



Australian  
Human Rights  
Commission

**WILLING  
TO WORK**

**Australian Human Rights Commission**

**Willing to Work: National Inquiry into Employment Discrimination  
against Older Australians and Australians with Disability**

**Issues paper: Employment discrimination against older Australians**

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## 1 Introduction

This Paper is the one of two Issues Papers for the *Willing to Work: National Inquiry into Employment Discrimination against Older Australians and Australians with Disability*. This paper focuses on issues facing older Australians, while the other focuses on issues facing persons with disability. Each paper recognises the distinct challenges and resulting impacts experienced by older Australians and Australians with disability in the workforce, and the solutions needed to address employment discrimination.

The Issues Papers provide background information for individuals, employers and organisations interested in contributing to the National Inquiry. They do not present finalised research, nor do they intend to limit the scope of submissions.

The purpose of this Issues Paper is to provide guidance on the range of issues related to **employment discrimination against older Australians** that the National Inquiry is examining over the next 12 months. Throughout the paper there are discussion questions intended to assist those who would like to make a submission or participate in consultations.

## 2 About the National Inquiry

On 10 December 2014 the Attorney General announced that he would ask the Australian Human Rights Commission (the Commission) to conduct a major inquiry into employment discrimination against older Australians and Australians with disability, led by the Age and Disability Discrimination Commissioner.

The right to work, free from discrimination on any basis, is a fundamental human right. Individuals who are denied the right to work are denied the independence, dignity and sense of purpose that work brings. This Inquiry will examine what more can be done to protect this human right.

The terms of reference for the Inquiry were provided to the Commission on 5 March 2015 (see Box 1 below).

The Inquiry was launched on 15 April 2015 and is due to report by July 2016. The Inquiry will examine the barriers to employment for people with disability and older people and will make recommendations about practices, attitudes and Commonwealth laws that should be changed and actions that should be taken in order to address employment discrimination.

Over the course of the Inquiry the Australian Human Rights Commission will consult as widely as possible with older Australians, Australians with disability and their carers and families, business, employer and employee organisations, advocacy groups and stakeholders in order to hear about their experiences and suggestions for change.

Consultations and roundtable discussions will be held across Australia to give people an opportunity to provide their views. The Commission will also call for submissions in a variety of different ways: online, in writing, and by telephone - in addition to the option of attending a consultation in person. Information about participating in consultations or making a submission will be regularly updated on the Inquiry's home

### **Box 1: Terms of Reference**

Having regard to:

- the obstacles faced by older persons and persons with disabilities in actively participating in the workforce;
- discrimination against older persons and persons with disabilities as a systemic problem and a considerable barrier to their enjoyment of human rights;
- the economic and social costs, and the costs to productivity, that result from discrimination against older persons and persons with disabilities in employment; and
- the Australian Government's commitment to the promotion and protection of human rights of older Australians and Australians with a disability.

I, Senator the Hon George Brandis QC, Attorney-General of Australia REFER to the Australian Human Rights Commission for inquiry and report pursuant to sections 11(1)(d), 11(1)(e), 11(1)(j) and 11(1)(k) of the *Australian Human Rights Commission Act 1986* (Cth):

- practices, attitudes and Commonwealth laws that deny or diminish equal participation in employment of older Australians and Australians with a disability; and
- the Commission's recommendations as to Commonwealth laws that should be made or amended, or action that should be taken, to address employment discrimination against older Australians and Australians with a disability.

### **3 Recent work on barriers to employment of older workers**

A significant amount of research in recent years has helped to identify some of the barriers to employment for older Australians.

Australia's Age and Disability Discrimination Commissioner, the Hon. Susan Ryan AO, has led work to promote greater awareness of the issues and assist efforts to ensure that older Australians reach their full potential in workplaces and the community. For example:

- In April 2015, the Commission released the *National prevalence survey of age discrimination in the workplace*<sup>1</sup> which provides data that measures the prevalence, nature and impacts of age discrimination in Australian workplaces.
- In 2013, the Commission published *Fact or fiction? Stereotypes of older Australians*<sup>2</sup> which identified the main stereotypes about older Australians, including those that contribute to discrimination in the workplace.
- In 2012, the Commission published *Working past our 60s: Reforming laws and policies for the older worker*<sup>3</sup> which outlines some of the areas where action needs to be taken to remove limits and provide the appropriate protections for people in the workforce as they age.

In 2012, the Australian Law Reform Commission (ALRC) conducted a review into Commonwealth legal barriers to older persons participating in the workforce. The review findings and recommendations were released in the final report entitled *Access All Ages—Older Workers and Commonwealth Laws*.<sup>4</sup>

*Willing to Work* will draw on previous work of the Commission, the ALRC and other organisations in conducting this Inquiry and making recommendations.

