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**Self-Analysis**

|  |  |
| --- | --- |
| **Name:** | James Simon Cohen |
| **Have you experienced employment discrimination?** | No |
| **Who Am I?** | Bachelor of Arts 3rd Year Legal Studies student at Murdoch University |
| **Existing qualifications:** | Bachelor of Commerce (International Business) – Curtin University |
| **Why you have a valuable opinion:** | I am an informed, tertiary educated Australian with both parents over the age of 60 and both still operating within the workforce. |
| **Authority in the area of age discrimination:** | Notable Completed University Units As Per Academic Transcripts:1. Legal Research (LEG120)
2. Australian Legal System (LEG150)
3. Law, Justice and Social Policy (LEG100)
4. Business Law 100 (11011)
5. Workplace Law (BSL202)
6. Industrial Relations in Asia-Pacific Region 302 (9797)
7. Social and Welfare Law (LEG393)
 |
| **Objective(s)** | 1. To work with the Australian Government to inspire law reform on the ground of age in the area of work
2. To hold the Australian Government accountable to national and international human rights standards
3. To empower Australian workers to understand and exercise their human rights
4. To encourage recognition and an understanding of the principles of equal opportunity
5. To promote recognition and acceptance within the community of the equality of persons of all ages
6. To eliminate, so far as is possible, discrimination against persons on the ground of age in the area of work; and
7. To consolidate, clarify, restate, reframe, and refresh contemporary information pertaining to discrimination on the ground of age in the area of work
 |

**Recommendations**

(Practical Ways to Improve Access and Ensure Greater Participation of Mature Workers in the Australian Workforce – With Reference to Government and Employers Large and Small, Across All Sectors)

Governmental Recommendations

1. Remove structural barriers to participation and provide equal rights for workers as they age.
2. Moreover, in the interests of national consistency and to avoid discriminating against older drivers, the Australian government should consider action to encourage all jurisdictions to implement a standard of periodic licensing testing that does not discriminate on the basis of age.
3. Extend workers compensation, income protection and superannuation provisions to all who remain productive in the workforce.
4. Encourage insurance companies to extend their coverage of workers based on health and well-being measures, and not on age limits.
5. Provide incentives such as generous tax rebates for people over 60 participating in the workforce; and
6. Change the perceptions of the public and employers towards older workers.[[1]](#footnote-1) (Working past our 60s, 2012)

Remove Structural Barriers to Participation

Ensuring licensing, insurance, compensation, superannuation and regulatory requirements do not discriminate on the basis of age (i.e. removing age limits) will provide opportunities for people to work as long as they are fit and productive. (Working past our 60s, 2012)

Extend Workers Compensation, Income Protection and Superannuation Provisions to All Who Remain Productive in the Workforce

In making reforms to the superannuation scheme, the Australian government needs to consider ways in which the scheme can be nuanced to provide fairness and equity for all older workers, including those aged 75 and older. (Working past our 60s, 2012)

The removal of the age limit on superannuation concessional contributions will have positive benefits for those working into their 70s and beyond. (Working past our 60s, 2012) Moreover, it will send a message that people are valued in the workforce, no matter what their age. (Working past our 60s, 2012)

Change the Perceptions of the Public and Employers Towards Older Workers

Influence the Media; Advertise:

1. Older people as normal people living normal lives; and
2. Older people in roles that contribute to Australian society
3. Mythbust. (Fact or fiction?, 2013)

