



Age
Limits:

Age-related
discrimination in
employment
affecting workers
over 45

March 2001

The Victorian, South Australian and Western Australian Equal Opportunity Commissions and the Australian Employers Convention





CONTENTS

Foreword	3 – 4
Introduction	5 – 6
Executive Summary	7 – 9
Directions and Recommendations	10 – 11
Age Discrimination in Recruitment	12 – 16
Age Discrimination in Training	17 – 19
Age Discrimination in Exit Policies	20 – 22
Conclusion	23
Appendix	
Summary of age discrimination provisions in Victoria	24 – 25
Summary of age discrimination provisions in South Australia	25 – 26
Summary of age discrimination provisions in Western Australia	26 – 28
Footnotes	29
References	30



The Victorian, South Australian and Western Australian Equal Opportunity Commissions
and the Australian Employers Convention

AGE LIMITS: Age-related discrimination in employment affecting workers over 45

MARCH 2001

ISBN: 1 876605 56 1

GET GOOD ADVICE

The material in this publication is intended as a general guide only and is not intended to be legal advice. You should always consider taking appropriate professional advice on your particular circumstances. The Commissioner expressly disclaims any liability to any person in respect to anything done or not done in reliance on any of the contents of this publication.

Designed and Printed by Design Post 03 9899 3100



FOREWORD

Victorian, South Australian and Western Australian Equal Opportunity Commissioners

This Report was generated by the dual interests of the Equal Opportunity Commissioners in three states and the Australian Employers Convention. It represents a major step in exposing the existence of age discrimination in employment affecting workers over 45 years of age across these states. Although the number of age discrimination complaints is less than those for other types of discrimination such as sexual harassment and race, inquiries and anecdotal evidence have indicated that there is a hidden groundswell of occurrences which disadvantage people over 45 in the workplace.

The Report identifies the nature of discrimination experienced by workers over 45 years of age, known as 'older workers'¹. It also delineates the persistence and pervasiveness of age discrimination in a number of critical aspects of employment. The research enables informed discussion by key stakeholders about such discrimination, and the subsequent development of focused strategies that target discrimination on the basis of age in recruitment, training, promotion, retrenchment and retirement. Importantly, it enables the formulation of initiatives that reach workers over 45 to inform them of their rights under anti-discrimination laws across Australia².

Age discrimination has far reaching effects in terms of making use of the available workforce, which is rapidly ageing. This Report contributes to reducing the negative effects of discrimination as Australia comes to understand that economic productivity depends on harnessing its entire potential workforce, including older workers.

We wish to thank all stakeholders in the three states who participated in the project. These include older employed and unemployed people, members of organisations representing employers and older workers, legal office holders and private advocates, human resource and

recruitment consultants. We also wish to thank other government departments and individuals whom assisted with this project, specifically the Department of Employment and Training in Western Australia.

Finally, in producing this report we have been greatly assisted by many people. Special thanks are extended to mature-age people, both employed and unemployed who voiced their experiences of age discrimination in the series of focus groups that were held in each state. Representatives of peak employer and employee organisations, including public and private advocates contributed to the Report by articulating the ways in which age discrimination occurs in the processes of employment and unemployment, and in proffering a range of solutions. The Report attests to the benefits of a partnership between the anti-discrimination bodies and a number of other government departments, most specifically the Department of Employment and Training in Western Australia,

Ms Louise Rolland of JobsEast and Dr Libby Brooke of La Trobe University undertook the extensive consultative process that underpins the findings of this report on our behalf. The Report was prepared by Dr Libby Brooke of La Trobe University.

We welcome your comments and suggestions on the applicability and relevance of the Report. The findings of the focus groups, review of literature and analysis of trends in inquiries and complaints concerning age discrimination unequivocally indicate that a collaborative approach is vital: to challenge stale stereotypes of mature workers; enhance awareness of legislative provisions and the means of redress available under the relevant Acts; and to develop workplaces where experience and skills, not just age, matter. There is a clear need for material that addresses the disparate needs of human resource practitioners, older workers, employers and recruitment



FOREWORD

agencies. Partnerships, collaborations and tripartite working parties are an effective and recommended means of ensuring this report translates to the development of appropriate strategies.

June Williams

Commissioner for Equal Opportunity
Western Australia

Linda R Matthews

Commissioner for Equal Opportunity
South Australia

Diane Sisely

Chief Executive Victorian EOC



INTRODUCTION

The backdrop to this project is the shifting age demographic of the workforce and current social and industrial policies. Older workers' disadvantages are demonstrated in their low participation rates in employment, high rates of casualisation which exclude them from benefits awarded to permanent employees, their comparatively low levels of training, their duration of long term unemployment and their continuing displacement from work.

The ageing of the baby boomers and the falling fertility rates correlate to ageing of the labour force. Differences between rates of older and younger labour force entrants are dramatic. As baby boomers pass into middle age and beyond, the labour force will age too. More than 80% of the projected growth in the labour force between 1998 and 2016 will be in the 45 year and over age group ³.

There are also strong economic reasons for recruiting and retaining older workers. The Australian Employers Convention has projected that the foregone revenue from taxation, superannuation and social security costs for people over 45 in the highest quartile who had taken early retirement at 1994 was \$42.6 billion ⁴. Access Economics has projected that in 2031 greying baby boomers will cost Australia an extra \$42.8 billion a year, due to health costs and losses in superannuation and social security. If Australia is to have a similar budgetary position to the current one this cost must be offset by increased participation in work by older people or historically unattainable levels of economic growth.

Clearly, it is imperative from social, economic and industry perspectives to respond to the displacement of older workers. The structural lag that currently exists between older workers' availability and the perceptual barriers and policies which limit their optimal utilisation must be challenged. To achieve this stakeholder groups in the community need to revisit their perceptions of older workers.

Employers' perspectives towards ageing often influence who should be recruited, trained and retained and whether or not it is worthwhile to develop strategies to optimise their ageing workforces. The need to integrate human resource with business planning in relation to the changing age demographics of the labour market is particularly important in the context of globalisation.

Older workers are also often influenced by social stereotypes that affect their ongoing connection to work. Some mature workers consider leaving their workplace since they perceive that their colleagues view them as becoming too old to work and as wearing out. Other workers are afraid that they may not be able to learn new skills and choose to exclude themselves from new employment opportunities, for example, in new technologies.

Governments are also integral partners in understanding and combating age stereotypes. Responses to age discrimination require a whole-of-government approach, which recognises systemic barriers in recruitment, training and retention but also addresses the flow on impact experienced by older workers in the provision of employment, further education, training and other services.

The difficulties experienced by older workers at all stages of the employment cycle are related to complex and systemic age factors patterning employment outcomes. Current national data indicates that workers over 45 are more likely to be retrenched than younger workers, to remain outside the workforce for a longer period of time, and to receive less training to assist them to re-enter the workforce.



INTRODUCTION

In the context of the disadvantages faced by older people in employment, the Equal Opportunity Commissions of Victoria, South Australia and Western Australia in partnership with the Australian Employers Convention established this project to:

- identify perceptions held of and by older workers underlying age discrimination in Australian workplaces;
- identify forms of age discrimination in the workplace, for instance discrimination in recruitment, retention and training;
- examine the extent and trend of utilisation of age discrimination legislation in Australia and overseas and barriers leading to its under utilisation; and
- make recommendations to protect the rights to employment of older workers.

