows insurance companies to discriminate on the basis of age where the discrimination is based on actuarial or statistical data from a source on which it is reasonable to rely (s.85R(2)).

The age limits imposed by superannuation providers and the income insurance provisions attached to the schemes hail from a time when the 65 retirement age was 'set in stone'. With the retirement age due to increase, and the better health of Australians leading to extended participation in the workforce, the 65 age limit imposed is no longer relevant. It prevents capable people from participating fully as a member of society. The Commission believes that the age limits imposed by superannuation schemes need to be revised to allow more

flexibility in an older persons employment arrangements and not act as a barrier to participation in the workforce.

Recruitment

We regularly receive calls regarding potentially discriminatory practices during recruitment. On application forms and during interviews candidates are asked their age or date of birth. We explain that asking for the information is not discriminatory, but it is how a potential employer uses that information that determines whether discrimination has occurred or not. However, proving such a practice as leads to discriminatory decisions is near impossible.

Case study:

Annie is applying for a job and they have asked her to supply her birth certificate with her application. Annie wanted to know whether they could ask for it and whether she was obligated to provide it. I informed her that they could ask for it, but that if she did not want to supply it she did not have to. Discussed the fact that asking for the info is not discrimination, but if the employer uses that information against her, that would be discrimination.

The Commission considers that it may be effective to introduce regulations that preclude private recruitment agencies from asking for certain information. Factors such as age and history of WorkCover claims are used against potential applicants for a position. This type of information should only be asked for when it is an essential requirement of the position that a person be of a particular age or fitness, otherwise, the assumption should be made that the information will be used for discriminatory purposes.

Employment

Another issue that is raised with the Commission is related to the treatment of older workers in employment. We receive calls from people who believe they have been passed over for training or promotion opportunities because of their age.

Case study:

Caller works as a clerk in the office of a timber company. He has worked for this company for 25 years, apart from a short break 15 years ago. Before the break he worked as a representative. Due to changes to the product the current manager took accrued long-leave and is being replaced by a new, younger manager. The caller was looked over for this position but is now required to train the new manager. He believes that this is due to his age.

Stereotypes are attached to mature age workers, such as a lack of ambition or being incapable of learning new skills. The Commission believes that more guidance needs to be provided to employers to ensure that they have the knowledge and resources to manage the needs and aspirations of older workers and to avoid applying stereotypical presumptions.

Conclusion

Thank you for the opportunity to provide a submission to the Grey Areas – Age Barriers to Work in Commonwealth Laws Issues Paper. We see many instances of discrimination on account of a person's age and are often unable to assist due to legislation that effectively compounds the barriers to employment for older people. It is encouraging to see that the Australian Law Reform Commission is examining this area with a view to introducing much needed change.

If you would like any further information regarding the above submission, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Anne Burgess", with a long horizontal flourish extending to the right.

ANNE BURGESS
ACTING COMMISSIONER FOR EQUAL OPPORTUNITY