Employer Recommendations

1. Develop and implement a policy on discrimination and make sure it is communicated effectively in the workplace.
2. Ensure there is clear, unambiguous and visible support from senior management for the policy.
3. Establish other policies that reflect your organisations commitment to workplace equity.[[2]](#footnote-2)
4. Ensure that all staff are aware of the organisations policies and procedures regarding discrimination.
5. Regularly review these policies and procedures to ensure they are up to date with the law and best practice, and ensure that any updates are clearly communicated to staff.
6. Identify possible risk factors and potential problem areas likely to lead to discrimination.[[3]](#footnote-3)
7. Develop grievance procedures to respond to internal complaints about discrimination in a fair, timely, and effective way.
8. Appoint and train contact officers of both sexes with whom employees can discuss any questions, concerns, or complaints about discrimination.
9. Moreover, treat all complaints seriously and investigate them promptly.
10. Provide staff information about external agencies that can in turn provide advice about dealing with complaints of discrimination.[[4]](#footnote-4)
11. Provide regular training to staff to ensure they understand their workplace rights regarding discrimination and responsibilities to identify and respond to incidents of the same.[[5]](#footnote-5)
12. Ensure managers and supervisors are trained effectively to understand their responsibilities to proactively identify and deal with discrimination issues.
13. Make sure managers model behaviour consistent with promoting a workplace free from discrimination. Moreover, check that they are fulfilling their responsibilities through regular performance appraisals; and
14. Regularly monitor the workplace environment to prevent discrimination and to ensure anti-discrimination policies and the aforementioned recommendations are working effectively. (Mature Workers 4. Help for Employees, 2015; Ten steps… 2015; Vicarious Liability, 2015)

Employer Best Practices for the Recruitment, Retention, and Reasonable Adjustment of Mature Age Workers and for the Minimisation of Workplace Age Discrimination

Recruitment and Selection[[6]](#footnote-6)

General

1. Educate those involved in the recruitment process about their obligations to prevent discrimination in the recruitment process
2. Be consistent and fair in the way you treat candidates
3. Accommodate people who require adjustments
4. Do not seek irrelevant personal information from applicants
5. Set aside personal bias, myths and stereotypes; and
6. Keep records of your decisions and reasons for them.[[7]](#footnote-7) (A step-by-step guide… 2015)

Selection Criteria

1. Develop selection criteria, which are consistent with the actual job requirements and duties (i.e. inherent requirements) (Mature Workers 4. Help for Employees, 2015)

Advertising

1. Ensure the information in the advertisement matches the selection criteria. (Mature Workers 4. Help for Employees, 2015)
2. Do not use discriminatory language; (Mature Workers 4. Help for Employees, 2015)
3. If used, ensure recruitment consultants are fully briefed on your requirements and have a good understanding of equal opportunity and anti-discrimination principles. (Mature Workers 4. Help for Employees, 2015)

Short Listing

1. Develop a priority list for selection criteria and apply this consistently to all applications. (Mature Workers 4. Help for Employees, 2015)
2. Document the decisions you make and reasons for them. (Mature Workers 4. Help for Employees, 2015)

Testing

1. Testing should match the essential requirements of the job. (Mature Workers 4. Help for Employees, 2015)
2. Check for any bias or indirect discrimination. (Mature Workers 4. Help for Employees, 2015)

Interviewing

1. Check if any applicants require specific arrangements to participate in the interview. (Mature Workers 4. Help for Employees, 2015)
2. Ensure consistency and fairness in questioning. (Mature Workers 4. Help for Employees, 2015)
3. Don’t make assumptions about a person’s ability to do the job based on physical characteristics. (Mature Workers 4. Help for Employees, 2015)
4. Keep records of questions and answers. (Mature Workers 4. Help for Employees, 2015)

Selecting

1. Focus on the selection criteria. (Mature Workers 4. Help for Employees, 2015)
2. Rank applications according to performance against essential and desirable requirements. (Mature Workers 4. Help for Employees, 2015)
3. Assess all information – application form, interview, referee’s reports, tests, etc. (Mature Workers 4. Help for Employees, 2015)
4. Make a record of the decisions made and the reasons for them. (Mature Workers 4. Help for Employees, 2015)
5. If requested, provided constructive feedback to unsuccessful applicants on their performance against the selection criteria. (Mature Workers 4. Help for Employees, 2015)

Medical Examinations

It is appropriate for applicants to be medically examined if there are potential health risks involved in performing the job. (Mature Workers 4. Help for Employees, 2015) However, to ensure consistency and adherence to anti-discrimination law:

1. Provide the medical examiner with the job specifications so that any recommendations made relate specifically to the job. (Mature Workers 4. Help for Employees, 2015)
2. Ensure only information relevant to the position is sought. (Mature Workers 4. Help for Employees, 2015)
3. Ensure the selection committee and medical examiner are aware of technical equipment and other reasonable adjustment provisions that might facilitate employment. (Mature Workers 4. Help for Employees, 2015)
4. If there is any concern about the ability of a person to perform a job, the medical examiner should seek expert advice and assessment. (Mature Workers 4. Help for Employees, 2015)