## **4 The role of business and employers**

Businesses and employers benefit from promoting human rights and preventing discrimination within their organisations. In many businesses and organisations, there is already a good understanding of the benefits of a diverse and inclusive workforce. Proven benefits include access to a larger talent pool, increased productivity, improved job satisfaction and customer engagement, higher rates of retention of talent, and avoiding costs (including reputational) associated with complaints of discrimination.

There are also many businesses and employers with good practice examples and leading strategies to facilitate and promote the participation of older workers.

The National Inquiry would like to hear from individuals and organisations with experience and knowledge of practical measures that prevent employment discrimination, and assist employers to recruit and retain older workers.

We are interested in solutions that work at different levels: for individuals, employers, across programs or system-wide.

### **Discussion questions**

1. What policies, workplace practices, programs or incentives assist with increasing participation of older workers? How adequate are these policies, practices and incentives? What is the role of Government, peak business and employee groups, and individual employers?
2. Are there distinct challenges faced by different sized businesses and organisations, sectors and industries in employing older workers?

## **5 What do we know about employment discrimination and the labour force participation<sup>5</sup> of older workers?**

Australia has an ageing population.

The 2015 Intergenerational Report projects that the proportion of the population aged 65 and over will more than double by 2054-55.<sup>6</sup> Life expectancy is also increasing such that by 2055, life expectancy at birth will be 95.1 years for men and 96.6 years for women in Australia.<sup>7</sup> As a result of the growing population of older people and increasing life expectancy, there will be greater pressure for older Australians to remain in the workforce for longer.

**Labour force participation rates** for older Australians are currently low. As a proportion of the whole population, one out of three Australians over 55 participate in

the labour force; approximately 1.9 million people.<sup>8</sup> This accounts for 16% of the total labour force.<sup>9</sup> Statistics also indicate that labour force participation declines with age. In the year to June 2010:

- 71% of Australians aged 55-59 years were participating in the labour force.<sup>10</sup>
- 51% of 60-64 year olds were in the labour force; and 24% of those aged 65-69 years.<sup>11</sup>

In 2013 to 2014, employment was the main area of complaint to the Commission under the *Age Discrimination Act 2004* (Cth), making up 62% of age-related complaints in the last financial year.<sup>12</sup> The main age groups of complainants were 55-64 years (31% of age-related complaints) and 65-74 years (17% of age-related complaints).<sup>13</sup>

The Commission's *National prevalence survey of age discrimination in the workplace* found that over a quarter (27%) of Australians aged 50 years and over indicated that they had experienced some form of age discrimination on at least one occasion in the workplace in the last two years.<sup>14</sup> The highest incidence of age discrimination was observed in the population aged between 55 and 64 years old.<sup>15</sup>

Another key finding was that a third (33%) of people who had been discriminated against gave up looking for work as a result of experiencing age discrimination.<sup>16</sup> In the year to January 2015, there were 80,000 unemployed Australians aged 55 and over, an increase of 12% over that year.<sup>17</sup>

#### **Discussion question**

3. What other data or information is available on employment discrimination against older Australians?

### **5.1 How does Australia compare internationally?**

The past few decades have seen a steady increase in participation of older Australians in the labour force. However, as the proportion of the population aged 65 and over is projected to more than double by 2054-55, the government and community face the challenges of meeting future demands for health and aged care services and retirement incomes, labour force participation and sustainable economic productivity.<sup>18</sup>

This situation is not unique to Australia. Many other industrialised countries around the world face similar challenges in regards to ageing populations. Countries such as New Zealand, Canada and Japan are doing much better than Australia at recruiting and retaining older workers (see Table 1 below). While Australia's labour force participation amongst people aged 45-54 and 55-64 are higher than the OECD averages there is still much scope to encourage older Australians to remain in or, re-enter, the workforce.

The National Inquiry will look at domestic and international best practice to address employment discrimination and other barriers that prevent or discourage participation of older Australians in the workforce.

**Table 1: Annual labour force participation rates, 2013<sup>19</sup>**

Table 1 compares annual labour force participation rates (2013) among Australia, four other OECD countries, and the OECD average, across three age groups: 45-54 years; 55-64 years and 65+ years.

Country	45-54 years	55-64 years	65+ years
Australia	83.0%	63.9%	12.1%
Canada	85.7%	64.7%	13.0%
Iceland	91%	84.3%	35.3%
Japan	85.7%	69.4%	20.5%
New Zealand	87.2%	77.5%	20.6%
OECD Average	80.7%	59.7%	13.5%

**Discussion question**

4. What lessons and leading practices can we learn from other countries to address employment discrimination and increase workforce participation of older Australians?

**6 Economic and social benefits of employing older Australians**

Older Australians working for longer provides significant benefits to workplaces, the economy, the community and individuals themselves.

