

**Proposal for Commonwealth Age Discrimination Legislation:  
YACVic's response to the information paper**



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## Introduction

The Youth Affairs Council of Victoria Inc. (YACVic) is the peak body and leading policy advocate on young people's issues in Victoria. The main function of YACVic is to make representations to government and serve as an advocate for the interests of young people, workers with young people and organisations that provide direct services to young people.

YACVic commends the Commonwealth Government's commitment to develop legislation to prohibit age discrimination and we welcome the opportunity to participate in the consultation process. YACVic believes that a robust legislative framework that contains few exemptions, can assist in tackling some of the age-based discrimination issues facing young people in Australia. To ensure the legislation has real impact, YACVic urges the Government to provide appropriate resources for community education and complaint handling.

In general, YACVic is supportive of the Government's proposal to include both direct and indirect discrimination (2.1) and for age characteristics (2.2.1) and age group (2.2.2) to be included under the legislation. YACVic is also supportive of the proposed exemption for 'positive' age discrimination, where age restrictions seek to address disadvantage or meet the needs of particular age groups (9.1), and of the proposed offence of victimisation (10.1).

However, YACVic does have specific concerns about the number of proposed exemptions included in the legislation. In many cases whole Acts are exempted (eg Social Security Act 1991, Migration Act 1958, Migration Regulations 1994, Australian Citizenship Act 1948 and the Immigration Education Act 1971). Because of the number of exemptions, YACVic does not believe the proposed legislation is sufficiently robust to challenge age discrimination and this weakens the government's commitment to an Australian community free from discrimination. Rather than broad exemptions, YACVic believes it would be more appropriate to include specific exemptions where it can be established that the exemption is for the benefit of a certain group, that is, a positive form of discrimination.

In particular, we are disappointed that several issues that more specifically relate to young people (eg Medicare cards, unequal social security payments) are not tackled in this information paper. Rather, these issues will be referred back to the relevant portfolio areas. YACVic is concerned that if these issues are not addressed as part of the development of the legislation, current age-based discriminatory practices, which are specifically detrimental to young people, will continue. Timelines should not determine which issues will be addressed in the legislation. History shows that flawed legislation can stay on the statute books for long periods despite the

best intentions to 'fix it up once it's in'. It is vital that all issues are considered before the legislation is developed to ensure it is robust and provides appropriate protection.

More specific comments are outlined in further detail below.

### **Para 3: Prohibitions on age discrimination**

The proposed legislation will prohibit age discrimination in 'access to premises, places and transport'. Young people often express concern about age-based discrimination they experience when using public spaces such as parks, shopping centres (in particularly privately owned centres), train stations etc. As discrimination in public areas is a key concern for young people, YACVic believes that this should come under a separate heading and particular consideration given to issues arising from the privatisation of public areas.

### **Para 4.5 Youth wages, job training and younger workers**

YACVic urges the Government to reconsider its intention to exempt youth wages and existing policies about job training from the age discrimination legislation. Current policies mean that young workers can be paid lower wages than older workers for equal work. Lesser pay for equal work is discriminatory and breaches Australia's obligations under the Convention of the Rights of the Child. The information paper states that the decision to exempt youth wages has been taken to maintain young people's competitiveness within the labour market. However, this argument is unconvincing as the same argument could be used for any group of workers. If an argument to restrict wages for young people were sufficiently robust (ie. in their interests to maintain employment opportunities) then it should be able to be argued through appropriate administrative processes under a general 'positive' discrimination principle. YACVic strongly believes that young people should not be penalised by receiving less pay than adult workers for undertaking the same work.

### **Para 5.6 Prohibition in relation to access to health and medical goods and services and exemptions**

A common problem faced by young people is that they are denied access to health services because some health professionals believe that they should have parental/carer consent before treating the young person. This is particularly true of issues relating to contraceptive and other sexual health matters. YACVic does not believe that that a health professional should limit access to health services other than for health reasons. That is, access to health services should not be limited by age.

### **Para 5.7 Young people and goods and services**

YACVic is disappointed that a number of issues specially relating to young people and their access to goods and services has fallen outside the immediate scope of the proposed legislation. The discussion paper states that these issues will be referred to the appropriate organisations but there is no further discussion about these referrals and when this will occur. YACVic urges the Government to ensure these issues are addressed in the development of this legislation prior to its enactment.