Developing an Anti-Discrimination Policy

Whether you are running a small business or the CEO of a large company, it is vital that your staff have the information they need to do their job well. (Mature Workers 4. Help for Employees, 2015) The same is true when it comes to developing a cohesive and productive workplace, free from discrimination. (Mature Workers 4. Help for Employees, 2015) An important first step is to develop a policy, which makes it clear that your workplace does not tolerate discrimination.[[8]](#footnote-8) (Mature Workers 4. Help for Employees, 2015) It is then essential that all employees are made familiar with your anti-discrimination policy. (Mature Workers 4. Help for Employees, 2015)

What to Include in a Policy

1. The policy should include a strong opening statement on the organisations attitudes to discrimination. (Mature Workers 4. Help for Employees, 2015)
2. The policy should include an outline of the organisations objective to eliminate discrimination. (Mature Workers 4. Help for Employees, 2015)
3. The policy should include a clearly worded definition of discrimination, and make reference to the legislation from which it draws legitimacy. (Mature Workers 4. Help for Employees, 2015)
4. The policy should clearly state that everyone has a role in ensuring workplace discrimination does not occur. (Mature Workers 4. Help for Employees, 2015)

It should emphasise the primary role of management in ensuring staff are not harassed or discriminated against within the workplace or ‘in connection with’ the persons employment. (Mature Workers 4. Help for Employees, 2015) It should also highlight the responsibility of each employee to avoid participating in discriminatory behaviour within the workplace. (Mature Workers 4. Help for Employees, 2015)

1. The policy should describe the likely consequences of discrimination. (Mature Workers 4. Help for Employees, 2015)

Promoting the Policy

Ensuring staff are familiar with the policy is crucial. (Mature Workers 4. Help for Employees, 2015) Employers should provide the policy to new staff as a standard part of induction. (Mature Workers 4. Help for Employees, 2015) Moreover, employers should make it compulsory that it be signed and thus acknowledged as understood by employees.[[9]](#footnote-9) (Mature Workers 4. Help for Employees, 2015)

Internal Grievance Processes

Establishing a grievance process for resolving complaints of discrimination in a fair, timely and confidential manner is an important part of fulfilling ones legal responsibility as an employer, and minimising disruptions in the workplace.[[10]](#footnote-10) (Mature Workers 4. Help for Employees, 2015) There is no ‘right’ internal complaints procedure, so employers have the flexibility to design a system that suits their organisational size, structure, and resources. (Mature Workers 4. Help for Employees, 2015) However, employers should offer staff both informal and formal complaint procedures. [[11]](#footnote-11)

Complaints should be made internally to a supervisor, discrimination contact officer, or industrial relations manager. (Mature Workers 4. Help for Employees, 2015) In any case, trained staff with specialist expertise should be available to ensure the complaint process is fully understood and dealt with such that complainants can make informed decisions every step of the way. (Mature Workers 4. Help for Employees, 2015)

Promotion

Employers Should:

1. Advertise vacancies widely throughout their workforce, giving all staff members the opportunity to consider applying
2. Ensure all procedures are fair and just
3. Review each position as it becomes vacant and select on the real requirements of the job; and
4. Provide constructive post-selection counselling to unsuccessful applicants. (Mature Workers 4. Help for Employees, 2015)

Staff Development and Training

Employers Should:

1. Regularly examine how training is given across the organisation, specifically looking into who is receiving training and the types of training available
2. Ensure access and reasonable adjustments are made, if required, to allow mature age workers to attend a broad range of training; and
3. Ensure training opportunities are flexible, do not take place after hours or on weekends, and provide for the care of children. (Mature Workers 4. Help for Employees, 2015)

Positive Work Environment[[12]](#footnote-12)

Employers Should:

1. Consider the family responsibilities of staff members and the possibility of implementing flexible work practices.[[13]](#footnote-13)
2. Provide senior management support with the implementation of the aforementioned anti-discrimination policy
3. Recognise that discrimination between staff members is not just a personal issue but one which negatively affects the organisations productivity and profitability; and
4. Ensure that all staff have access to staff notice boards, personnel procedural manuals, educational programs and other appropriate sources of information as to their and others rights and responsibilities at work. (Mature Workers 4. Help for Employees, 2015)

**Analysis of the Aged**

Factors Holding Back Older Workers From Participating in the Workforce (Barriers)

Older Australians face different barriers at each stage of employment.