Older workers benefit from increased incomes and savings that help to raise living standards in retirement. Staying in the workforce also helps to improve health outcomes and general wellbeing for older people. This would help to reduce demand on health and welfare systems. Workplaces and the overall economy can benefit from using the ‘experience and skills of older workers to train younger and newer employees’.<sup>20</sup>

**Share your story**

As well as taking evidence through consultations and submissions, the Commission wants to hear successful stories of older Australians seeking and retaining employment, changing jobs or careers. In particular, we want to identify what factors contribute to positive outcomes for older Australians in employment. For examples of stories from individuals and organisations about the significant and diverse contributions of older Australians to society please visit the Commission’s Age Positive website: <https://agepositive.humanrights.gov.au/>

## **7 Economic and social costs of employment discrimination against older Australians**

An ageing population presents many opportunities. However, research shows that the low labour force participation of older Australians also has significant economic and social costs.

### **7.1 Economic costs**

There are considerable economic costs associated with low labour force participation of older Australians. According to Deloitte Access Economics, an extra 3 percentage points of labour force participation among workers aged 55 and over would result in a \$33 billion boost to GDP – or around 1.6% of national income.<sup>21</sup>

A 5% lift in paid employment among this group would result in a \$48 billion in extra GDP – or 2.4% of national income.<sup>22</sup> These gains are on top of an expected \$55 billion or 2.7% boost from participation among the over 55s already factored into the latest *Intergenerational Report*.<sup>23</sup>

At the individual workplace level, lower participation rates and experiences of employment discrimination impact in a variety of ways, including:

- Loss of knowledge and highly experienced and skilled staff
- High costs of recruitment and training
- Loss of productivity in workplaces
- Levels of job satisfaction
- Limiting diversity and its associated benefits in the workplace.

### **7.2 Social costs and impacts on individuals**

The Australian Human Rights Commission's research indicates that 60% of people who experienced age discrimination found that it affected their self-esteem or mental health, or caused them stress.<sup>24</sup> Others also reported that it had a negative impact on their family or career or made them consider changing their occupation or retraining.<sup>25</sup>

The research found that many people who experience age discrimination in the workplace subsequently give up looking for work or think about retiring or accessing their superannuation.<sup>26</sup>

Other impacts include:

- Involuntary early retirement
- Unemployment and long-term unemployment
- Social exclusion
- Outdating of skills
- Barriers to accessing benefits and the age pension
- Housing stress.



## **8 Legal and policy framework**

The following section outlines the relevant legal and policy framework, including the international human rights framework.

### **8.1 *International legal framework***

The rights of older persons are protected by a number of key international human rights treaties.<sup>27</sup> However, there is no specific United Nations convention on the rights of older persons.<sup>28</sup>

Some of the key rights protected under international human rights law are:

- The right to work;<sup>29</sup>
- The right to just and favourable conditions of work, including equal pay and conditions for equal work, safe and healthy work conditions, and equal opportunities for promotion in the workplace;<sup>30</sup>
- The right to an adequate standard of living and to enjoyment of the highest attainable standard of physical and mental health;<sup>31</sup> and
- The right to enjoy all other rights without discrimination;<sup>32</sup>

The United Nations Principles for Older Persons (1991) does not have the legal status of a convention but addresses the employment rights of older persons directly.<sup>33</sup> For example, the principles state that older persons should:

- have the opportunity to work or have access to income-generating opportunities;<sup>34</sup>
- be able to participate in determining when and at what pace their withdrawal from the labour force takes place;<sup>35</sup>
- remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations;<sup>36</sup> and
- be able to pursue opportunities for the full development of their potential.<sup>37</sup>

The right to work is more than the right to earn money, though that is important. The United Nations Committee on Economic, Social and Cultural Rights has said the right to work 'forms an inseparable and inherent part of human dignity' and is essential for realising other human rights.<sup>38</sup>

As mentioned in Section 6, workplaces and communities benefit from the continuing engagement of older persons in the workforce. Unemployment, underemployment and low labour force participation deprive societies of older persons' energies and skills.<sup>39</sup> The United Nations Committee on Economic, Social and Cultural Rights has emphasised that 'it is desirable to employ older workers in circumstances in which the best use can be made of their experience and know-how'.<sup>40</sup>

### **8.2 *Domestic legal framework***

The domestic legal framework consists of anti-discrimination legislation at both Commonwealth and state/territory levels, and Commonwealth workplace relations

laws – all of which prohibit discrimination on the basis of age in the context of employment.

(a) *Age Discrimination Act 2004 (Cth)*<sup>41</sup>

The *Age Discrimination Act 2004 (Cth)* (ADA) makes it unlawful to treat a person unfairly because of their age.

Discrimination includes direct and indirect discrimination.<sup>42</sup>

**Direct discrimination** involves treating a person less favourably than a person of a different age in the same or similar circumstances.

**Indirect discrimination** occurs when there is a rule or policy that is the same for everyone but has an unfair effect on people of a particular age.