As noted in the information paper and as highlighted in previous consultations, Medicare card eligibility is a key concern for young people. YACVic believes young people should be able to access their own Medicare card when they have the capacity to make decisions about treatment. Failure to be able to do this effectively limits their access to treatment services because of their age. As such, YACVic believes that this issue must be addressed immediately and we do not understand why it falls outside the scope of the legislation.

### **6.4 Migration**

YACVic opposes the proposed exemption of the Migration Act 1958 and the Migration Regulations 1994. The argument that these issues can be exempt because of the 'intense parliamentary and public scrutiny given to migration laws and regulations and the broad public interest criteria being served by various migration restrictions, migration laws and evaluations' is unjustified. Laws should not be exempt because they are purported to be under public scrutiny. YACVic believes that a robust legislative framework is particularly important for groups such as newly-arrived migrants, who may require a greater level of protection due to their status. If there are good reasons for specific exemptions (which we are not aware of at this time), then they should be able to be argued through appropriate administrative processes under the 'positive' discrimination principle.

### **Para 6.6 Social security legislation, Family and Community Service and related programs**

The discussion paper notes several concerns raised during consultations about low social security payments to young people. However, again these issues are not addressed in detail in the discussion paper and it is not intended that these discriminatory issues will be addressed in the legislation. YACVic does not believe that these issues are solely the responsibility of the social security portfolio. Age-based payments are discriminatory and have negative consequence for young people. For example, research undertaken by welfare organisations such as the Australian Council of Social Services (ACOSS) consistently shows that Youth Allowance recipients live below the poverty line. The poverty associated with receipt of the

Youth Allowance may impact on a student's ability to participate in further education and training.

These issues need to be addressed in the development of the legislation and YACVic strongly opposes the proposed broad exemption of the relevant Act. Once again, if there are good reasons for specific exemptions (which we are not aware of at this time), then they should be able to be argued through appropriate administrative processes under the 'positive' discrimination principle. A lack of willingness to address these issue in this discussion paper, and in the implementation of age-based discrimination legislation, weakens the government's commitment to an Australian community free from discrimination.

### **Para 6.9 Corporation Act 2001 – repeal of age limit for directors.**

YACVic believes that young people should have the opportunity to be part of decision-making processes. This may include young people participating on boards and committees (under the Corporations Act 2001) or setting up their own businesses. For this reason, YACVic supports the repeal of the age limit for directors. However we are aware of some of the issues relating to this repeal (eg liability) and we would recommend that the Government seek further advice on these issues to ensure young people do not face additional burdens.

### **Para 8.1 Harassment**

As outlined in the information paper, age-based harassment can be a significant problem in the workplace. As such, we oppose the proposal to not specifically prohibit harassment based on age. YACVic believes there needs to be further discussion and clarification about what constitutes harassment to overcome the belief that the concept is 'too vague'.

### **Para 11.3 Participation in complaints and review processes**

YACVic is supportive of the proposal to provide people with information about the age discrimination legislation and complaint processes. This is an area of particular concern for YACVic.

During our consultations with members, YACVic often hears about young people, who have experienced inappropriate treatment or who have been denied their legal rights, failing to take action against the organisations or individuals responsible because they don't know how or where to complain or that they even have the right to complain.

We know that in terms of seeking justice and redress:

- Many young people do not have the skills or the confidence to contact adults for advice.
- They are likely to feel intimidated, confused and embarrassed concerning their problem.
- Traditional avenues for obtaining assistance are generally not user friendly for young people.
- Young people won't necessarily identify their issue as one that needs to be addressed.
- Young people can experience a lack of faith in the 'system'.

Overall, young people are less experienced, more likely to be untrained in legal processes and less likely to know or understand their legal rights. This is particularly true of some young people, for example young people from culturally and linguistically diverse backgrounds, indigenous young people and homeless young people.

For these reasons, it is important that young people themselves and workers, educators, and parents know and understand how they can exercise their own rights or how they can assist young people to do so. The establishment of a national network of legal advice services, such as those established under the Disability Discrimination legislation, is also an important component to ensure that young people are able to use the legislation once it is enacted.

It is also crucial to the success of this legislation that an education campaign, backed by appropriate resources, is implemented. It is important that information about the legislation is accessible to young people and available in languages other than English.