Research methods

A preliminary literature review focusing on the utilisation of age discrimination legislation in other countries set the background to the research. An initial consultation was also undertaken with key stakeholders in legal, trade union, employer and other relevant organisations in the three states, Victoria, South Australia and Western Australia.

This was followed by a consultation through focus groups of older workers and employers which were held in all three states. The focus groups with older workers spanned manufacturing, retail and other service industries. Specific focus groups were also held with sub-groups such as older women and older workers from culturally and linguistically diverse backgrounds.

The research utilised qualitative methodology to capture the responses of older workers, employers and other stakeholders to older workers' employment situations. Transcripts were analysed and common themes drawn out across the interviews in all states. These common themes were built into the analysis under sections which relate to areas of employment, such as recruitment, training and exit policies and formed the basis for particular case studies cited in the Report.



EXECUTIVE SUMMARY

Recruitment

The focus groups and discussions with key stakeholders identified the nature and extent of age discrimination relating to employment. These are as follows:

The recruitment process

- ◉ Older people and employers are unclear about their rights and responsibilities in recruitment. Older people are often unsure about procedures such as disclosure of their age in job applications and how to write a CV which presents their experience positively. Employers are often unsure about how to implement procedures that comply with age discrimination legislation in recruitment.
- ◉ Older unemployed people's experiences with employment services indicated that these agencies did not tailor the job search process to be responsive to the needs of older workers.
- ◉ Older workers commonly report that recruitment agents screen applicants according to age criteria at the initial stage of application.
- ◉ Older job applicants report common experiences of being 'judged by appearances' in interviews and presume that their age disadvantages them.
- ◉ Lack of feedback by employers and recruitment consultants restricts the ability of older applicants' to reskill or redirect their job search.

Age stereotypes in recruitment

- ◉ Age discrimination is commonly covert and evasive. Discrimination is perceived to be easy to mask through the use of code words, which make it difficult to prove. Code words such as 'too qualified' and ways of indirectly identifying age through questions like 'How old are your children?' are seen to mask discrimination.
- ◉ Older applicants who are unsuccessful may internalise negative stereotypes relating to age, which can undermine their future job seeking.

- ◉ Selection criteria in particular industries such as engineering and information technology can favour young, recent graduates with current skills and education.

- ◉ Older applicants can be perceived as 'old economy' effectively marginalising them in 'new economy' organisations.

Older workers experiences of powerlessness

- ◉ Repeated rejections can lead older people to feel powerless. An older woman who had been unemployed for nearly two years commented that employers could 'treat you any way they want to' in deciding whether to select or reject you.
- ◉ Older workers commonly report that they are reluctant to lodge age discrimination complaints due to fears of being victimised by employers. This also has consequences for whether they feel that they can use the age discrimination legislation to protect their rights.
- ◉ Age, gender and cultural diversity are seen to interact and create further barriers in recruitment. A focus group of older people from culturally and linguistically diverse backgrounds provided many examples of well-qualified people who had been repeatedly rejected for jobs for which they had trained.

Training

Low profile as an age discrimination issue and lack of measurement

- ◉ Training is not acknowledged as an age discrimination issue to the same extent as recruitment and exit policies.
- ◉ Lack of performance measurement of training opportunities for older workers can conceal lack of compliance.



EXECUTIVE SUMMARY

Structural barriers to training for older workers

- ◉ Structural barriers impede access to training for older workers due to age-based award wages for training and apprenticeships.
- ◉ Older people's access to training and apprenticeships is impeded by youth award payments based on age (below 21).
- ◉ Training professionals in focus groups considered that until broader structural changes were made in training eligibility to include older people, they are powerless to introduce changes.

Age stereotypes of older workers as 'old economy'

- ◉ Access to training in new technologies is critical in retention and career development. Negative perceptions that older workers lack adaptability to new training can limit their training in new technologies.
- ◉ Lack of currency of desirable skill sets further marginalises older people's retention, career development and employability.
- ◉ Older women who have been out of the workforce require training assistance to increase their employability.

Difficulties in identifying appropriate training

- ◉ Older workers commonly lack information about where they can find and gain access to appropriate training. This affects their ability to self-initiate training. Generally, older workers are not assertive in asking for training. If employers do not offer training, older workers are disadvantaged in not knowing how training can improve their employment opportunities.
- ◉ Negative perceptions of the suitability of older workers may cancel out any benefits they accrue by upgrading their skills through training.

- ◉ Older women who have been out of the workforce require particular assistance to identify training and link this to employment opportunity.
- ◉ Older people from culturally and linguistically diverse backgrounds have difficulties locating training resources.
- ◉ Older workers participating in the focus groups reported that the cost of accessing vocational training is a major inhibitor to training take up.

Exit policies

Continuing pressures to retire early were supported by age stereotypes

- ◉ A lag exists between the legislative abolition of mandatory retirement and community attitudes. Covert and overt pressures exist that induce early retirement; these are commonly justified by age stereotypes of older people being in decline.
- ◉ Older people can internalise the stereotype that they are 'too old' and blame themselves for being retrenched.

Age as a proxy in downsizing and re-engineering to new technologies

- ◉ Older workers are frequently perceived as 'old economy' workers in workplaces which are reengineering.
- ◉ Older workers commonly blame themselves for organisational downsizing and internalise negative stereotypes.
- ◉ A cultural shift to valuing younger, 'new economy' employees.
- ◉ Changes in workplaces through technological imperatives can be accompanied by a perception that older workers' skills are obsolete. This is accompanied by perceptions that younger workers are energetic, adaptable and possess current skills sets.



EXECUTIVE SUMMARY

- ◉ Employers have yet to be convinced that older workers are retrainable or adaptable and that it is more cost effective to retrain rather than replace them.

Lack of post-retrenchment support

- ◉ Older workers commonly experience a lack of support and assistance with job seeking both during and following retrenchment.
- ◉ Exit policies could be better managed to ensure retrenched older workers develop resources to assist them to maintain confidence and develop the skills and tools necessary to find new employment. Outplacement and employment programs should consider the non-generic nature of older workers and develop specific assistance targeting sub-groups, for example, of older women.
- ◉ The experience of several older workers in focus groups did not support the assumption that older workers can find new employment through 'portfolio careers'.

The limited range of innovative retirement options

- ◉ Employers and older workers lack information on the range of exit policies, including innovative retirement options.
- ◉ Older workers in the focus groups commonly supported phased retirement options, as long as they were not financially disadvantaged in relation to superannuation and pension entitlements.
- ◉ Employers tended to give positive support to innovative ideas around retirement, as long as there were no financial disincentives.



DIRECTIONS AND RECOMMENDATIONS

DIRECTIONS

This report clearly indicates the complex and pervasive nature of stereotypes about age which result in age discrimination in employment. These stereotypes can affect workers over 45 and shape the way they view their working lives, choices and opportunities.

The recruitment and employment services industry, employers, human resource managers, further education and training providers and all levels of government which employ older workers are subject to the same stereotypes.

To combat stereotyping that leads to the perception that older people are less able or less committed to contributing through their employment, we need to be aware that many people harbour negative perceptions about older age.

Essential to the directions advocated in this report is that action must first be taken to challenge age stereotypes, to develop sensitivity in the community to counter ageist views and to educate people about the true capacity of older workers. As well as education about stereotypes that lead to discrimination, the benefits to business and society also need to be promoted.

Secondly, older workers, employers and their agents must understand their legal rights and responsibilities regarding age discrimination and have access to advocacy and support that will assist them to protect their rights and undertake their responsibilities.

