



BRIEFING PAPER

AGE DISCRIMINATION & MATURE WORKFORCE ISSUES

THE ROLE OF HREOC

Age discrimination is one of the key areas of discrimination monitored by HREOC

Australians of all ages have a right to be treated fairly and have the same opportunities as everyone else. This right is protected under the Age Discrimination Act 2004 (ADA). Under the Act, individuals can lodge complaints of discrimination with the Australian Human Rights Commission.

HREOC undertakes research, education and policy activities to build awareness of the Act and to tackle the attitudes and stereotypes that can lead to age discrimination.

This work is led by Elizabeth Broderick, the Commissioner responsible for Age Discrimination.

THE AGE DISCRIMINATION COMMISSIONER

Commissioner Elizabeth Broderick is a lawyer and former Telstra NSW Business Woman of the Year and Australian Corporate Business Woman of the Year. Prior to her appointment as Sex Discrimination Commissioner and Commissioner responsible for Age Discrimination, Ms Broderick was a partner at Blake Dawson and developed the firm's business case for flexibility in the workplace. Recently she travelled extensively around Australia listening to people's concerns about gender equality and age discrimination.

DEFINITION OF AGE DISCRIMINATION

The definition of direct discrimination is contained in s 14 of the ADA as follows:

For the purposes of this Act, a person (the discriminator) discriminates against another person (the aggrieved person) on the ground of age of the aggrieved person if:

1. the discriminator treats or proposes to treat the aggrieved person less favourably than, in circumstances that are the same or not materially different, the discriminator treats or would treat a person of a different age; and

2. the discriminator does so because of:

- the age of the aggrieved person; or
- a characteristic that appertains generally to persons of the age of the aggrieved person; or
- a characteristic that is generally imputed to persons of the age of the aggrieved person

WHAT IS HREOC DOING TO PROMOTE THE INTERESTS OF MATURE AGE WORKERS?

The HREOC website contains a section entitled “Mature Workers Mean Business”. It showcases stories from the workplace featuring older workers and their employers. It also debunks common myths about older workers and offers strategies to attract and retain mature workers. There is a guide to the federal Age Discrimination Act, research and reports on older workers, publications for employers and other useful links and contacts.

WHAT ARE THE ISSUES BEING CONSIDERED AS PART OF THE MATURE AGE WORKFORCE DEBATE ?

- A combination of the declining birth rate and increasing longevity have decisive implications for the size of the future workforce. By 2012, the Australian Bureau of Statistics (ABS) predicts that the proportion of the population aged over 65 will reach a peak growth rate of 4 per cent per annum, which is considerably faster than total population growth. By 2021, nearly 22 per cent of the population will be aged over 65.
- Workforce growth has already been slowing. By the 2020s, the total projected labour force growth *for the decade* is predicted to be 125,000 compared with current growth of 170,000 *per annum*.
- Emphasis on the extension of working life has grown in most industrialised countries, arising largely from concern about the impact of an ageing

population on the availability of labour and pressure on established pension systems. Factors include the following:

- an ageing population and increased life expectancy;
- pressure on public pension systems;
- a shift of responsibility for pension coverage from public schemes to individual saving;
- the popularity of early retirement;
- a general shift from passive to active labour market policies;
- increases in long-term unemployment among older workers;
- a growing view that employment problems require co-operation between government, employers and unions;
- recognition of age discrimination in the labour market; and
- concern about labour shortages.

Together, these pressures are underpinning policies designed to extend working life and to improve employment opportunities for older people before they reach pensionable age.

- There is a growing recognition in Australia and overseas that some policies and attitudes have encouraged and reinforced a trend towards early exit from the labour force – voluntary or otherwise. The Commonwealth Government is addressing concerns regarding mature-age workers and early retirement across a number of fronts including among others:
 - changes to retirement income policies including pensions and superannuation arrangements to redress incentives to early retirement;
 - changes to superannuation arrangements to make it easier to contribute at an older age and easier for individuals who decide to re-enter the workforce;
 - job search and placement assistance has been enhanced for older job seekers; and
 - improved coordination among job placement agencies.
- A theme which is also emerging from comprehensive policy approaches overseas is the importance of addressing public attitudes and perceptions about the benefits of ongoing mature-age workforce participation and increasing awareness of age discrimination legislation and its implications.
- The skills shortage is a significant impediment to business. The business case for retaining and supporting mature age workers is mounting. It also improves return on investment in human capital; broadens diversity in the workforce; and maximises recruitment potential.

