

Australian Human Rights Commission  
Age Discrimination Commissioner  
The Hon Dr Kay Patterson AO

1. The Australian Human Rights Commission (the Commission) welcomes the opportunity to make this submission to the Inquiry into the Appropriateness and Effectiveness of the Objectives, Design, Implementation and Evaluation of jobactive.
2. The Commission is a Commonwealth corporate entity under the Public Governance and Performance Accountability Act 2013 and staff of the Commission are public servants employed under the Public Service Act 1999.
3. The Commission is a national human rights institution, with recognised independent status and roles in United Nations human rights fora. We undertake a range of policy development and research tasks which aim to promote compliance with Australia's human rights obligations, while also investigating and conciliating complaints of unlawful discrimination and breaches of human rights.
4. The right to work, free from discrimination on any basis, is a fundamental human right. Too many older Australians are denied this right and as a result are prevented from enjoying the independence, dignity and sense of purpose that work brings.
5. Australia has committed to prohibiting discrimination and protecting the right to work under international human rights law. The domestic legal framework in Australia includes the *Age Discrimination Act* and *Fair Work Act* which prohibit employment discrimination on the basis of age.
6. The labour force participation rate of older Australians is growing. Australians aged 55 and over tend to have a lower unemployment rate than younger people: in May 2018 it was 3.8% compared to 4.4% for those aged 25-54.<sup>1</sup>
7. However, once an older worker becomes unemployed, they face much greater difficulty re-entering the workforce. In May 2018 the average duration of unemployment for Australians aged 55 and over was 74 weeks compared to 54 weeks for those aged 25-54.<sup>2</sup>
8. Age discrimination in employment remains a significant problem in Australia. In 2016-17, 58% of complaints the Commission received about age discrimination were in the area of employment.<sup>3</sup>

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9. The Commission's 2015 *National Prevalence Survey of Age Discrimination in the Workplace* reported more than a quarter (27%) of people aged 50 and over had experienced age discrimination in employment. A third of those who had experienced age discrimination gave up looking for work.<sup>4</sup>
10. The challenges faced by older jobseekers are confounded by gender, race, location and other factors such as English language proficiency. For example, one in four men and fewer than one in ten women with poor English language proficiency work beyond the age of 60.<sup>5</sup>
11. This submission addresses one of the Inquiry's terms of reference, namely:
  - d. *the ability of jobactive to provide long-term solutions to joblessness, and to achieve social, economic and cultural outcomes that meet the needs and aspirations of unemployed workers.*
12. This submission covers three issues raised in the Commission's 2016 *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*.<sup>6</sup>
13. First, the *Willing to Work* report identified specific disincentives for older jobseekers in the jobactive system. These include:
  - the limited availability of jobactive services for older jobseekers who are not receiving income support (Recommendation 22)
  - the requirement that older jobseekers serve a six-month waiting period to be eligible for the Restart wage subsidy (Recommendation 21)
  - other financial disincentives in current taxation and benefits systems for older workers seeking to extend their workforce participation including via self-employment opportunities (Recommendation 12)
  - that older people eligible for Age Pension income support are not eligible for jobactive services, New Enterprise Incentive Scheme, Restart wage subsidy, or other government jobsearch programs
14. Second, the *Willing to Work* report identified the potential for intersectional discrimination against vulnerable groups seeking access to employment services (see pages 72-4). These vulnerable groups include:

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- older women
  - older Aboriginal and Torres Strait Islanders
  - older people from culturally and linguistically diverse (CALD) backgrounds
  - older lesbian, gay, bisexual, transgender and intersex (LGBTI) people
  - older people in regional and remote areas
15. Intersectional discrimination is based on multiple intersecting attributes such as age, gender, race, sexuality, caring responsibility and/or location. Examples of intersectional discrimination may involve direct discrimination. It may also centre on unconscious bias and stereotyping of attributes that result in under-valuing or failing to recognise accurately the skills, experience and capacities of older jobseekers.
16. The results of intersectional discrimination are wide-ranging and include adverse effects on jobseekers' health and wellbeing, increased financial risk caused by reduced financial security in terms of lower weekly earnings and lower retirement incomes, reduction in autonomy and ability to meet responsibilities, including caring, at the same time as limiting a person's capacity to contribute productively to society.
17. Third, the *Willing to Work* report identified that jobactive providers deliver inconsistent employment services to older jobseekers. Examples include:
- some jobactive providers being unaware of the Restart wage subsidy (page 81)
  - an absence of tools for jobactive providers to assist older workers in the search for work (page 88)
  - a need for the development and provision of training for jobactive staff to improve their capacity to understand the challenges faced by older jobseekers and their ability to provide them with effective support (pages 131-2).
  - a need for tailored resources and supports for older workers displaced from small and medium businesses or transitioning from declining to growth industries (Recommendation 7)
18. In the context of the ageing population, it is essential that jobactive employment services enable older Australians to extend their labour force participation by facilitating the development and transferability of

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their skills and removing barriers and disincentives that restrict their capacity to work for as long as they wish.

19. The full *Willing to Work* report can be downloaded from the Commission website: [www.humanrights.gov.au/our-work/age-discrimination/projects/willing-work-nationalinquiry-employment-discrimination-against](http://www.humanrights.gov.au/our-work/age-discrimination/projects/willing-work-nationalinquiry-employment-discrimination-against)

20. We trust this information is useful to the Inquiry into the Appropriateness and Effectiveness of the Objectives, Design, Implementation and Evaluation of jobactive.

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<sup>1</sup> Australian Bureau of Statistics, *Cat. No. 6291.0.55.001 – Labour Force, Australia, Detailed – Electronic Delivery, May 2018*. At [www.abs.gov.au/ausstats/abs@.nsf/mf/6291.0.55.001](http://www.abs.gov.au/ausstats/abs@.nsf/mf/6291.0.55.001) (viewed 23 August 2018).

<sup>2</sup> Australian Bureau of Statistics, *Cat. No. 6291.0.55.001 – Labour Force, Australia, Detailed – Electronic Delivery, May 2018*. At [www.abs.gov.au/ausstats/abs@.nsf/mf/6291.0.55.001](http://www.abs.gov.au/ausstats/abs@.nsf/mf/6291.0.55.001) (viewed 23 August 2018).

<sup>3</sup> Australian Human Rights Commission, *2016-2017 Complaint Statistics*. At [https://www.humanrights.gov.au/sites/default/files/AHRC\\_Complaints\\_AR\\_Stats\\_Tables%202016-2017.pdf](https://www.humanrights.gov.au/sites/default/files/AHRC_Complaints_AR_Stats_Tables%202016-2017.pdf) (viewed 23 August 2018).

<sup>4</sup> Australian Human Rights Commission, *National prevalence survey of age discrimination in the workplace* (2015), 33. At <https://www.humanrights.gov.au/our-work/age-discrimination/publications/national-prevalence-survey-age-discrimination-workplace> (viewed 23 August 2018).

<sup>5</sup> D Ralston and M Jenkinson, *Involuntary Retirement: Characteristics and Implications*, Australian Centre for Financial Studies for the Australian Institute of Superannuation Trustees (2014). At <https://australiancentre.com.au/publication/involuntary-retirement-characteristics-and-implications/> (viewed 27 August 2018).

<sup>6</sup> Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability* (2016). At <https://www.humanrights.gov.au/our-work/disability-rights/publications/willing-work-national-inquiry-employment-discrimination> (viewed 21 August 2018).