The ADA protects people in a range of different areas of public life, including: employment, the provision of goods and services, education, accommodation, access to premises, disposal of land and the administration of Commonwealth laws and programs.<sup>43</sup>

In the workplace, the ADA covers situations where a person has been: refused employment; given less favourable terms or conditions of employment; denied opportunities for promotion, transfer, training or other benefits; dismissed; or subjected to any other detriment on the basis of the person's age.<sup>44</sup>

*Exemptions*

Like other anti-discrimination laws, the ADA says that in some circumstances treating someone less favourably because of their age is not unlawful. It is not unlawful to discriminate on the ground of age (directly or indirectly) if a person is unable to carry out the inherent requirements of the particular job.<sup>45</sup>

There are also a number of other exemptions in the ADA.<sup>46</sup>

(b) *Fair Work Act 2009 (Cth)*

The *Fair Work Act 2009 (Cth)* (FWA) provides that an employer must not take adverse action against an employee or prospective employee because of their age (or any other protected attribute, such as race, sex, disability).<sup>47</sup> Adverse action includes such things as dismissing an employee, altering an employee's position to their detriment or refusing to employ a prospective employee.<sup>48</sup>

The FWA covers discrimination occurring: to someone applying for a job as an employee; to a new employee who has not started work; or to an employee at any time during employment.

(c) *Other laws*

Other laws and regulations interact with the anti-discrimination and employment laws above. These include regulatory frameworks around:

- superannuation;

- retirement ages;
- licensing or re-qualification requirements;
- workers' compensation schemes; and
- work, health and safety laws.

(d) *Remedies*

If a person feels that they have experienced discrimination on the ground of age in the context of employment, there are several ways of pursuing a complaint. The different forums for complaining about discrimination in the workplace on the ground of age include:

- The Australian Human Rights Commission. For more information visit the Commission's complaints portal: <https://www.humanrights.gov.au/complaint-information>. If a complaint is not resolved by the Commission, it can be taken to the Federal Circuit Court or the Federal Court of Australia.
- State or territory anti-discrimination agencies.<sup>49</sup> If a complaint is not resolved by those agencies, it can be taken through the administrative law tribunal and court system.
- The Fair Work Commission. If a complaint is not resolved by the Fair Work Commission, it can be taken to the Fair Work Division of the Federal Circuit Court or the Federal Court of Australia.
- The Fair Work Ombudsman, if the employer is a 'national system employer' under the FWA.

**Discussion questions**

5. How adequately do existing laws protect older Australians from employment discrimination? How effective are the legal remedies for older workers who have experienced discrimination? How could existing laws be amended or supplemented?
6. What difficulties are there for employers in understanding and complying with legal obligations?

### **8.3 Policy**

Currently, there is a fragmented strategic and policy framework relating to older workers in Australia. The Australian Law Reform Commission's report, *Access All Ages-Older Workers and Commonwealth Laws* identified this as an issue and recommended that the Australian Government develop a National Mature Age Workforce Participation Plan.<sup>50</sup> The Plan would provide a coordinated policy response to the challenges of an ageing population and low labour force participation of older workers.<sup>51</sup>

(a) *Past initiatives and activities*

Past initiatives and activities which have attempted to raise awareness of the challenges and develop policy responses to the ageing population and the labour force participation of older Australians include:

- The Treasury published intergenerational reports in 2002, 2007, 2010 and 2015. The Reports assess the long-term sustainability of Government policies and how changes to Australia's population size and age profile may impact on economic growth, workforce and public finances over the next 40 years.<sup>52</sup>
- In 2012, the Advisory Panel on Positive Ageing was established in response to a recommendation of the Advisory Panel on the Economic Potential of Senior Australians. The role of the Advisory Panel was to lead a national dialogue on ageing issues, improve coordination of policy design across portfolios, and work with the Government on implementation and design of ageing policy.<sup>53</sup> Australian Government funding for the panel was withdrawn in late 2013.
- In 2011, the Advisory Panel on the Economic Potential of Senior Australians was established to examine how Australia could best harness the opportunities that older Australians can bring.<sup>54</sup> The Advisory Panel was located within Treasury and produced three reports.
- In 2010, the Consultative Forum on Mature Age Participation was established to provide advice on practical solutions to address the barriers to employment participation for mature age people.<sup>55</sup>
- In April 2005, the Productivity Commission released the report, *Economic Implications of an Ageing Society* which examined the productivity, labour supply and fiscal implications of likely demographic trends over the next 40 years in order to further improve understanding of the challenges and opportunities resulting from an ageing Australia.<sup>56</sup>

Between 2008 and 2010 a number of reviews into areas related to this Inquiry were conducted. These include the Tax Review<sup>57</sup>, the Super System Review<sup>58</sup> and the Pension Review,<sup>59</sup> each of which made recommendations for reform.<sup>60</sup>

(b) *Current policies and gaps*

Current policies which are targeted to older Australians include:

