

Supplementary written evidence submitted by Dr Alysia Blackham (ROP0060)

I write this additional submission as an academic with particular expertise in age discrimination law and age equality. I hold a PhD in Law, on age discrimination at work, from Gonville and Caius College at the University of Cambridge.

I would like to emphasise to the Committee that there *is* an evidence base for action to strengthen equality law to better support the rights for older people. I have previously provided a copy of my book to the Committee.¹ This offers a series of recommendations, grounded in evidence, for improving the operation of age discrimination law. A number of those recommendations are included in my previous submission. I do not believe there is a need, at this point, for further research before committing to change. **What is needed, at this point, is targeted change.**

Another issue that was flagged in the hearing related to time limits for claiming, and the need for evidence around the impact of time limits. For the Committee's benefit, I attach additional research on the impact of time limits on age discrimination claims in Employment Tribunals (ETs).² Time limits are having a significant and deleterious effect on the enforcement of age discrimination law. As I argued in that article:

short time periods for filing a claim put an unreasonable burden on claimants, who must undergo the process of 'naming, blaming and claiming' while under tight time pressure. As the National Association of Schoolmasters Union of Women Teachers submitted to the Law Commission,

Three months is not a lot of time in practice, especially when an employee has to absorb the situation, recognise they have been wronged, seek representation (if appropriate), go through early conciliation and begin the process of lodging a potential employment claim, including the associated paperwork.

This time pressure compounds the mental burden of bringing a discrimination claim, particularly for members of impacted groups, who are likely to also be experiencing other forms of disadvantage and demands on their time (particularly for those with caring responsibilities). Indeed, for many claimants, managing a discrimination claim is *on top of* the already onerous process of finding a new job, or navigating a discriminatory or toxic workplace on a day-to-day basis. Managing a discrimination claim is already stressful and demanding, let alone under time pressure; short time limits are likely to affect claimants' mental wellbeing. Further, justifying why a claim is out of time – and why it would be just and equitable to extend time – forces claimants to disclose sensitive and personal information, which is now generally released into the public sphere with the online reporting of ET judgments. This is likely to have adverse

¹ Alysia Blackham, *Reforming Age Discrimination Law: Beyond Individual Enforcement* (Oxford University Press 2022).

² Alysia Blackham, 'Enforcing Rights in Employment Tribunals: Insights from Age Discrimination Claims in a New "Dataset"' (2021) 41 *Legal Studies* 390.

effects on individual privacy and wellbeing. Unsurprisingly, then, the Law Commission has concluded that the current three-month time limit for bringing a claim to an ET is ‘undesirably short’, and has recommended that time limits be six months for all claims brought in an ET (including discrimination claims).

The Law Commission's recommendations are given further weight by the results of this study. Among all decisions [1208] in this case sample, time limits were raised as an issue in 98 cases (8.1%): in 74 cases time limits proved fatal to a claim, and in 24 cases the claim (in all or part) was allowed to proceed. While ETs have discretion to extend time where it is ‘just and equitable’ to do so, this was rarely used in practice. In only 18 cases was time extended.³

Drawing on this evidence, I recommend that the three-month time limit for employment discrimination claims be extended.

For example, recognising the impacts of time limits on access to justice, in Australian federal law, the time limit for age discrimination claims was extended to **24 months** in 2022.⁴ This time limit is also flexible and discretionary; by contrast, time limits under the Equality Act 2010 have been enforced rigidly in practice.

I am happy to speak further to any part of this submission.

Yours sincerely,

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³ *ibid* 404–5 (footnotes omitted).

⁴ *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022* (Cth), amending the *Australian Human Rights Commission Act 1986* (Cth) s 46PH(1)(b).

