

## 23. WA Equal Opportunity Commission

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Full name: Yvonne Henderson

Name of organisation: WA Equal Opportunity Commission

Address: Level 2, 141 St George's Terrace

PERTH WA 6000

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As the Report points out (at p.63) , employment agencies that discriminate against mature-age employees or applicants for employment may face liability under anti-discrimination laws, the *Age Discrimination Act* (ADA) being the relevant Commonwealth Act. Whilst the ADA maintains a necessary regulatory presence in the recruitment industry, it can and should be strengthened. Your reference (at p.62) to the Australian Human Rights

Commission's description of age discrimination in recruitment as being "rampant (and) systemic" is apposite. Discrimination in employment generally is notoriously difficult to prove, with claimants having to rely almost entirely on inferences drawn from facts rather than on any actual observed discriminatory conduct. Proving age discrimination in employment, particularly at the recruitment stage, is more difficult still. You will be aware that in September last year, the Attorney General's Department released a discussion paper inviting submissions on whether the Commonwealth discrimination laws should be consolidated into one Act and, if so, how it should be done. The WA Commission in its submission agreed with a number of suggestions for making Commonwealth discrimination laws fairer and more accessible, including removing the requirement to show a 'comparator', reversing the onus of proof (as is currently the case in 'general protections' applications under the *Fair Work Act*), the creation of a general limitations exception (as opposed to several specific exceptions), and a single test for what constitutes the inherent requirements of a job. It is hoped that all of these reforms, if enacted, will bring about improvements in the way that employment agencies, and their employer clients, go about recruiting, reducing the likelihood of age discrimination occurring. The Government is expected to provide a response to the discussion paper later this year.

Question 35:

The WA Commission agrees that s 65 of the *Fair Work Act* (FWA) should be amended to allow employees with attributes other than being a parent of children under 18 years of age the right to request more flexible working arrangements. This should include employees who are over the age of 55 years, those with disabilities, and employees with significant and important cultural obligations arising out their ethnicity or race. Employees should also be given the right under the FWA to legally challenge an employer's refusal to grant such a request on reasonable grounds.

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There would be little dispute that the limitations on workers compensation payments after an employee reaches 63 years of age act as a barrier to continuing employment. As far back as 1994, shortly after the *WA Equal Opportunity Act* was amended to make age discrimination unlawful, the WA Commission recommended that s.56 of the *Workers Compensation and Injury Management Act 1981* (WA), the equivalent provision to the current provisions in the relevant Commonwealth Acts, be amended to remove the age limit on the payment of workers compensation benefits. This was finally done last year. The Commonwealth Acts should be similarly amended.

Question 49:  
Question 50:  
Question 51:  
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