The Key Stages Are:

1. Finding a job
2. Keeping a job; and
3. Coming back to the workforce after taking a break. (Mature workers mean business, 2008)

Barriers To Employment for Older Australians (not exhaustive)

1. Not being aware of your rights at work.
2. Discriminatory attitudes and behaviours (anticipated or actual) during recruitment and in the workplace; from employers (potential or actual) and others.
3. Limited access to flexible working arrangements and training opportunities.
4. Having out-of-date job search skills.
5. Having to do training or get new skills to keep up with industry demands.
6. Licensing requirements.
7. Issues with health.
8. Issues with your superannuation, income or saving for retirement.
9. Issues with tax or aged pension.
10. Issues with workplace environments and conditions; and
11. Limited insurance, income protection and workers compensation options. (Mature workers mean business, 2008; National Seniors Productive… 2012; Issues paper… 2015; National prevalence survey… 2015)

Discriminatory Attitudes and Behaviours

Some Australians aged 50 years and older are discouraged from entering the workforce due to the very anticipation of discrimination. (National prevalence survey… 2015)

Training Opportunities

There are limited training opportunities aimed at older workers. (Willing to Work – Booklet 4, 2015) This makes it hard for older people to develop new skills so they may change careers or get a new job. (Willing to Work – Booklet 4, 2015)

Licensing Requirements for Professional Drivers

State and Territory motor registration authorities place certain licensing requirements on drivers of heavy vehicles and drivers of public passenger vehicles. (Working past our 60s, 2012) Moreover, in many jurisdictions, there are standards and tests for professional drivers as they reach age milestones. (Working past our 60s, 2012) These tests and requirements are intended to regulate safety within each jurisdiction. (Working past our 60s, 2012) However, they are often nationally inconsistent, create no real assurance of compliance (given that drivers routinely cross state and territory borders), and discriminate on the basis of age. (Working past our 60s, 2012)

Superannuation Age Limits

Workers over the age of 75 are ineligible to make concessional contributions into their superannuation funds. (Australian Taxation Office, Supper… 2011) Moreover, as these contributions are taxed at the concessional rate of 15%, workers over the age of 75 years will miss out on this tax advantage, which provides a significant benefit to other working Australians.[[14]](#footnote-14) (Working past our 60s, 2012)

An arbitrary cut-off point to superannuation contributions (concessional and non-concessional) at age 75 can send a message to both employers and employees that workers at this stage of life are of lesser value. (Working past our 60s, 2012) It may also act as a disincentive for people to remain in the workforce. (Working past our 60s, 2012)

Tax Issues

People over the age of 65 are taxed a larger amount on redundancy payments. (Willing to Work – Booklet 4, 2015) This means less money for retirement, and encourages people to leave the workforce if they are offered a redundancy before they turn 65. (Willing to Work – Booklet 4, 2015)

Workers Insurance

Many workers insurance policies do not provide the same cover once a person turns 65. (Willing to Work – Booklet 4, 2015) This is likely to discourage older workers from staying in or coming back to the workforce.[[15]](#footnote-15) (Willing to Work – Booklet 4, 2015)

Income Protection Insurance

Most income protection insurance is only available to people up until the age of 65.[[16]](#footnote-16) (Working past our 60s, 2012) Moreover, income protection premiums generally increase with age. (Working past our 60s, 2012) Not only do such limits on income protection insurance send a message to people in their mid-60s that they are too old to be in the workforce, they also act against policies that are aimed at keep older people employed. (Working past our 60s, 2012)

Older people working in trades industries are particularly at risk. Most income protection insurance for the trades industry cuts out at 60. (Working past our 60s, 2012) And while there are some exceptions (e.g. some union organisations provide insurance up until the age of 70), their coverage is oftentimes inconsistent. (Working past our 60s, 2012)