Thirdly, policy and structural barriers that act as vehicles to ageist stereotypes in employment must be identified and addressed. This includes policies in recruitment, training, career development and retirement options.

Finally, the complex and interwoven contributors to age discrimination in employment require that all levels of government develop co-operative strategies.

RECOMMENDATIONS

The recommendations, which address employment barriers of older workers, are directed at priority stakeholder groups of government, employers, older people and their representatives:

It is recommended that:

1. State Governments, in partnership with the Commonwealth, respond to the findings of this report through strategies to raise awareness amongst all stakeholders of the issues affecting the ongoing employment opportunities of Australians as they age by:
 - (a) developing and promoting education tools for employers and their agents, older workers and the community stakeholders which dispel ageist stereotypes and encourage recognition of the true capacity of people over the age of 45 years to continue to contribute through work.
 - (b) facilitating and resourcing the development of strategies to enhance older Australians' opportunities to participate in work.
 - (c) reviewing structural and policy barriers that act as agents for ageist practices or stereotypes.
2. Employers, their agents and related networks and associations actively pursue opportunities to understand the issues affecting Australian workers as they age by:
 - (a) reviewing their current practices in relation to age balance, training participation, older workers' access to training and promotion as well as age related patterns in outplacement and retirement within their workplaces;
 - (b) becoming active partners in strategies to enhance the ongoing employment opportunities and attachment to work of people as they age;



DIRECTIONS AND RECOMMENDATIONS

- (c) managing change in relation to the ageing demographic of the workforce. This could include the development and promotion of case studies and tools to encourage best practice in age balance.
3. Unions and professional associations take an active role in understanding the issues affecting older workers and providing them with further information to assist them to identify when their rights are being impinged on and to protect their employment opportunities, by:
 - (a) providing older workers with support and assistance at all stages of employment, for example, combating age barriers in recruitment, interviewing, presentation of CVs and in training;
 - (b) ensuring that older workers, particularly those seeking transition to employment, understand how to lodge complaints with Equal Opportunity Commissions to protect their employment opportunities and have the necessary support to enable them to take such action.
 4. The recruitment and employment service industries actively promote age balance in the workforce to Australian employers and develop protocols to ensure:
 - (a) compliance with the age discrimination legislation;
 - (b) recognition of the value which older workers bring to organisations;
 - (c) encouraging employment service providers to be responsive to age-related recruitment disadvantages;
 - (d) advocate the provision of appropriate feedback to applicants to positions.
 5. The education and training sector,
 - (a) actively pursue opportunities to understand the issues affecting Australian workers as they age;
 - (b) review the current age profile of their student base;
 6. Organisations responsible for retirement policies & practices,
 - (a) actively pursue opportunities to understand the constraints and incentives that will restrict or enable the retention of older workers;
 - (b) investigate and instigate opportunities to expand retirement options.
- (c) investigate the vocational education and training needs of workers as they age;
 - (d) develop and actively promote training options to enhance the ongoing employment opportunities of workers as they age.



AGE DISCRIMINATION IN RECRUITMENT

Recruitment is the point at which examples of age discrimination in employment are most visible. While discrimination in recruitment has a high profile, there are other difficult, less visible barriers to employment for older people. These include lack of training and career advancement opportunities. Not every employer discriminates on the basis of age in recruitment, yet the data emerging from our interviews and focus groups indicates that it is a systemic practice, which fundamentally shapes the employment outcomes of many people who are over 45.

Age discrimination is a key driver of recruitment outcomes as Australian national data shows:

Two thirds of unemployed jobseekers aged over 55 report that the most significant problem they have in finding work is being considered 'too old' by employers⁵.

The duration of unemployment for people over 55 was 104 weeks for males and 107 weeks for females compared with 70 weeks for the average of all males and 52 weeks for females⁶.

The following themes emerged from the older worker and employer focus groups.

The recruitment process

Focus groups with older job applicants revealed that they experience many difficulties in the recruitment process, which they attribute to being older. The recruitment process for older job applicants can be typically broken into stages:

- ◉ the initial stage of job application, if shortlisted progressing to;
- ◉ the interview;
- ◉ the post-recruitment stage, during which applicants may (or may not) receive feedback.

The application stage

Older workers in the focus groups commonly perceived that they were filtered from the selection pool at the stage of applying for a job on the basis of their age. Many did not know their rights in making an application for work. Some older workers thought that if they did not include their age in the application, they would be excluded from selection; others felt that their chances of employment would be harmed if they were 'up front' about their age. An older worker reported that a job agency advised him to leave his age off the job application:

'The agency told me that without the age I could still be shaped into a saleable package'.

An unemployed ex-media worker reported that an employment consultant warned him never to put his date of birth on an application.

'You feel you should be 'up front' about your age, but there are institutionalised consequences of putting your age'.

There were other comments about the unresponsiveness of employment services to the specific issues affecting older workers, which included agencies' lack of support for training to upgrade their skills. This theme was recurrent across the states and indicated that unemployed older workers can feel unsupported in recruitment.

One extensive comment by a representative of a peak employer organisation exemplifies a range of issues in recruitment, such as older workers' benefits as well as their needs for training and support.

'There needs to be a better level of understanding of the benefits of older workers by recruitment agencies including government agencies. Officers should be educated to understand the benefits of older workers. Older workers need to be assisted



AGE DISCRIMINATION IN RECRUITMENT

to present themselves. Strong loyalty and commitment and work history need to be emphasised. Government employment services and older unemployed could be looked at more proactively. 'Upgrade their skills rather than downgrade their expectations'

(Peak employer organisation).

Most peak employer organisations and employers also reported that employers were also unclear about their rights and responsibilities in recruitment. Several employers wanted to leave it up to the person to decide whether to put down his or her age on the resume; others considered that even if age is omitted employers can guess age from the person's educational and job history. A recruitment consultant commented that older applicants were often advised by job agencies to remove their age from applications and truncate their work history, to disguise their age.

Older workers also perceived that they could be screened from the selection pool by recruitment agencies at the application stage. An older unemployed manufacturing industry worker commented that 'recruitment agencies will be making all the decisions and managers will never see you'. An older unemployed customs officer commented that negative judgements about older workers had already been made prior to selection by recruitment agents, as:

'Recruitment agents are 'going through the motions' of recruitment according to an 'identikit picture' of what employers want'.

Several employers indicated that they were also aware that the selection process by recruitment consultants was not age neutral. A human resources consultant commented that recruitment agencies could make assumptions relating to age on behalf of employers. She gave an example of an older jobseeker being screened out on the basis of age and then getting the job after he made a direct approach to the employer. An employer

also reported that a recruitment consultant removed an older worker from the list of potential applicants as:

'They didn't think we wanted someone as old as that'.

There was a lack of feedback to older job applicants at the application stage regarding the reasons contributing to unsuccessful outcomes. The initial screening by a recruitment consultant was seen to lack transparency according to the perceptions of several legal stakeholders. A legal stakeholder commented:

'When a recruitment agent turns someone down they do not know why they were not short-listed. There is a lack of knowledge and restrictions on how recruitment agents should behave'.

An employer, however, also gave an example of a recruitment consultant who had adopted a proactive position which valued age. The recruitment consultant recommended leaving it up to the person to decide whether to put his or her age on the resume, as employers can guess your age from what you've done:

'It is better to be up front about age as employers should be buying the skills and expertise and you can't have a multitude of skills and be twenty five'.

