

Senate Standing Committee on Economics  
ANSWERS TO QUESTIONS ON NOTICE

**Treasury Portfolio**

**Inquiry into the Economic Recovery Package (JobMaker Hiring Credit)  
Amendment Bill 2020**

2020 - 2021

**Division:** JobKeeper Division  
**Topic:** Implementing powers  
**Reference:** Spoken 02 November 2020

**Question:**

Senator PATRICK: This is my last question, and I'd ask you to take this on notice. Can you come back to the committee and advise whether or not there was an explicit instruction or just a default position from either government or from Treasury as to constructing this in a way where the implementation is spelt out in regulation rather than in the head legislation?

Ms Brown: I can probably answer without taking that on notice that this was the subject of Treasury advice. We provided advice to the government in terms of all aspects of the program design, including the legislative design.

Senator PATRICK: Can I ask you, then, to table the advice specifically related to the recommendation to conduct the implementing, or to have the implementing powers in regulation rather than in the main body of legislation?

Ms Brown: I can certainly take on notice that we can have a look at what we might be able to provide.

**Answer:**

Treasury provided advice to the Government on all aspects of the program design, including the legislative design. This advice is Cabinet-in-confidence as it is directly pertinent to the deliberations of Cabinet.

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2020 - 2021

**Division:** JobKeeper Division  
**Topic:** Advice in the Lead-up to Budget  
**Reference:** Spoken 02 November 2020

**Question:**

Senator GALLACHER: On JobMaker and the hiring credits legislation?

Ms Brown: We provided a series of advice in the lead-up to the budget. I can't recall exactly when that first began.

Senator GALLACHER: Perhaps on notice you could give us the days that you advised on this scheme in the lead-up to the budget. We've had earlier inquiries where we were told there was no advice given by Treasury, so I want to make sure there was a chain of advice given here.

Ms Brown: Certainly.

**Answer:**

Treasury provided formal advice throughout the development of the JobMaker Hiring Credit in the lead up to the Budget.

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**Inquiry into the Economic Recovery Package (JobMaker Hiring Credit) Amendment Bill 2020**

2020 - 2021

**Division:** JobKeeper Division  
**Topic:** Wage Subsidies based on Age  
**Reference:** Spoken 02 November 2020

**Question:**

Senator PRATT: Perhaps I could just ask: clearly a wage subsidy to a particular age cohort is not discriminatory. So, using a wage subsidy is not, but advertising only on the basis that you'll employ someone who's eligible for that wage subsidy is a different question.

ACTING CHAIR: It is perplexing, because if employers decide to employ these people and then find that financially they aren't able to, because they aren't eligible for the assistance—clarity is important. I'll just give the Treasury officials a moment, but this may be something they'll wish to take on notice and come back to us on.

Senator GALLACHER: Chair, if I could: it is not an unforeseeable circumstance that these ads are appearing. So, is it a surprise to Treasury, and can you give us, on notice, a response to that question?

Ms Brown: Certainly we can provide a considered response on notice to that question.

Senator PRATT: This is a very basic element. What happens when someone's who's 40 applies for a job? Is the employer obliged to advertise the job only to people under 35 so that people over 40 don't waste their time? People go to a lot of effort to apply for jobs. How are people supposed to navigate this? It's core to the purpose of the scheme.

Ms Brown: There'll be a great range of reasons that an employer chooses a particular employee who applies through a recruitment process. It may be that their preference is to hire somebody with a greater degree of skills and experience than they might find in a younger worker. As I said earlier, where an employer is acting in accordance with a government program, there are exemptions under the Age Discrimination Act. But I'd be happy to provide a more considered answer on notice.

**Answer:**

Section 41A of the *Age Discrimination Act 2004 (Cth)*, (about Commonwealth employment programs) provides that Commonwealth employment programs are not inconsistent with the Act where the program is primarily intended to increase workforce participation and is intended to reduce a disadvantage experienced by people of a particular age. Prospective employers may target employees who fit within these programs, including by reference to the criteria applying in the program, consistent with the *Age Discrimination Act 2004*.

As with all employment decisions, there are a variety of legal obligations that apply to the advertising of positions and recruitment of staff. The Treasury is unable to provide employers with legal advice as to how the law may apply in their individual circumstances.

The *Age Discrimination Act 2004* was introduced after the legal case considered by the Human Rights and Equal Opportunity Commission in 1999 (mentioned by Senator Patrick) was handed down.