Workers Compensation

Australia has 11 different workers compensation schemes; one operating in each State and Territory, and three Commonwealth schemes. (Working past our 60s, 2012) However, most of these schemes contain an age limit at which workers are no longer covered by the income replacement component of the scheme. (Working past our 60s, 2012) In most jurisdictions, the age at which income replacement is cut off or limited is 65. (Working past our 60s, 2012) While workers remain covered for medical expenses if they are over 65, without income replacement, most people lacking an independent source of income would be forced to retire. (Working past our 60s, 2012)

Barriers For Employers Looking to Hire and Maintain Older Australians (not exhaustive)

1. Low levels of awareness as to the laws one must obey in relation to discrimination against older Australians.
2. Difficulties adhering to laws and complying with regulations related to anti-discrimination; employment; work, health and safety; redundancy payments; workers compensation; and insurance.
3. Belief that mature age workers may be prone to health problems (Myth 1)
4. Belief there is no long-term benefit to training and developing mature age workers (Myth 2).
5. Belief younger workers are better performers than mature age workers (Myth 3).
6. Belief mature age workers wont be able to adapt to changes and new technology (Myth 4).
7. Belief that older employees will have limited or weaker technical skills comparative to younger employees.[[17]](#footnote-17)
8. Limited resources to support older workers (particularly in the case of small business); and
9. The age pension and superannuation system. (Mature workers mean business, 2008; Issues paper… 2015)

Mythbusting: The Truth About Mature Age Workers and Their Benefits to Business (Part 1)[[18]](#footnote-18)

Myth 1: Mature Age Workers May be Prone to Health Problems.[[19]](#footnote-19) (Mature Workers 2. Myths… 2015)

Fact: Australians are living longer and are healthier. (Mature Workers 2. Myths… 2015)

Australia has an ageing population. That means:

1. People are living longer; and
2. The number of people over the age of 65 is increasing.[[20]](#footnote-20) (Mature workers mean business, 2008)

Australian Bureau of Statistics (ABS) reports show that the current life expectancy of Australians is 78 years for men and 83 years for women – a two and three year increase since 1994 respectively. (ABS: Measures of Australia’s Progress, 2006) Moreover, the life expectancy at birth in 2055 is expected to be 95.1 years for men, and 96.6 years for women in Australia. (Issues paper… 2015) Indeed, over the next 40 years, the number of Australians aged 85 and over will go up by a factor of 5 – some 7 times for men, and 4 times for women (as relative life expectancy for men and women moves into closer alignment). (Increasing participation among… 2012)

A 2005 ABS survey found the proportion of Australians aged 55-64 reporting their health as ‘good’, ‘very good’, or ‘excellent’ was 75.5% - an increase of 4% since 1995. (ABS: National Health Survey, 2006)

Myth 2: There is no Long-Term Benefit to Training and Developing Mature Age Workers.[[21]](#footnote-21) (Mature Workers 2. Myths… 2015)

Fact: Australia’s ageing population means business will need to invest in mature age employees (Mature Workers 2. Myths… 2015)

Based on current trends, the working age population will grow by just 125,000 for the entire decade from 2020 to 2029 – less than a tenth of the current pace. (Mature Workers 2. Myths… 2015) Moreover, research into OECD countries shows that those countries that provide a higher level of training to older workers have workers leaving the labour market at an older age. (OECD: Live Longer Work Longer, 2006)

Myth 3: Younger Workers are Better Performers Than Mature Age Workers (Mature Workers 2. Myths… 2015)

Fact: Experience is a better indicator of productivity than age. (Mature Workers 2. Myths… 2015)

A study of OECD nations concluded that verbal skills, communication and intelligence remain unchanged as a person ages, leaving experience to be a key differentiator between the performance quality of individuals. (OECD: Live Longer Work Longer, 2006) It follows then that mature age workers are likely to be better performers comparative to their younger co-workers.

Myth 4: Mature Age Workers Won’t be Able to Adapt to Changes and New Technology.[[22]](#footnote-22) (Mature Workers 2. Myths… 2015)

Fact: Older people are the fastest growing users of technology. (Mature Workers 2. Myths… 2015)

ABS data shows that Australians aged 55-64 are the fastest growing users of information technology. (ABS: Year Book Australia, 2005)

Fact: Older people can be trained to use new technologies. (Mature Workers 2. Myths… 2015)

International studies indicate that appropriate training provided in a supportive environment can greatly assist older workers to learn new technology systems. (Research and Policy Committee… 1999)

The Costs of Employment-Related Age Discrimination

Broadly understood, the costs of employment-related age discrimination may be either:

1. Economic
2. Social; or
3. Psychological.

In reality however, these three are not distinct, but highly interrelated.