The interview stage

Older job seekers commonly reported experiences of being judged negatively on the basis of their older appearance at the interview stage. One older job seeker commented that older people get a much shorter interview while younger people get more time. Several reported instances where employers took a look at them and they perceived that they had been rejected purely on the basis of their age. An older woman was initially informed by the human resources manager that she was successful in getting a job and would start on Monday:



AGE DISCRIMINATION IN RECRUITMENT

‘The General Manager came in and winced and wouldn’t look at me. They never rang me back. I rang and they gave an excuse that they were going to get someone more experienced’.

Another example is of an older woman who applied for a job demonstrating and selling cosmetics in a major department store. She was involved in an interview within a group which was largely made up of younger applicants. At the beginning of the interview she was asked to act as the model for the cosmetic demonstration. As she was not given an opportunity to demonstrate her skills within the interview she concluded that she was excluded from the selection pool:

‘I attended a group interview with around twenty other women, all of whom were younger. When the time came to demonstrate how to apply cosmetics I was asked to act as the model for the whole interview’.

(As this excluded her from demonstrating her skills with the other applicants she then walked out of the interview).

Employers indicated mixed views regarding their compliance with recruitment provisions of the legislation. One employer emphasised that age was not the key criterion used in the selection process, and ‘finding the right skill set’ was the priority, regardless of age. Several employer representatives made the point that employers wanted to be in control of the selection process. These employers were generally aware of the legislation in relation to recruitment and considered that they ‘matched skills and experience to the job regardless of age’. Other employers believed that covert attitudes affected selection despite procedures and policies being in place.

Post-recruitment stage

There was generally no feedback to inform job applicants how to improve their job search skills. They commonly reported that they did not receive feedback after the interview and that recruitment processes lacked transparency. While many of them believed that they were unsuccessful due to their age, employers and recruitment agents usually gave reasons other than age as the critical reasons for outcomes.

Lack of feedback was the most common experience, so even though age may not have been the key determinant in selection, older applicants were often left with the perception that their age disqualified them. This did not enable them to revise job-seeking skills or seek training to improve their competitiveness in the labour market. Many of the older jobseekers had written letters which were stored on databases and not answered:

‘You send the agency your CV with your age on it and recruitment agencies have got you all worked out before you get to go to the employer. They just put your CV on their computer records - you never hear back’.

One large employer confirmed that their company has a policy not to provide unsuccessful job applicants with feedback in relation to their application for fear of legal repercussions.

Covert discrimination in recruitment

Discrimination was perceived to be easy to mask using code words which made it difficult to prove. An unemployed saleswoman applying for a new position reported:

‘There are ways to get around asking age and marital status directly. They will take you through a showroom and ask you ‘How many people are there in your family and what are their ages?’.



AGE DISCRIMINATION IN RECRUITMENT

A former customs agent gave further examples of code words which masked age discrimination:

‘To prove it is a difficult thing. The employer can pick younger rather than older people. A person can be too qualified or they can couch a letter – ‘We have compared your qualifications with others who are more suitable for the position’.

Legal stakeholders also considered that although the onus of proof is on the complainant age discrimination is frequently hidden, coded and difficult to prove. It is also seen to be a reflection of broader social attitudes, so that an employer may not even be aware that they are discriminating. Several employers recognised that while many are not aware of age discrimination legislation, those people who know about it can use it to evade compliance. A human resource manager in a welfare organisation commented:

‘The legislation tells the employers what they can’t say and provides the reason for evasion. The policies and structures can be in place-but what in reality we are doing are different’.

After repeated rejections older people could also internalise negative stereotypes of age which can undermine their future jobseeking. One older workers’ focus group revealed that in occupations in which there is high unemployment and an oversupply of labour such as mining and manufacturing industries, recent graduates with current skills and education are preferred. Older workers must make decisions to retrain and reinvent their occupations. Many, however, can lose confidence and self-select themselves out from the labour force and take on the stereotype of being ‘too old’. A human resources manager of a large manufacturing company commented:

‘Older women often say ‘I am too old’. They can expect discrimination. It’s difficult to prove whether you intend to discriminate. It’s a very complicated situation; there are lots of other reasons’.

The older workers’ focus groups contained people who had been unemployed for long periods of time and had faced repeated rejections. Several members of focus groups feared that they would jeopardise their future employment and risk being victimised by employers if they complained about recruitment processes or lodged a formal age discrimination complaint. This also has consequences for whether they feel that they can use the age discrimination legislation to protect themselves. An older woman who had been unemployed for nearly two years and was looking for work in the hospitality industry faced repeated rejections but had done nothing about it, commenting:

‘They can treat you any way they want to’.

Further barriers faced by sub-groups of older workers

Age and gender can interact and create further barriers in recruitment for older women. Older women described typical experiences of being disadvantaged in re-entering the workforce after being out of the workforce for many years as they cared for their children. Several older women re-entered the workforce after the breakdown of their marriages. One woman commented:

‘Barriers come up as soon as you tell them you are a mother. You don’t get any accolades for sacrificing your career’.

Members of focus groups of older workers from culturally and linguistically diverse backgrounds provided examples of how their ethnicity interacted with their age to prevent their selection for jobs. Many had applied for countless numbers of jobs and faced rejection. For example, an Indian woman with a PhD in physics had been unable to secure interviews for administrative jobs for which she was well qualified. She had topped a public service test and has since applied unsuccessfully for 30 to 40 jobs in the public service. Another older woman from Latin America considered that her accent was a barrier.



AGE DISCRIMINATION IN RECRUITMENT

'I didn't get it because of my age and accent. I asked for an interview and asked them to ring me back. The feedback I was given was 'I don't think my boss would have an employee with an accent'.

Summary

- ◉ Both employers and older people are unclear about their rights and responsibilities in recruitment.
- ◉ Older workers commonly reported that recruitment agents screened applicants according to age criteria.
- ◉ Older job applicants reported common experiences of 'being judged by appearances'.
- ◉ Older job applicants perceived that recruitment processes lacked transparency and the lack of feedback further exacerbated their job search experience.
- ◉ Age discrimination in recruitment is hidden, coded and difficult to prove. Despite overt compliant non-discriminatory processes, covert attitudes influence selection.
- ◉ Older applicants who are unsuccessful could internalise negative stereotypes relating to age, which can undermine their future job seeking.
- ◉ Some older people reported that they were reluctant to lodge age discrimination complaints as they felt powerless and feared victimisation.



AGE DISCRIMINATION IN TRAINING

There is general consensus amongst older workers, employers and stakeholders that older workers lack access to training compared to younger workers. Australian Bureau of Statistics data confirms this view.

Younger workers below 45 are 1.2 times more likely to receive on-the-job training than older workers⁸.

Older workers are also 2.6 times less likely to complete training courses while working than younger workers, whether for promotion or retraining⁹.

Training has a lower profile than other age discrimination issues

Overall, training has a lower profile as an age discrimination issue than recruitment and exit policies. Ensuring equity of access to training through the use of the legislation is perceived as difficult to implement. The low profile and lack of measurement of training outcomes for older workers illustrate the maxim: 'What gets measured, gets done'.

'Training is a hidden issue and there is no measurement of how the training dollars are improving employment prospects for older people'
(Recruitment consultant).

'Training is too distant and theoretical for employers to get to grips with. This area is seen as complex and it is difficult to redirect training resources using the legislation'
(Peak employer organisation representative).