- In 2014, the **Restart Wage Subsidy** was introduced by the Department of Employment to advance the employment of older workers and provide financial support to employers who employ and retain eligible job seekers who are 50 years of age or older.
- Increases in the qualification age for the **Age Pension** were also introduced in response to the growing population of older people and increasing life expectancy. In the 2009-2010 Budget the Australian Government announced that the qualification age for the Age Pension would be increased from the existing age of 65 years to 67 from July 2023.<sup>61</sup> This will gradually increase to 70 years by July 2035.<sup>62</sup>

As mentioned in Section 8.2, there are other regulations and policies which relate to older workers and have implications on their labour force participation. For example, workers compensation and income insurance schemes vary across the States and Territories and does not provide equal cover for workers once they turn 65. Age restrictions and limits to incapacity payments can be disincentives for older workers to remain in or re-enter the workforce.

Higher taxation of redundancy payments to people over 65 reduces savings for retirement and encourages people to leave the workforce if the opportunity to take a redundancy is presented to them before the age of 65.

There is also a lack of vocational education programs targeted to older workers, as well as opportunities for older workers to retrain and equip themselves for new jobs and careers. Research shows that outdated skills and experience can be a barrier to mature age employment.<sup>63</sup> These issues need to be addressed in order to maximise the potential of those who are willing and able to work.

## **9 Barriers to employment**

Older Australians can face a range of individual and structural barriers at different stages of employment including recruitment, retention and re-entering the workforce.<sup>64</sup>

Certain groups within the community may experience discrimination on the basis of their age differently from others, for example, people with disability, women, Aboriginal and Torres Strait Islander peoples, people from culturally and linguistically diverse backgrounds and LGBTI people. The effects of age discrimination can be compounded by multiple forms of discrimination, for example an older lesbian woman potentially faces discrimination on the grounds of gender, sexuality and age. Further, multiple grounds of discrimination can overlap and produce different impacts.

### **9.1 For older Australians**

Some possible barriers older Australians may experience in gaining and keeping employment include:

- Discriminatory attitudes and behaviours during recruitment, and in the workplace, from employers and others
- Low levels of awareness of rights at work
- Lack of access to flexible work arrangements
- Outdated job search skills
- Retraining and up-skilling to keep up with industry demands
- Health issues
- Factors related to superannuation, retirement savings and incomes
- Tax incentives and disincentives
- Issues with workplace environments and conditions
- Lack of availability of insurance and workers compensation
- Age pension and superannuation frameworks.<sup>65</sup>

### **9.2 For employers of older Australians**

Businesses and organisations of different sizes, and from a range of sectors and industries, may face particular challenges.

Some possible barriers employers may experience in employing older people include:

- Low levels of awareness of legal obligations in relation to discrimination against older Australians
- Limited resources, in particular for small business

- Difficulties in complying with laws and regulations related to anti-discrimination, employment, work, health and safety, redundancy payments, workers compensation and insurance
- Age pension and superannuation frameworks.

**Discussion question**

7. What are the distinct challenges faced by certain groups of older Australians (e.g. women, Aboriginal and Torres Strait Islander peoples, people from culturally and linguistically diverse backgrounds or LGBTI people) in relation to employment discrimination?

## 10 How can you participate in the National Inquiry?

Individuals and organisations interested in participating in the National Inquiry can do so through consultations or by making a submission.

The information collected through the consultations and submissions process will be used for the purposes of understanding the issues and may be drawn upon, quoted or referred to in the National Inquiry's report. The Commission's submission policy provides further information on the use, publication and access to submissions. The submission policy is located at: <https://www.humanrights.gov.au/submission-policy>. Details on the consultations and submission process and further information about the National Inquiry can be found at: <http://www.humanrights.gov.au/our-work/disability-rights/projects/willing-work-national-inquiry-employment-discrimination-against>.

To contact the National Inquiry team, you can phone (02) 9284 9600 or send an email to [ageanddisabilityinquiry@humanrights.gov.au](mailto:ageanddisabilityinquiry@humanrights.gov.au).

## Discussion questions

1. What policies, workplace practices, programs or incentives assist with increasing participation of older workers? How adequate are these policies, practices or incentives? What is the role of Government, peak business and employee groups, and individual employers?
2. Are there distinct challenges faced by different sized businesses and organisations, sectors and industries in employing older workers?
3. What other data or information is available on employment discrimination against older Australians?
4. What lessons and leading practices can we learn from other countries to address employment discrimination and increase workforce participation of older Australians?
5. How adequately do existing laws protect older Australians from employment discrimination? How effective are the legal remedies for older workers who have experienced discrimination? How could existing laws be amended or supplemented?
6. What difficulties are there for employers in understanding and complying with legal obligations?
7. What are the distinct challenges faced by certain groups of older Australians (e.g. women, Aboriginal and Torres Strait Islander peoples, people from culturally and linguistically diverse backgrounds or LGBTI people) in relation to employment discrimination?