Economic costs include: (not exhaustive)

1. Suboptimal and slowed economic growth as a smaller share of the community enjoys workforce participation. (Increasing participation among… 2012)
2. Increased federal budget pressure as pension and health care subsidies extended by society to the aged begin to define a greater portion of living expenses.[[23]](#footnote-23) (Increasing participation among… 2012)

Social costs include: (not exhaustive)

1. Involuntary early retirement.
2. Unemployment.
3. Social exclusion and reduced community service.
4. Negative impact on family.[[24]](#footnote-24)
5. Outdating of skills.
6. Trouble accessing benefits and age pension; and
7. Housing stress; that is not having enough money to pay the rent or mortgage. (Mature workers mean business, 2008; Issues paper… 2015)

Psychological costs include:[[25]](#footnote-25) (not exhaustive)

1. Loss of self-esteem.
2. Discouragement.
3. Mental health issues; and
4. Stress.[[26]](#footnote-26) (Mature workers mean business, 2008)

Table 1; Negative Psychological Impacts of Employment-Related Age Discrimination



Source: (National prevalence survey… 2015)

Moreover, employment-related age discrimination affects workplaces in a number of ways, including:

1. Loss of knowledge.
2. Loss of skilled and experienced staff.
3. Limited workplace/ workforce diversity and its associated benefits in the workplace.
4. High costs of recruitment and training.
5. Disruptions to work/ loss of productivity; and
6. Reduced staff morality and job satisfaction.[[27]](#footnote-27) (Mature workers mean business, 2008; Mature Workers: 3. Employers Guide to Age Discrimination, 2015; Issues paper… 2015)

The Impact of Greater Mature Age Participation in the Australian Workforce (Benefits)

Increasing mature age employment has a range of benefits for the economy, the government, employers and, of course, for individual Australians with a desire to continue working. (Mature workers mean business, 2008)

Individual Benefits

1. More income.
2. Greater savings (including superannuation).
3. Thus reduced need for welfare payments and services.
4. Improved health and wellbeing.
5. Social inclusion; and
6. An improved standard of living upon retirement. (Mature workers mean business, 2008; Increasing participation among… 2012; Working past our 60s, 2012)

By remaining in employment for longer, older Australians can not only increase their current incomes, but can also save more in order to support themselves once they do eventually decide to retire. (Increasing participation among… 2012) In turn, improving retirement incomes not only raises living standards for future retirees, but can also assist in reducing welfare costs for future governments. (Increasing participation among… 2012) These benefits serve as a timely reminder that effective polices aimed at promoting increased workforce engagement among older Australians are likely to be among the most cost effective tools available to lift national incomes and living standards in coming decades. (Increasing participation among… 2012)

Moreover, emerging evidence suggests that greater engagement in the workforce among older Australians can assist to maintain social inclusion and improve physical and mental health outcomes (even more important considering that approximately two thirds of all projected increases in government spending over the next 40 years are expected to be health related). (Working past our 60s, 2012)

Employer Benefits

1. Older workers have a great wealth of skills, experience and know-how from which benefits may be derived
2. Moreover, employers can benefit from using the ‘experience and skills of older employees to train younger and newer ones.’
3. Reduced age discrimination in the workplace is likely to enhance the employer’s reputation as an employer; and
4. Consequently, reduced age discrimination in the workplace can help employers to attract, motivate, and retain good staff. (Issues paper… 2015; Mature Workers: 3. Employers Guide to Age Discrimination, 2015)

Mythbusting: The Truth About Mature Age Workers and Their Benefits to Business (Part 2)

Myth 5: Mature Age Workers Will Cost the Business More For Their Experience (Mature Workers 2. Myths… 2015)

Fact: Mature age employees can limit costs to employers through increased rates of retention (Mature Workers 2. Myths… 2015)

Workers aged 55 and over are five times less likely to change jobs compared with workers aged 20-24, reducing ongoing recruitment and training costs. (ABS: Labour Mobility Survey, 2006) Moreover, mature workers deliver an average net benefit of $1,956 per year (2000) to their employer compared to the rest of the workforce – a result of **increased retention, lower rates of absenteeism, decreased costs of recruitment,** and **greater investment returns on training.** (Business, Work and Ageing, 2000)