Structural barriers to training for older workers

A key structural barrier to training older workers identified by respondents in all states is junior award wages for apprenticeships and traineeships based on age (below twenty-one). This age barrier acts as a disincentive to employers who may otherwise consider employing older apprentices. As a hospitality trainer noted:

'Our awareness of age discrimination is vast because we tell people every day that they won't get into the industry because of their age'.

Training professionals in employers focus groups were concerned that until this barrier was removed, they were unable to provide career options for older workers in all industries offering traineeships. The training professionals in focus groups proposed that age-based awards for apprenticeships be scrapped so that older people become acceptable. They believed that until these broader structural changes are made, they are powerless to introduce changes in training opportunity. An industry training body representative proposed that a training proposal which targets older workers should be submitted to state training boards.

Age stereotypes of older workers as 'old economy'

A perception that older people are slow to adapt to new technologies results in a 'digital divide' between older and younger workers. Older workers commonly believe that employers' reluctance to invest in training is driven by negative stereotypes regarding their adaptability to new technology.

For example, an administrative officer was not offered training in operating new computer equipment, although this was available to younger workers. He eventually left his employment after he decided that his organisation sanctioned his exclusion from new training opportunities due to his age. He was told by a supervisor:

***'You are getting a bit old for that'.
'Management whitewashed the complaint'.***

Older workers commonly gave instances in which they were replaced rather than retrained in new skills. Several older workers described incidents in which they missed out on being deployed to new jobs which required learning new IT skills.



AGE DISCRIMINATION IN TRAINING

An ex-insurance worker who had worked for the company for 25 years was not retrained when her insurance industry was restructured. The new organisation preferred to hire new, younger staff rather than retrain her. As she commented:

‘There is a perception that older workers cannot catch up on computer literacy.’

An ex-radio journalist experienced redundancy and was not offered training to assist him to update his skills. He commented:

‘There is a perception that you are not likely to change, and that you are not open to new skills and you are not offered new skills. There is no offer of new training, but rather that another person comes back in a new role.’

Focus groups with older workers included older workers who had been retrenched from industries in decline, such as mining. These workers reported that younger employees from universities with current skill sets were preferred for permanent jobs. Several unemployed, older engineers formerly working as contractors in the mining industry considered that companies were unwilling to invest training resources in them. This vicious circle meant that they were unable to maintain their employment and were further marginalised. As one ex-mining engineer commented:

‘Most companies will train people based in their organisations as they get a return on investment. They prefer their own staff and casual/contract staff do not get benefit out of training. They get the training out of you and then let you go.’

Many employers, however, also demonstrated that they were aware of the need to maintain the currency of older workers’ skills in order to develop their careers. Several employers recognised that training was a precondition for the retention of older workers:

‘Training packages should be available for older as well as younger workers. Older workers should be continually exposed to new training to prevent them being left behind and becoming vulnerable to dismissal’ (CEO of a small engineering company).

‘It all goes back to questions of employability, competence and relevance. If I have done these courses am I more employable?’
(Large manufacturing employer).

‘If a person is not retrained then they hit the bottom line in terms of their career’
(Human resources manager in a welfare organisation).

‘We need to offer training to older workers in desired work attributes and to older workers seeking new employment’
(Small manufacturing employer).

While age preconceptions about older people’s adaptability to training commonly act as blockages to their training and retention in workplaces, the focus groups indicate that older workers want to continue to train. In one focus group of older women, all had retrained in information technology in order to maintain the currency of their skills. Many of the older engineers who had been displaced by younger graduates wanted to learn technologies, particularly as their livelihood depends on their capacity to adapt.

Older workers’ difficulties in identifying appropriate training

Older workers commonly reported that they experienced difficulties in finding training to assist them to obtain employment. Choosing a course is often a hit or miss process which may not enhance employment chances. A former radio broadcaster commented:

‘Older workers can do generic courses, which may not fit exact specifications for a job. The selection process does not value experience.’



AGE DISCRIMINATION IN TRAINING

Many of the older female workers reported that they experience particular difficulties in identifying training to assist them to obtain a job. These older women's previous employment trajectories generally include long periods of time out of the paid workforce, until an event such as divorce has meant that they need to work to support themselves. They have applied unsuccessfully for many jobs and are learning to use computers to upgrade their skills. Yet how this training links them with real employment prospects is still unclear.

Even though training is identified and undertaken, older women experience a range of further barriers in gaining employment. Several older women in one focus group who had completed community work courses had been unable to find employment for over six months. Another older woman perceived that despite undergoing training in bar work she was unable to obtain a bar job on the basis of her age and sex, as:

'I was not eighteen with a frilly skirt on'.

There are also particular difficulties for people from culturally and linguistically diverse backgrounds who lack familiarity with the process of identifying training opportunities. Most of the older workers in a focus group for people from culturally and linguistically diverse backgrounds in one state emphasised that they did not know where to go for training that would improve their employment opportunities:

'We need information about work experiences, a resume, what kind of training you need. The EOC needs to ask what type of information and in what language?' (Indian economist).

Summary

- ◉ Structural barriers impede access to training for older workers due to age-based award wages for training and apprenticeships.
- ◉ Training has a low profile as an age discrimination issue compared with recruitment and exit policies.
- ◉ Lack of performance measurement of training opportunities hides a lack of compliance with training as an age discrimination issue.
- ◉ Negative perceptions that older workers lack adaptability to new training can limit their employment opportunities, particularly in new technologies.
- ◉ Lack of currency of desirable skill sets further marginalises older people's retention, career development and employability.
- ◉ Older women who had been out of the workforce require particular training assistance to increase their employability.
- ◉ Older workers commonly lack information about where they can find and gain access to appropriate training. Older people from culturally and linguistically diverse backgrounds have particular difficulties with locating training resources.
- ◉ There are also barriers to training due to the cost of training.



AGE DISCRIMINATION IN EXIT POLICIES

Although mandatory retirement has been abolished in federal and state legislation in most states, older workers and employers commonly hold expectations that older workers should retire by 65, or earlier. Age is the most powerful driver of retirement for people over 45, according to Australian Bureau of Statistics national data.

Fifty four per cent of male workers aged 45 and over retired for age-related reasons¹¹.

Age-related reasons progressively become more significant as people become older, as opposed to other reasons such as health:

Seventy-six per cent of males aged 60 to 64 and eighty-seven per cent of males aged 65 to 69 indicated age-related reasons for retirement¹².

Age stereotypes and induced early retirement

The community has been slow to understand that the mandatory retirement age has been abolished. Stereotyped expectations regarding age can pressure older workers to retire, as a legal advocate defending older workers in unfair dismissal cases commented:

‘Older people consider that ‘I’m old now. Maybe I should be leaving the workforce but I suppose it’s time to retire.’ People still think that they should retire at 65’.

Pressures on older workers to retire can be covert and cumulative and whittle away the confidence of the older person that he/she has the right to remain employed. Older workers could also adopt negative stereotypes of age and blame themselves, or they could accept the common social view that they should not be working by the time they are 65 and, if they can afford to, should leave work as soon as possible after 50. As one older worker stated:

‘Employers could perceive older workers as “set in their ways” so that they were made to feel they are too old for the job’.

Another older worker commented:

‘Sometimes older workers are conditioned into saying that ‘I am just getting too old for this’.

