

Chamber of Commerce and Industry of Western Australia (Inc)

Submission to the Australian Law Reform Commission:

“Grey Areas – Age Barriers to Work in Commonwealth Laws”

1. In response to the Australian Law Reform Commission’s (ALRC) invitation to interested individuals and organisations to prepare written submissions regarding their discussion paper entitled “Grey Areas – Age Barriers to Work in Commonwealth Laws” (**Discussion Paper**), the Chamber of Commerce and Industry of Western Australia (Inc) (**CCI**) provide the following submissions in relation to proposed amendments to the *Fair Work Act 2009* (Cth) (**FW Act**).

Flexible Working Arrangements

2. Proposal 2 – 5 of the Discussion Paper provides that:

The Australian Government should amend s 65 of the Fair Work Act 2009 (Cth) to extend the right to request flexible working arrangements to all employees who have caring responsibilities.

3. CCI opposes the above proposal.
4. CCI strongly supports the Australian Chamber of Commerce and Industry’s Submissions dated February 2012 in relation to the FW Act Inquiry,¹ which strongly opposed any amendments to the FW Act which sought to increase the scope of eligibility under section 65 of the FW Act.
5. CCI submit that the current legislative framework provides for adequate flexibility as there are many ways in which mature work age workers can seek flexible working arrangements to suit their individual needs. For example, there is nothing preventing mature age workers from requesting flexible working arrangements to accommodate caring responsibilities. In addition, mature age workers can actively seek out part-time or casual work.
6. CCI also submits that the existing obligations under section 65 of the FW Act are already onerous on employers. Therefore, CCI opposes any amendments to the FW Act which seek to increase the scope of eligibility under section 65 of the FW Act as it is our view that such an amendment will impose further regulatory burden on employers.

¹ Refer to 5.1.6 of *ACCI Submission: Inquiry into the Fair Work Act 2009*

7. It is our view that education (i.e. about the value of retaining/engaging mature age workers and facilitating their individual working needs) rather than legislative reform is the best manner in which to facilitate change.
8. CCI also notes that despite the FW Act Expert Panel making a recommendation for FW Act reform which was similar in nature to Proposal 2 – 5 in the Discussion Paper, this recommendation was not implemented in the *Fair Work Amendment Bill 2009* (Cth). Whilst, this recommendation might be the subject of further consultation with stakeholders or an amendment of a similar nature may be pursued in the *Fair Work Amendment (Better Work/Life Balance) Bill 2012* (Cth), for the reasons outlined above, CCI submit that any proposed amendments which seek to increase the scope of eligibility under section 65 of the FW Act should not be adopted.

Modern Awards

9. Proposal 2 – 7 of the Discussion Paper provides that:

From 2014, Fair Work Australia will conduct the first four-yearly review of modern awards. In the course of the review, the inclusion or modification of terms in the awards to encourage workforce participation of mature age workers should be considered.

10. CCI opposes the above proposal.
11. CCI submit that Proposal 2 – 7 is not an appropriate matter for inclusion in awards and in-turn should not be considered during the four-yearly award review process for the following reasons:
 - a. as set out in section 132 of the FW Act, modern awards set minimum terms and conditions of employment (as opposed to statements of aspiration). CCI submit that terms that relate to encouraging mature age workers participation in the workforce cannot be appropriately categorised as a term or condition of employment; and
 - b. if such terms are included, they will increase the already onerous regulatory burden on employers.

Notice of Termination of Employment

12. Proposal 2 – 8 of the Discussion Paper states:

Section 117(3)(b) of the Fair Work Act 2009 (Cth) provides that if an employee is over 45 years of age and has completed at least two years of continuous service with the employer, then the minimum period of notice for termination is increased by one week. The Australian Government should consider amending this section to increase this period from one week to four weeks.

13. CCI opposes the above proposal.
14. CCI submit that Proposal 2 – 8 is unnecessary for the following reasons:
 - a. as aptly pointed out in the Discussion Paper,² the ALRC has expressed that it is conscious of concerns that the effect of Proposal 2 – 8 is that it may make mature

² Refer to p 54

age workers less attractive to employers. CCI has serious concerns that the consequence of providing mature age workers with additional rights and entitlements above their younger counterparts is that it will essentially discourage employers to engage mature age workers;

- b. as pointed out in the Discussion Paper,³ the Australian Bureau of Statistics have identified that mature workers are currently more likely to experience long term periods of unemployment. Therefore, CCI believes that this additional entitlement would make unemployed mature age workers less attractive to prospective employers which could in-turn further increase these workers length of unemployment or even worse, completely hinder their chances of further employment; and
- c. as pointed out in the Discussion Paper,⁴ there is evidence to suggest that mature age workers are more likely to have their employment terminated or be made redundant when compared to their younger counterparts. Whilst in the event of a redundancy situation, the imposition of Proposal 2 – 8 would most likely discourage employers from making mature age workers redundant, the flow on effect is that employers may discriminate against mature age workers' younger counterparts, who are equally or more valuable, simply because it is more cost effective to make the non-mature workers redundant.

The Need for Legislative Amendments

- 15. It is CCI's position that the FW Act currently imposes onerous obligations on employers and that additional regulation is unlikely to result in an improved outcome for mature age workers.
- 16. We believe that the most appropriate means of addressing the concerns raised in this submission would be to promote to employers the benefits of engaging and retaining mature age workers. To the extent that the problem exists, increased legislation is a poor method of addressing any perceptions or stereotypes of mature age workers that may be impacting upon their employment opportunities or experiences.
- 17. Furthermore, the Government should consider the assistance that is provided to job seekers to ensure that they are competitive in the marketplace. This assistance should not be limited to mature age workers but to other job seekers for whom the assistance is necessary.

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³ Refer to p 54

⁴ Refer to p 54