Fact: Retention of mature age workers can **help maintain corporate memory** and **save employers the cost of ‘re-inventing the wheel’**. (Australian Government, Department of Health and Aged Care, 2001)

Fact: There is a strategic business advantage to having employees who reflect the **diversity** of the customer base as the Australian population ages. (Australian Government, Department of Health and Aged Care, 2001)

Myth 6: Mature Age Workers May be Prone to Health Problems (Mature Workers 2. Myths… 2015)

Fact: Mature age workers are **less likely to take sick leave and experience work related injuries.** (Mature Workers 2. Myths… 2015)

A 2006 ABS survey found that mature age workers are the least age likely group to take days off due to their own illness or as a carer. (ABS: National Health Survey, 2006) Moreover, in a two-week period prior to the survey, nearly half the number of mature age workers had days off compared to workers aged 25-34. (ABS: National Health Survey, 2006)

ABS data also indicates that mature age workers are less likely to experience work-related injuries compared to younger workers. (ABS: Work-Related Injuries, 2006)

Economic Benefits

1. Growth of national economy.
2. Increased tax revenue.
3. Higher incomes for individuals and greater profits for business; and
4. Reduced pressure on the federal budget to provide welfare payments and services.[[28]](#footnote-28) (Increasing participation among… 2012; Working past our 60s, 2012)

Research shows that if Australia were to achieve a 3% increase in mature age (55+) participation, the national economy would be $33 Billion or 1.6% larger. At 5%, these figures grow to $48 Billion and 2.4% respectively.[[29]](#footnote-29) (Mature workers mean business, 2008)

These increases in national income would subsequently flow to workers via higher wages; to businesses via greater profits, and to the government via increased tax revenues. (Increasing participation among… 2012)

**Analysis of Relevant Commonwealth Legislation**

International Laws

Foremost, the rights of mature age workers in Australia are protected by a number of international human rights laws. (Willing to Work – Booklet 4, 2015; Issues paper… 2015)

Some of the key rights protected under international human rights laws, include:

1. The right to work.
2. The right to just and favourable conditions of work, including equal pay and conditions for equal work; safe, healthy working conditions; and equal opportunities for promotion in the workplace.
3. The right to an adequate standard of living and to enjoyment of the highest attainable standard of physical and mental health; and
4. The right to enjoy all other rights without discrimination. (Issues paper… 2015)

The United Nations Principles for Older Persons (1991)

Whilst there is no specific United Nations convention on the rights of older persons, the UN has outlined a number of principles addressing the employment rights of older persons directly.[[30]](#footnote-30) (United Nations Principles… 1991; Issues paper… 2015; Willing to Work – Booklet 4, 2015) These principles form the foundation of the rights-focused and anti-discrimination oriented laws of the Australian Federal, State and Territory governments addressed in the following sections.

Principles of Note:

Independence

Principle 2: Older persons should have the opportunity to work or to have access to other income-generating opportunities. (United Nations Principles for Older Persons, 2015)

Principle 3: Older persons should be able to participate in determining when and at what pace withdrawal from the labour force takes place. (United Nations Principles for Older Persons, 2015)

Principle 4: Older persons should have access to appropriate educational and training programmes. (United Nations Principles for Older Persons, 2015)

Participation

Principle 7: Older persons should 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. (United Nations Principles for Older Persons, 2015)

Self-Fulfilment

Principle 15: Older persons should be able to pursue opportunities for the full development of their potential. (United Nations Principles for Older Persons, 2015)

Dignity

Principle 17: Older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse. (United Nations Principles for Older Persons, 2015)

Principle 18: Older persons should be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contributions. (United Nations Principles for Older Persons, 2015)

Federal Laws[[31]](#footnote-31)

The Age Discrimination Act 2004 (ADA)

Objects

The Objects of This Act Are: (Age Discrimination Act 2004)