Age as a proxy in downsizing

Older workers can be perceived as barriers to change in a workplace undergoing rationalisation and restructuring. Age was viewed as a proxy for a group to be retrenched in downsizing exercises, according to two employers' perspectives:

‘Age is used as a proxy for a downsizing strategy. This could result in a loss of intellectual knowledge to the organisation’.
(Small engineering manufacturer).

‘There needs to be constant monitoring of mandatory retirement legislation to ensure that downsizing does not target older workers’.
(Human resources manager, engineering company).

Organisations can select people for retrenchment by scapegoating a particular strata. An ex-radio journalist described how his entire division consisting of older employees, was retrenched, without retraining or outplacement assistance. An ex-industry executive commented on how organisations select by attribute for retrenchment:

‘If the organisation asks how best will we survive – by re-grouping and restructuring? They then sack all men with grey hats’.

The experience of retrenchment was perceived to negatively impact on older workers' confidence and become a self-fulfilling prophecy that they are under-performing. It can also lead older workers to blame themselves, as this comment regarding older women suggests:

‘When a new company takes over a business and decides to re-engineer they decide that “There is no place for you” and then ‘burns you off’ by a



AGE DISCRIMINATION IN EXIT POLICIES

constructive dismissal. If it's older women, they think it is their fault and try harder and harder'
(Advocacy lawyer representing older workers).

The culture shift towards valuing adaptability to new technology

Older workers and employers perceive that the changing workplace culture tends to value adaptability over longevity and commitment. This culture shift towards preferring younger people limits older workers' future employment prospects, once retrenchment occurred.

'There seems to be a culture of preferring young people who have had a lot of jobs. I thought that a long history with one firm would be worth more, but they prefer young people who have had six or seven jobs in the last ten years. They like the turnover rather than stable employment'
(Retrenched older worker).

Changes in workplaces through technological imperatives can be accompanied by a perception that older workers' skills are obsolete. Many older workers in the focus groups reported that specific skill sets are required to allow them to competently perform in the new jobs. However, according to older workers' experience, employers often prefer to replace rather than retrain them.

'Recruitment agencies prefer young people expert in computers. They want people who know MYOB and Windows 98. It's no dice we never used these, we used secretaries. If we had access to training we could be whiz kids' (Unemployed ex-journalist).

As an unemployed manufacturing worker in engineering company commented:

'You've got to be a computer whiz kid. I work in engineering - it's now old machinery. You've got to know CNC stuff'.

According to employers' perspectives, older workers could be perceived as not adapting due to their age and representing 'old economy' barriers to change.

'In traditional industry there is respect for people who have been there a long time. In the new workplace there are changes in technology and older people feel left behind. They need special training'
(CEO of a small engineering company).

'They are seen as getting sick more, they say that they can't cope with technology, that they get sick more and don't adapt'
(A law firm human resources manager).

Lack of post-retrenchment support

Unemployed older workers in the focus groups generally experienced a lack of tailored support to assist them to find employment after retrenchment. There are some exceptions, such as two government programs which target sub-groups of older women and people from culturally and linguistically diverse backgrounds. Two human resource managers considered that exit policies could be better managed to assist older workers to regain confidence:

'When people are made redundant and then the outplacement umbilical cord (is) cut they need support and someone to give them confidence'.

'Often it's not performance based but due to rationalisation... There is a lot of contracting out rather than workplace agreements. A lot of people apologise for being old and come across as lacking confidence and self-esteem. They come across as a blubbing mess and have ruined their chances. For many, outplacements are the last thing they expect'.



AGE DISCRIMINATION IN EXIT POLICIES

Although the idea of a 'portfolio career' consisting of a number of contracted jobs is often presented as an attractive and new option for unemployed older people by recruitment agents, their actual experience does not confirm its viability. Older workers who are made redundant can find it difficult to regain employment as independent contractors, and piecing together part-time and casual work is unachievable in an employment environment where employers often expect such employees to be available for irregular hours at short notice.

In one case, a retrenched journalist had tried to construct a portfolio but considered that this solution was not viable for him in the long term. In another case, an ex-customs officer was initially retrenched and then came back to his organisation as a consultant until he was retrenched again. According to his experience, the consultancy option was difficult to achieve as a career option:

'I like the idea but I have not been able to restructure it for myself. I don't like contracts as you've got to start searching again and always have to be looking'.

The limited range of innovative retirement options

The exit policies experienced by unemployed older workers in the focus groups generally consisted of an absolute 'cut off' from employment. The options did not include further innovative options such as phased retirement or consultancy options with their former employer. Concerns were expressed by both employers and older workers that retirement policies had to be economically viable and not contain superannuation disincentives.

Employer and union representatives both commented that there is currently a lack of innovative human resource planning in exit policies:

'There are opportunities in exit policies and part-time employment particularly in knowledge based jobs. There is a lack of good human resources management planning'

(Employers' organisation representative).

'Older workers need choices such as easing out and working four or three days. This has not been addressed. There are some schemes running in unions where people can work four years and have the fifth year off' (Union official).

Summary

- ◉ There is a lag between the legislative prohibition of mandatory retirement and community attitudes.
- ◉ Covert and overt pressures exist towards induced early retirement, which are commonly justified by age stereotypes of older people in decline.
- ◉ Older workers are frequently perceived as 'old economy' workers in workplaces which are reengineering. Older workers commonly blame themselves for displacement due to organisational downsizing and internalise negative stereotypes.
- ◉ There is generally a gap in job seeking support and assistance to older workers following retrenchment.
- ◉ Older workers lack information on the range of exit policies, including retirement options. Opportunities can be favourably perceived by both employers and older workers as long as these did not contain superannuation disincentives.



CONCLUSION

Age-related barriers have been shown to be strong factors which restrict the opportunities of people over 45 in employment. There is a clearly demonstrated need for education to raise awareness and break down stereotypes at the individual, sectoral and community level.

There is a low level of awareness of age discrimination in employment amongst employers. This translates to a lack of internal human resource management policies and practices amongst Australian businesses that focus on both maximizing the potential and protecting the rights of older workers. This gap in focus and intervention is at odds with older workers' experiences of discrimination and the increasing need for business to ensure they encourage the growth sector of the available workforce, those over 45, to maintain their relevance and attachment to work.

The lack of priority given to this area of discrimination by employers is a direct result of the perceptions we hold as a society of age as a time of decline and detachment from activity. Perspectives of what a person's working life should be are based in a past era where workers were often worn out from physical labour by the time they were 45 and would not live beyond 60. Today older people can develop their capacities over increasingly longer life spans, estimated by the Australian Bureau of Statistics in 2000 to reach 86 for women and 82 for men by 2051.

Given the shift to an era of work where knowledge is at the core of many 'new economy' businesses and the extended period of active older age, workers from the age of 45 should be viewed as a critical resource.

To maximise their chances of recruitment, older workers require information about how to value their own experience and capacities, and to independently consider the span and course of their working life, rather than accepting imprinted social expectations. They also require practical information and support to understand the changing opportunities for work and how to upgrade

their skills and present themselves to employers.

Employers also need to know how to comply with the legislation in recruitment and how to value and support older workers' employment opportunities through training. Further, older workers and employers need to understand how innovative retirement and exit policies can be implemented which advantage both.

Age discrimination is a systemic phenomenon which extends beyond equal opportunity portfolios. The report points to significant age barriers, for example in training. Retirement policies also bear on broader social security and superannuation policies. These issues cross-cut portfolios which include employment, training, industrial relations, information technology and others. To successfully address structural barriers the restrictive boundaries of individual portfolios must be overcome.