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- <sup>1</sup> Australian Human Rights Commission, *National prevalence survey of age discrimination in the workplace* (2015). At <https://www.humanrights.gov.au/our-work/age-discrimination/publications/national-prevalence-survey-age-discrimination-workplace> (viewed 22 May 2015).
- <sup>2</sup> Australian Human Rights Commission, *Fact or fiction? Stereotypes of older Australians* (2013). At <https://www.humanrights.gov.au/our-work/age-discrimination/publications/fact-or-fiction-stereotypes-older-australians-research> (viewed 22 May 2015).
- <sup>3</sup> Australian Human Rights Commission, *Working past our 60s: Reforming laws and policies* (2012). At <https://www.humanrights.gov.au/our-work/age-discrimination/publications/working-past-our-60s-reforming-laws-and-policies> (viewed 22 May 2015).
- <sup>4</sup> Australian Law Reform Commission, *Access All Ages – Older Workers and Commonwealth Laws*, Report No 120 (2013). At <http://www.alrc.gov.au/publications/access-all-ages-report120> (viewed 22 May 2015).
- <sup>5</sup> The Australian Bureau of Statistics defines the labour force as people employed (including underemployed, full-time and part-time workers and self-employed people) and unemployed (including youth, long-term unemployed). A person who is not classified as either employed or unemployed is not in the labour force. Australian Bureau of Statistics, *Labour Statistics: Concepts, Sources and Methods*, 2013 (2013) Chapter 2: Currently Economically Active Population. At <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/6102.0.55.001Chapter82013> (viewed 8 May 2015).
- <sup>6</sup> The Treasury, *2015 Intergenerational Report - Overview* (2015), p 8. At <http://www.treasury.gov.au/PublicationsAndMedia/Publications/2015/2015-Intergenerational-Report-Overview> (viewed 22 May 2015).
- <sup>7</sup> The Treasury, *2015 Intergenerational Report - Overview* (2015), p 8. At <http://www.treasury.gov.au/PublicationsAndMedia/Publications/2015/2015-Intergenerational-Report-Overview> (viewed 22 May 2015).
- <sup>8</sup> Australian Bureau of Statistics, *Australian Social Trends, Sep 2010, cat 4102.0 - Older People and the Labour Market* (2010). At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features30Sep+2010> (viewed 7 May 2015).
- <sup>9</sup> Australian Bureau of Statistics, *Australian Social Trends, Sep 2010, cat 4102.0 - Older People and the Labour Market* (2010). At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features30Sep+2010> (viewed 7 May 2015).
- <sup>10</sup> Australian Bureau of Statistics, *Australian Social Trends, Sep 2010, cat 4102.0 - Older People and the Labour Market* (2010). At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features30Sep+2010> (viewed 7 May 2015).
- <sup>11</sup> Australian Bureau of Statistics, *Australian Social Trends, Sep 2010, cat 4102.0 - Older People and the Labour Market* (2010). At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features30Sep+2010> (viewed 7 May 2015).
- <sup>12</sup> Australian Human Rights Commission *Annual Report 2013-2014*, p 132.
- <sup>13</sup> Australian Human Rights Commission *Annual Report 2013-2014*, p 148.
- <sup>14</sup> Australian Human Rights Commission, *National prevalence survey of age discrimination in the workplace* (2015), p 8. At <https://www.humanrights.gov.au/our-work/age-discrimination/publications/national-prevalence-survey-age-discrimination-workplace> (viewed 22 May 2015).
- <sup>15</sup> Australian Human Rights Commission, *National prevalence survey of age discrimination in the workplace* (2015), p 3. At <https://www.humanrights.gov.au/our-work/age-discrimination/publications/national-prevalence-survey-age-discrimination-workplace> (viewed 22 May 2015).
- <sup>16</sup> Australian Human Rights Commission, *National prevalence survey of age discrimination in the workplace* (2015), p 47. At <https://www.humanrights.gov.au/our-work/age-discrimination/publications/national-prevalence-survey-age-discrimination-workplace> (viewed 22 May 2015).
- <sup>17</sup> 12 month averages. Australian Bureau of Statistics data cited in Department of Employment *Improving the employment prospects of mature age job seekers* (2015).