- Recruitment is the main area where older workers encounter discrimination. The persistence of age discrimination despite the existence of anti-discrimination legislation in all States and Territories is also backed up by analysis from the Human Rights and Equal Opportunity Commission and State authorities. The problem is especially severe for older unemployed job seekers. Almost two-thirds of unemployed job seekers aged over 55 report that the most difficult problem they face in finding work is being considered too old by employers. Mature people generally have little difficulty holding onto their jobs but that once they lose them they have greater difficulty than younger people in getting back into employment.
- Whatever the desirability of stimulating mature-age employment, it is unlikely to be possible without some costs. While encouraging the employment of older workers will result in savings in terms of pensions, unemployment benefits and increased tax revenues, training and placement costs will likely rise. Employers may be reluctant to carry the cost of retraining older workers and redesigning workplaces.
- As evidenced by the strategies being adopted in Australia and elsewhere, there are differing views about how best to address the issue of increasing and sustaining the labour force participation of older workers and appropriate policies to achieve this. There are, however, some common themes:
 - recognition that age discrimination legislation is important but not sufficient in itself to prevent discrimination towards older workers – there needs to be widespread understanding and appreciation of the legislation and its implications;
 - retirement income policies should be designed to encourage not discourage ongoing participation in the labour market;
 - there is a need for a substantial shift in attitudes across a wide front regarding the benefits older workers bring to the workforce and the benefits of older workers remaining engaged – i.e. there is a need for far reaching cultural change; and
 - policies need to be integrated across all levels of government.

Impacts on individuals of changed expectations around work and retirement

- More older people need to work and for longer to accumulate sufficient individual retirement savings to finance a lengthy period of old age. In addition, the taxes paid by younger and older workers alike to fund the aged care needs of those other older Australians who rely on tax payer funded benefits. Age discrimination acts as a barrier to these goals.

- As the population ages there will be a greater need for access to family-friendly employment arrangements as both women and men juggle not only the care of children but also the care of ageing parents. The question of elder care is emerging as one that will affect all workers, regardless of whether they have children. While recognising the changes already undertaken in regard to superannuation arrangements, it is likely that more may need to be done to simplify current arrangements and to increase the flexibility of the system to better support ongoing participation and phased retirement.

COTA OVER 50s' VIEWS REGARDING MATURE WORKFORCE ISSUES, DISCRIMINATION ETC.

- COTA Over 50s believes that the barriers faced by mature age people are complex and involve:
 - discrimination in terms of recruitment and retrenchment on the basis of age
 - lack of appropriate skills and training as skill requirements change
 - lack of jobs in particular regions and locations
 - the effects of long term unemployment in terms of getting back into work
 - social security and tax disincentive effects.
- To improve the participation of mature age people in the labour market each of these barriers will need to be addressed. In this process there needs to be recognition of the diversity of circumstances and backgrounds of mature age workers and their pre existing relationship to the labour market. Mature age workers are as diverse as any other group in the community.
- Training and skill development are rated very highly by older Australians. Investment in education and training is crucial to a strategic approach for Australia's ageing population. The skills of mature age people will need to be fostered and enhanced to meet future workforce requirements. The technological environment will continue to undergo profound and rapid change. We need a culture of lifelong learning if Australia is to respond to these continuous changes.
- Good health is vital to ensuring that an individual can maximise their social and economic participation, including participation in paid employment. Much job loss amongst mature age people is associated with ill health or injury. However, for a significant group of mature age workers, it is likely that ill-health or injury is often a surrogate for social reasons for leaving workplaces

where the mature age worker is neither valued nor encouraged, especially during organisational restructuring and downsizing. It is possible that many mature age people with relatively minor illnesses and injury retire because of their perceptions that their employment prospects are extremely limited. For many mature age people this means long term reliance on income support payments.

- As either job losers or job leavers, mature age people face very significant barriers in returning to work. There is also a significant group of people, primarily women, who have had marginal or no workforce attachment due to caring responsibilities but who are seeking a place in the workforce. The nature of these barriers is at the heart of the issues regarding the participation of mature age people in paid employment.
- It is vitally important that action is taken now to improve the employment prospects of mature age people in the labour market. Without action, a large cohort of people will enter retirement with insufficient savings, and they will experience social and economic exclusion. In addition, there is a serious loss of skills and productivity to the economy.
- Mature age workers tell COTA that age discrimination is the single most important cause of the problems they face. The significance of this factor should not be underestimated.
- There needs to be action on a wide range of levels to counter age discrimination and many players are needed to have a role, including:
 - the Commonwealth to take leadership in terms of public policy
 - forward-thinking employers to set examples and establish best practice
 - Job Network and other employment service providers to ensure that mature age job seekers are promoted to employers.
- For a significant number of people, phased retirement is an attractive option. Increasing the age of departure from the workforce can make a very significant difference to retirement savings and reduces the demand for government benefits. Income tax receipts are also increased if people are working for longer. Moreover, small changes to the labour market participation of mature age people can make a big difference to overall business and economic performance. COTA believes that phased retirement will become the norm rather than the exception over the coming years, with beneficial effects for both individuals and the community. Government needs to take action to facilitate this by improving the interface between social security, taxation and superannuation, ensuring effective age discrimination legislation,

and promoting the benefits of employing mature age workers to dispel negative stereotypes.

- COTA Over 50s has a strong commitment to intergenerational equity as set out in our Policy Principles. COTA concurs that the best option for the future will be to grow the economy through increased labour force participation and productivity.
- COTA Over 50s reiterates the need to maximise use of the labour force by increasing mature age employment, providing adequate skills training for mature age workers, enhancing lifelong learning opportunities and building social infrastructure. These investments will repay themselves many fold. Failure to invest in this way will result in reduced productivity, inability to meet the needs of the ageing population and inter-generational inequity.