This report is directed at all of us in our individual and professional capacities. At the individual level it calls on each of us to become aware of the ageist perceptions and stereotypes that we hold and how these stereotypes impact within our environment. It also challenges us to rethink our working future and how we position ourselves for continuing employment.

At the professional level it requires us to review our knowledge of attitudes and practices affecting older workers and to actively take up the opportunity we have to ensure that age barriers do not restrict the employment opportunities of people as they age.

As people age, they deserve every opportunity to reinvent themselves and to fully participate in employment for longer periods of time. Finally, as a society which is ageing we can no longer afford to continue to support the displacement of people from the workforce as they age if we are to maintain current levels of economic performance and quality of life as a nation.



APPENDIX

SUMMARY OF AGE DISCRIMINATION PROVISIONS IN VICTORIA, SOUTH AUSTRALIA & WESTERN AUSTRALIA

The key powers for anti-discrimination are based in State Governments age discrimination laws in employment. Australian State Governments prohibit compulsory retirement, with the exception of Tasmania. There are further State and Territory differences affecting age, such as in compulsory and voluntary retirement, redundancy packages, minimum employment ages, workers' compensation and industrial relations legislation. The key provisions of State Governments age discrimination legislation are outlined and some comparisons drawn.

The Victorian Equal Opportunity Act 1984

Discrimination on the ground of age is prohibited in Victoria by the Equal Opportunity Act 1995, which commenced January 1996. This replaced the Equal Opportunity Act 1984 and added the attribute of age. The Act specifies that discrimination is prohibited against job applicants and employees in determining who shall be offered employment, the terms of which it is offered, denying or limiting access by the employee to opportunities for promotion, transfer, training or to other benefits connected with employment and by dismissing the employee or terminating his or her employment.

Other attributes are impairment, industrial activity, lawful sexual activity, marital status, physical features, political belief or activity, pregnancy, race, religious belief or activity, sex, sexual orientation and gender identity, parental status or status as a carer, or personal association with a person identified by reference to any of the above attributes. Areas of discrimination include discrimination in employment, employment related areas, education, the provision of goods and services, accommodation, clubs and club members, sport, and in local government.

The Equal Opportunity Act 1995 provides that in determining whether a person directly discriminates, it is irrelevant whether or not the attribute on which the alleged discrimination is based is the only dominant reason for treatment, as long as it is a substantial reason. An employee includes a person employed under a contract of service, but does not include an unpaid worker or volunteer.

Exemptions

A range of exceptions exist which are:

- ⦿ The provision of domestic or personal services in a person's home;
- ⦿ Genuine occupational requirements such as credibility affecting dramatic performances and entertainment;
- ⦿ Taking into account the reasonable and genuine requirements of employment.
- ⦿ Compulsory retirement of judicial officers is justified under the Act;
- ⦿ An employer may also discriminate by limiting the offer of employment to people with a particular attribute in relation to the provision of services for the promotion of the welfare or advancement of people with the same attribute, if these services can most effectively be provided by people with that attribute;
- ⦿ A self-employer may discriminate in the offering of employment by limiting the offer of employment to relatives;
- ⦿ Exceptions also exist in small business if the employer employs no more than the equivalent of five people on a full-time basis (including the people to whom the employment is offered);
- ⦿ A person may provide benefits, including concessions, to another person on the basis of age;
- ⦿ Youth wages;



APPENDIX

- ◉ The Victorian Civil and Administrative Tribunal (VCAT) can grant an exemption from any provision (s) under the Act, valid for up to 3 years.

Compulsory retirement

Compulsory retirement of an employee was prohibited from 1st January 1997. This provision does not apply to the compulsory retirement or failure to reappoint a person on the basis of age as a judge of the Supreme Court or County Court of Victoria.

In respect to early retirement, an employer, in deciding the terms on which to offer an employee an incentive to resign or retire, may take into account the age of the employee and any eligibility of the employee to receive a retirement benefit from a superannuation fund. The Act provides that this exception from discrimination in employment is deemed to have always applied prior to the commencement of the Act on January 1 1996.

The functions of the Commission

The Commission consists of five Commissioners who collectively are the Commission.

The functions and powers of the Commission include:

- ◉ Educative and research functions in that the Commission 'must undertake programs for the dissemination of information for the education of the public with respect to the elimination of discrimination and sexual harassment, the promotion of equality of opportunity and any other relevant matters relevant to the Act';
- ◉ The Commission may undertake research into any matter arising from or incidental to the Act ¹⁴;
- ◉ If the Commission becomes aware of a provision of an Act which discriminates or has the effect of discriminating against any person, the Commission must notify the minister responsible and may, at any time, submit a report to the minister;

- ◉ The Minister 'must cause a review of all Acts and enactments to be undertaken for the purpose of identifying provisions which discriminate, or lead to discrimination against any person' ¹⁵.

South Australian Equal Opportunity Act 1984

The Equal Opportunity Act Amendment Act, 1990, inserted of "prohibition on the ground of age" into the South Australian Equal Opportunity Act 1984. The Act states that a person discriminates on the ground of age if he or she treats another person unfavourably because of the other's age in offering employment, its terms and conditions, denying or limiting access to opportunities for promotion, transfer or training, or to any other benefits connected with employment, dismissing the employee or subjecting him or her to another detriment.

The South Australia Equal Opportunity Act provides that a person acts in the grounds referred to in the Act, if that person acts on a number of grounds, one of which is that particular ground, and that ground is a substantial reason for the act ¹⁶. Other attributes are sex, sexuality, merit status, pregnancy, race, and impairment, physical and mental. Other areas are employment, associations, qualifying bodies, education, land, goods, services and accommodation.

Section 5 (1) of the Act provides a definition of employee:

- (a) includes the holder of a public or statutory office (not being a judicial or magisterial office); and
- (b) includes an unpaid worker;

Exemptions

Exemptions exist where:

- ◉ The employment is in a private household;
- ◉ There is a genuine occupational qualification that a person be of a particular age or age group;



APPENDIX

- ◉ If the person is not or would not be able to perform the work genuinely or reasonably required of the position or the person or the person would not be able to be reposed to situations of emergency reasonably required for the employment or position in question;
- ◉ An act is done in order to comply with the requirements of an award or industrial agreement made or approved under the Industrial Conciliation and Arbitration Act 1972 and employment of a junior in accordance with an award;
- ◉ In accordance with the statutory requirements of holding of judicial office;
- ◉ A limited term exemption where it is possible to apply for an exception to the Act for up to three years;
- ◉ Youth wages.

The South Australian provision of the exception of genuine occupational qualification, by not listing any positions where the exception of occupational qualifications applies has made it difficult for employers to have certainty when they can identify a position in contrast with Western Australia and New South Wales ¹⁷.

Compulsory retirement

Amendments to the Equal Opportunity Act which made compulsory retirement unlawful came into effect on 1 January 1994 - section/s 85F(5) and (6). The legislation makes void provisions in awards and industrial agreements made or approved under the Industrial Relations Act, 1972 (SA) which:

- ◉ imposes, or requires or authorises an employer to impose a compulsory retiring age in respect of employment of any kind or to terminate the employment of any person on the basis of the person's age.

The functions of the Commissioner

The functions of the Commissioner are to:

- ◉ Foster and encourage amongst members of the public

informed and unprejudiced attitudes with a view to eliminating discrimination;

- ◉ Institute, promote or assist in research, collection of data and the dissemination of information relating to age;
- ◉ Recommend to the Minister as to reforms which will further the objects of the Act.