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- <sup>18</sup> The Treasury, *2015 Intergenerational Report: Australia in 2055* (2015), p viii. At <http://www.treasury.gov.au/PublicationsAndMedia/Publications/2015/2015-Intergenerational-Report> (viewed 22 May 2015).
- <sup>19</sup> Organisation for Economic Co-operation and Development (OECD), *OECD.StatExtracts*, 'LFS by sex and age – indicators'. At [http://stats.oecd.org/Index.aspx?DatasetCode=LFS\\_SEXAGE\\_I\\_R#](http://stats.oecd.org/Index.aspx?DatasetCode=LFS_SEXAGE_I_R#) (viewed 17 April 2015). Figures have been rounded to one decimal point.
- <sup>20</sup> Madrid International Plan of Action on Aging (2002), para 26. See also, United Nations Principles for Older Persons (1991), principle 7.
- <sup>21</sup> Deloitte Access Economics, *Increasing participation among older workers: The grey army advances*' (2012), p i. At <https://www.humanrights.gov.au/increasing-participation-among-older-workers-grey-army-advances2012> (viewed 22 May 2015).
- <sup>22</sup> Deloitte Access Economics, *Increasing participation among older workers: The grey army advances*' (2012), p i. At <https://www.humanrights.gov.au/increasing-participation-among-older-workers-grey-army-advances2012> (viewed 22 May 2015).
- <sup>23</sup> Deloitte Access Economics, *Increasing participation among older workers: The grey army advances*' (2012), p i. At <https://www.humanrights.gov.au/increasing-participation-among-older-workers-grey-army-advances2012> (viewed 22 May 2015).
- <sup>24</sup> Australian Human Rights Commission, *National prevalence survey of age discrimination in the workplace* (2015), p 45. At <https://www.humanrights.gov.au/our-work/age-discrimination/publications/national-prevalence-survey-age-discrimination-workplace> (viewed 22 May 2015).
- <sup>25</sup> Australian Human Rights Commission, *National prevalence survey of age discrimination in the workplace* (2015), p 45. At <https://www.humanrights.gov.au/our-work/age-discrimination/publications/national-prevalence-survey-age-discrimination-workplace> (viewed 22 May 2015).
- <sup>26</sup> Australian Human Rights Commission, *National prevalence survey of age discrimination in the workplace* (2015), p 67. At <https://www.humanrights.gov.au/our-work/age-discrimination/publications/national-prevalence-survey-age-discrimination-workplace> (viewed 22 May 2015).
- <sup>27</sup> Including: *International Covenant on Civil and Political Rights*, 1966, articles 2 and 25(c); *International Covenant on Economic, Social and Cultural Rights*, 1966, articles 2, 6, and 7. See also, the *Convention on the Elimination of All forms of Discrimination against Women*, 1979 articles 2 and 11; and International Labour Organization, *Discrimination (Employment and Occupation) Convention*, 1958 (ILO 111), article 1. ILO111 does not specifically include age as a ground for discrimination but provides for possible additions to the list of grounds. The International Labour Organization, *Older Workers Recommendation, 1980* (No.162) directly addresses older workers (but is not a convention).
- <sup>28</sup> See, for example, *Draft UN Declaration on the Rights of Older Persons*, prepared by the Allard K. Lowenstein International Human Rights Clinic, Yale Law School, with the International Longevity Center (3 June 2008). At [http://www.globalaging.org/agingwatch/convention/modelconventions/ilc\\_draft\\_convention.pdf](http://www.globalaging.org/agingwatch/convention/modelconventions/ilc_draft_convention.pdf) (viewed 5 April 2015). There is, however, a body of 'soft' law guiding the treatment of older women and men, including the United Nations Principles for Older Persons (1991) and the Madrid International Plan of Action on Ageing (2002).
- <sup>29</sup> Article 6, ICESCR.
- <sup>30</sup> Article 7, ICESCR.
- <sup>31</sup> Articles 11 and 12, ICESCR.
- <sup>32</sup> Article 2, ICCPR and article 2, ICESCR.
- <sup>33</sup> United Nations Principles for Older Persons, adopted by the United Nations General Assembly in 1991, A/RES/46/91 (1991).
- <sup>34</sup> Principle 2.
- <sup>35</sup> Principle 3.
- <sup>36</sup> Principle 7.
- <sup>37</sup> Principle 15.
- <sup>38</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 18, *Article 6: the equal right of men and women to the enjoyment of all economic, social and cultural rights* (Thirty-fifth session, 2006), U.N. Doc. E/C.12/GC/18 (2006), para 1.
- <sup>39</sup> Madrid International Plan of Action on Aging (2002), para 23.
- <sup>40</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 6, *The economic, social and cultural rights of older persons* (Thirteenth session, 1995), U.N. Doc. E/1996/22 at 20 (1996), para 23.
- <sup>41</sup> For a detailed discussion on the ADA see Australian Human Rights Commission, *Federal Discrimination Law* (2011), Chapter 2. At <https://www.humanrights.gov.au/our-work/legal/federal-discrimination-law-2011> (viewed 5 April 2015).

