

30 November 2012

Professor Rosalind Croucher  
President  
Australian Law Reform Commission  
Level 40, MLC Tower  
40 Martin Place  
SYDNEY NSW 2000

sent via email: [age\\_barriers\\_to\\_work@alrc.gov.au](mailto:age_barriers_to_work@alrc.gov.au)

Business  
Council of  
Australia



**Review into Commonwealth legal barriers to older persons participating in the workforce or other productive work**

Dear Professor Croucher

The Business Council of Australia (BCA) welcomes the opportunity to contribute to the review into Commonwealth legal barriers to older persons participating in the workforce or other productive work. This letter responds to the Australian Law Reform Commission discussion paper, *Grey Areas – Age Barriers to Work in Commonwealth Laws*.

The BCA brings together the chief executives of 100 of Australia's leading companies. For almost 30 years, the BCA has provided a unique forum for some of Australia's most experienced corporate leaders to contribute to public policy reform that affects business and the community as a whole. Our vision is for Australia to be the best place in the world in which to live, learn, work and do business.

***Preferred approach***

The BCA strongly supports initiatives that encourage the full economic and social participation of all Australians. We also subscribe to the core principle that regulation is never the best way to deal with major public policy challenges.

In the case of older Australians, the BCA considers that full economic and social participation is best achieved by the following three strategies.

First, we support using educational strategies and selling the benefits of older workers to employers. We have been working to increase the participation of older workers, and developed with the ACTU a guide to help business support and encourage older workers to remain in the workforce (see [www.bca.com.au/Content/91719.aspx](http://www.bca.com.au/Content/91719.aspx)).

Second, we support high-performing, collaborative workplaces that give businesses the flexibility they need to stay competitive and employees the flexibility to work in different ways to balance their personal lives and needs.

Third, we support removing all legislated age restrictions, unless the costs of removing the age restriction outweigh the benefits.

We believe these three approaches are both fairer and more effective than increasing legal requirements. New or increased legal requirements relating to older workers may have the perverse impact of tipping the balance in favour of younger workers, who do not attract additional obligations. We also consider, as a matter of principle, that the law should avoid discriminating unfairly against other groups in society.

***Scope of the discussion paper***

The inquiry's terms of reference focus on legislation and legal frameworks that contain or create barriers to participation. The BCA is concerned that the discussion paper adopts an unusually broad view of legislation and legal frameworks. This leads to consideration of a number of matters that would appear to be beyond the terms of reference, duplicating consideration of matters already considered by other processes with broader terms of reference, such as the Consultative Forum on Mature Age Participation.

An example of an area where this occurs is the discussion of the practices of private recruitment agencies, which do not concern legal barriers but go to the question of compliance with existing anti-discrimination and workplace relations laws. Similarly, the commission considers a range of proposals to raise awareness of the benefits of mature age participation. Yet, as the discussion paper acknowledges, the Age Discrimination Commissioner is already empowered to promote the benefits of mature age participation and is already taking steps to engage with the private recruitment sector.

The BCA notes the proposed changes to social security arrangements, including changing income test and age eligibility requirements for certain payments, with some concern. Social security settings by their very nature constitute a trade-off between the three dimensions of payment adequacy, incentives for self-support, and affordability of the system. The proposals in the discussion paper would increase payment adequacy, but do not take account of the fact that they would both reduce the relative financial attractiveness of work and would also increase the costs of the system. These economic settings should be considered within the architecture of the social security system as a whole and having regard to the fact that older Australians already experience personal income tax, social security and associated arrangements that are more generous than those applying to younger Australians.

The BCA is also concerned that, rather than looking to the removal (where appropriate) of legal or regulatory barriers to participation, the discussion paper canvasses the adoption of a range of new regulatory and policy mechanisms to address non-legal barriers to participation. For example, the paper discusses various proposals for additional regulation of the practices of private recruitment firms. The BCA submits that, not only do these broader policy considerations fall well outside the terms of reference of this inquiry, they are also in most instances matters that are already under consideration by the appropriate policy department or authority, and there is no clear role for the commission in the development of those policies.

On balance, the broad scope of the discussion paper would appear to suggest that there are few significant legal barriers to older workers and confirms the BCA view that work arrangements, particularly job flexibility, are fundamental to encouraging older workers to remain in the workplace.

If you would like to follow up any matters in this submission, please do not hesitate to contact Marion Terrill, Director Policy.

Yours sincerely

[signature removed]

**Jennifer Westacott**  
Chief Executive