West Australian Equal Opportunity Act 1984

The Western Australian Equal Opportunity Act 1984 makes it unlawful to discriminate against a person in employment. Amendments prohibiting discrimination on the basis of age came into force on 8th January 1992. This Act makes it unlawful for an employer to discriminate against a person on the ground of the person's age in the arrangements made for the purpose of determining who should be offered employment, the terms and conditions on which employment is offered. It is also illegal to deny access or limit the employee's access to opportunities for promotion, transfer or training, or to any other benefits associated with employment, dismissal or subject the employee to any other detriment.

The Western Australian Equal Opportunity Act includes a reference to the doing of an act by reason of two or more matters that include the particular matter regardless of whether or not the matter is the dominant or substantial reason for the doing of the act ¹⁸. This interpretation is broader than that of Victoria and South Australia in which the act must be a substantial reason.

Definition of employment

Employment under Section 4 of the W.A Equal Opportunity Act 1984 includes:

- (a) Part-time and temporary work;
- (b) work under a contract for services; and
- (c) work as a State employee.



APPENDIX

Exceptions

Western Australian legislation includes exceptions for employers offering retirement options, compliance with health and safety considerations, an exception, which affords older people opportunities to meet special needs in relation to employment, education, training or welfare.

- ◉ Discrimination on the ground of age is not unlawful in relation to terms and conditions of employment if those terms and conditions are imposed in order to comply with health and safety considerations, which are reasonable in the circumstances;
- ◉ In relation to retirement, an employee, commission agent, contract worker or partner may be offered phased-in retirement scheme, voluntary retirement scheme, retirement incentives scheme, severance scheme;
- ◉ An employer may do an act, the purpose of which is to ensure that persons who are of a particular age have equal opportunities with other persons who are of a particular age or to afford persons of a particular age access to facilities, services or opportunities to meet their special needs in relation to employment, education, training or welfare;
- ◉ Participation in a dramatic performance or entertainment for reasons of authenticity;
- ◉ Participation as an artist's or photographic model;
- ◉ Jobs which provide services for people of a particular age which are carried out by people of a particular age;
- ◉ Employment in a private household where the second person is engaged to perform domestic duties at the premises at which the first person resides;
- ◉ Acts done pursuant to the written laws of the state;
- ◉ Youth wages.

The WA Tribunal has power to grant limited term exemptions ¹⁹. A person seeking an exemption must

make application to the Tribunal. The Commissioner is automatically a party to the application. The Tribunal can join any other person who is a party to the proceedings. The matter is heard in a public hearing. The Tribunal may grant the exemption for a period of up to five years and impose conditions. There can be applications for further exemptions.

Compulsory retirement

It has been unlawful to require employees, contract workers and partners to retire on the ground of age since August 1995. However, requiring people to retire in accordance with legislation which sets a maximum age limit for their jobs will still be permitted for the following: requiring judges, masters, District Court judges, Family Court (and acting) judges, Children's Court judges and stipendiary magistrates, the President of a Commissioner of the Industrial Relations Commission, the judge of the Liquor Licensing Court and the Solicitor-General or Acting Solicitor-General.

In 1990 the Western Australian government took action to remove an aspect of age discrimination within the public service by the Public Service Commissioner's power to call upon public servants over the age of 55 to retire. Amendments to the Public Service Regulations were also made to this effect. The Commissioner was also empowered to approve continued employment of public servants beyond the mandatory retirement age of 65 when it is in the best interests of the public service ²⁰.

The functions of the Commissioner

The Commissioner may:

- ◉ Carry out investigations, research and inquiries, and acquire or disseminate knowledge on all matters relating to discrimination rendered unlawful under the Act;
- ◉ Arrange and coordinate consultations, inquiries, discussions, seminars and conferences and review from time to time the laws of the state;



APPENDIX

- ◉ Consult with government, business, industrial and community groups in order to ascertain means of improving services and conditions affecting those persons subject to discrimination;
- ◉ Develop programs and policies promoting the achievement of equality discriminated on the ground of age.

The Commissioner may also:

- ◉ Review government policies and practices
- ◉ Policies and practices of superannuation funds in order to identify discrimination against any person or class of persons.

A report of the findings of the review is to be submitted to the Minister.

The Commissioner may publicly take up a discrimination issue which does not arise from a complaint to the Commission, powers which are broader than those in Victoria and South Australia. The Commissioner can also consult with government, business, industrial and community groups in order to ascertain means of improving services and conditions affecting those persons subject to discrimination. Victoria contains the provision to undertake a review of Acts and enactments.



FOOTNOTES

- 1 The definition of an older worker as 45 and over is based on the Australian Bureau of Statistics definition of 'an older jobseeker' and International Labour Organisation recognition of this age.
- 2 Summaries of age discrimination legislation relating to employment in the three states are contained in the Appendices.
- 3 ABS Feature article. Labour Force Projections 1999-2016. www.statistics.gov.au/Auss
- 4 Kinsella-Taylor, L. (Forthcoming).
- 5 ABS (1998). Successful and Unsuccessful Job Search Experience 1998. Cat No. 6245.0.
- 6 ABS (1998). Labour Force Australia, 1998, Cat 6203.0.
- 7 ABS (1998). Successful and Unsuccessful Job Search Experience 1997. Cat 6245.0
- 8 ABS (1997). Education and Training Experience Australia 1997. Cat 6278.
- 9 ABS (1997). Education and Training Experience Australia 1997. Cat 6278.
- 10 Victoria, South Australia, Western Australia abolished compulsory retirement in 1997, 1994, and 1995 respectively.
- 11 Reached compulsory age retirement, reached appropriate age of retirement, retrenched and early retirement package. Unpublished ABS data, 1997 Survey of Retirement and Retirement Intentions, Australian Social Trends 2000, p. 131.
- 12 Australian Social Trends 2000, p. 131.
- 13 Victorian Equal Opportunity Act 1984.Sect. 8 (2) b.
- 14 Victorian Equal Opportunity Act 1984..Sect.162 1a, b and c.
- 15 Victorian Equal Opportunity Act 1984. Sect. 207.
- 16 South Australian Equal Opportunity Act 1984. Sect 6 (2).
- 17 CCH Australia (1992). Practitioners Guide to Equal Opportunity Law and Practice. 53-400
- 18 W.A Equal Opportunity Act 1984 Sect. 5
- 19 W.A Equal Opportunity Act 1984. ss. 135 – 137
- 20 CCH Australia Limited (1998).



REFERENCES

ABS Feature article. Labour Force Projections 1999-2016.
www.statistic.gov.au/Auss

ABS (1998). Successful and Unsuccessful Job Search Experience 1998, Cat No. 6245.0.

ABS (1998). Labour Force Australia, 1998, Cat 6203.

ABS (1997). Education and Training Experience Australia 1997, ABS Cat 6278.

CCH Australia Ltd. (2000). Australian and New Zealand Equal Opportunity Law and Practice. North Ryde, N.S.W. CCH Industrial Law Editors.

CCH Australia Ltd (1992). Practitioners Guide to Equal Opportunity Law and Practice. North Ryde, N.S.W. CCH Industrial Law Editors.

Kinsella-Taylor, L (Forthcoming). To be published by Department of Human Services, Victoria.

South Australian Equal Opportunity Act 1984.

Victorian Equal Opportunity Act 1984.

Western .Australian Equal Opportunity Act 1984.