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- <sup>42</sup> *Age Discrimination Act 2004* (Cth), sections 14 and 15.
- <sup>43</sup> *Age Discrimination Act 2004* (Cth), Part 4, Divisions 2 and 3.
- <sup>44</sup> *Age Discrimination Act 2004* (Cth), section 18.
- <sup>45</sup> *Age Discrimination Act 2004* (Cth), sections 18(4), 19(3), 20(2), 21(4), 24(2)
- <sup>46</sup> The Australian Human Rights Commission can grant temporary exemptions from some parts of the ADA: section 44. Other exemptions to the ADA include: things done in compliance with Commonwealth laws; things done in compliance with state and territory laws; certain health and employment programmes; youth wages or direct compliance with industrial agreements and awards: Part 4, Division 4.
- <sup>47</sup> *Fair Work Act 2009* (Cth), section 351.
- <sup>48</sup> Fair Work Ombudsman, *Protections at work*. At <https://www.fairwork.gov.au/employee-entitlements/protections-at-work#adverse-action> (viewed 11 May 2015).
- <sup>49</sup> The state and territory agencies are: ACT Human Rights Commission, Anti-Discrimination Board of New South Wales, Anti-Discrimination Commission of Queensland, Equal Opportunity Commission Western Australia, Northern Territory Anti-Discrimination Commission, Office of the Anti-Discrimination Commission (Tasmania), South Australia Equal Opportunity Commission, Victorian Equal Opportunity and Human Rights Commission.
- <sup>50</sup> Australian Law Reform Commission, *Access All Ages – Older Workers and Commonwealth Laws* (2013) Chapter 3. At <http://www.alrc.gov.au/publications/access-all-ages-report120> (viewed 8 May 2015)
- <sup>51</sup> Australian Law Reform Commission, *Access All Ages – Older Workers and Commonwealth Laws* (2013) Chapter 3. At <http://www.alrc.gov.au/publications/access-all-ages-report120> (viewed 8 May 2015)
- <sup>52</sup> The Treasury, *2015 Intergenerational Report* (2015). At <http://www.treasury.gov.au/PublicationsAndMedia/Publications/2015/2015-Intergenerational-Report> (viewed 26 May 2015)
- <sup>53</sup> The Treasury, 'Advisory Panel on Positive Ageing'. At <http://www.treasury.gov.au/Policy-Topics/PeopleAndSociety/positive-ageing> (viewed 26 May 2015).
- <sup>54</sup> The Advisory Panel on the Economic Potential of Senior Australians, *Realising the economic potential of senior Australians: Turning grey into gold* (2011). At [http://epsa.treasury.gov.au/content/publications/grey\\_gold/downloads/grey\\_gold.pdf](http://epsa.treasury.gov.au/content/publications/grey_gold/downloads/grey_gold.pdf) (viewed 26 May 2015).
- <sup>55</sup> National Seniors Productive Ageing Centre on behalf of the Consultative Forum on Mature Age Participation *Barriers to Mature Age Employment: Final Report of the Consultative Forum on Mature Age Participation* (2012). At <https://docs.employment.gov.au/documents/barriers-mature-age-employment-final-report-consultative-forum-mature-age-participation> (viewed 22 May 2015).
- <sup>56</sup> Productivity Commission, *Economic Implications of an Ageing Australia* (2005). At <http://www.pc.gov.au/inquiries/completed/ageing> (viewed 26 May 2015).
- <sup>57</sup> The Treasury, *Australia's Future Tax System: Final Report* (2010). At [http://taxreview.treasury.gov.au/content/Content.aspx?doc=html/pubs\\_reports.htm](http://taxreview.treasury.gov.au/content/Content.aspx?doc=html/pubs_reports.htm) (viewed 27 May 2015)
- <sup>58</sup> Commonwealth of Australia, *Super System Review: Final Report* (2010). At [http://www.supersystemreview.gov.au/content/content.aspx?doc=html/final\\_report.htm](http://www.supersystemreview.gov.au/content/content.aspx?doc=html/final_report.htm) (viewed 27 May 2015)
- <sup>59</sup> Commonwealth of Australia, *Pension Review Report* (2009). At <https://www.dss.gov.au/about-the-department/publications-articles/corporate-publications/budget-and-additional-estimates-statements/pension-review-report?HTML> (viewed 27 May 2015)
- <sup>60</sup> Australian Law Reform Commission, *Access All Ages – Older Workers and Commonwealth Laws* (2013) p21. At <http://www.alrc.gov.au/publications/access-all-ages-report120> (viewed 27 May 2015)
- <sup>61</sup> Commonwealth of Australia, *Budget Paper No 2: Budget Measures 2009-2010* (2009). At <http://www.budget.gov.au/2009-10/content/bp2/html/index.htm> (viewed 22 May 2015).
- <sup>62</sup> Commonwealth of Australia, *Budget Paper No. 2: Budget Measures 2014-2015* (2014). At [http://www.budget.gov.au/2014-15/content/bp2/html/bp2\\_expense-21.htm](http://www.budget.gov.au/2014-15/content/bp2/html/bp2_expense-21.htm) (viewed 22 May 2015).
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