1. To eliminate, as far as possible, discrimination against persons on the ground of age in the areas of work, education, access to premises, the provision of goods, services and facilities, accommodation, the disposal of land, the administration of Commonwealth laws and programs and requests for information; and
2. To ensure, as far as practicable, that everyone has the same rights to equality before the law, regardless of age, as the rest of the community; and
3. To allow appropriate benefits and other assistance to be given to people of a certain age, particularly younger and older persons, in recognition of their particular circumstances; and
4. To promote recognition and acceptance within the community of the principle that people of all ages have the same fundamental rights; and
5. To respond to demographic change by:
6. Removing barriers to older people participating in society, particularly in the workforce; and
7. Changing negative stereotypes about older people;

Simplified Outline of This Act

* This Act makes it unlawful to discriminate on the ground of age
* This Act has effect subject to certain geographical and constitutional limitations (see Part 2)
* Discrimination on the ground of age can be direct or indirect (see Part 3)
* It is unlawful to discrimination on the ground of age in relation to work (see Division 2 of Part 4) and certain other areas (see Division 3 of Part 4)
* It is not unlawful to discriminate on the ground of age if a particular exemption is applicable (see Divisions 4 and 5 of Part 4)
* It is an offence to do certain things related to age discrimination (see Part 5)
* Complaints can be made to the Australian Human Rights Commission about unlawful discrimination (Australian Human Rights Commission Act 1986, s46P)
* Functions are given to the Commission (see Part 6)
* The Age Discrimination Commissioner is established (see Part 6A)
* Provision is made for miscellaneous matters such as delegation, protection from civil actions, etc. (see Part 7)

In Short, the ADA:

1. Prohibits discrimination in employment on the basis of age.
2. Makes it unlawful to harass or bully another person because of his or her age; and
3. Protects people from unfair treatment at work on the basis of age. (Age Discrimination, 2014; Issues paper… 2015; Mature Workers: 3. Employers Guide to Age Discrimination, 2015)

Coverage

1. Applies to young and older workers alike; and
2. Includes discrimination on the basis of age-specific characteristics or characteristics that are generally imputed to a person of a particular age. (Age Discrimination, 2014; A quick guide to… 2015)

Employment Relationships Covered Under the ADA

1. Commonwealth government employees.
2. State and Territory government employees.
3. Private sector employees.
4. Full-time employees.
5. Part-time employees.
6. Casual employees.
7. Contract workers.
8. Commission agents.
9. Apprentices.
10. Trainees.
11. Those on probation; and
12. Recruitment and employment agencies. (Age Discrimination, 2014; Know your rights: Age Discrimination, 2015)

Age Discrimination At Work

The Age Discrimination Act Covers Situations Where You Feel That, Because of Your Age, You Have Been:

1. Refused employment.
2. Selected for redundancy.
3. Dismissed/ fired.
4. Denied promotion, transfer or other employment-related benefits.
5. Given less favourable terms or conditions of employment.
6. Denied equal access to opportunities for training and promotion.
7. Harassed; and
8. Left open to other types of disadvantage. (Know your rights: Age Discrimination, 2015; Willing to Work – Booklet 4, 2015)

Advertising

The ADA makes it unlawful to discriminate on the basis of age when advertising jobs. (Age Discrimination, 2014)

Recruitment and Selection

The ADA makes it unlawful to discriminate on the basis of age during the recruitment and selection process. (Age Discrimination, 2014)

Training

The ADA makes it unlawful to discriminate on the basis of age when making decisions about training. (Age Discrimination, 2014)

Transfer and Promotion Opportunities

The ADA makes it unlawful to discriminate on the basis of age when making decisions about transfer and promotion opportunities. (Age Discrimination, 2014)

Terms and Conditions

The ADA makes it unlawful to discriminate on the basis of age in the terms and conditions of employment. (Age Discrimination, 2014)

Termination

The ADA makes it unlawful to discriminate on the basis of age with respect termination of employment. (Age Discrimination, 2014)

Exceptions

Like other anti-discrimination laws, the ADA says that, in some circumstances, treating someone differently because of their age in employment is not against the law. (Age Discrimination, 2014)

Exceptions Under the ADA, Include: (not exhaustive)

1. Things done in compliance with Commonwealth laws, (including laws about taxation, social security, superannuation, insurance and migration).
2. Things done in compliance with State and Territory laws; and
3. Things done in compliance with industrial agreements and awards. (Age Discrimination, 2014; Know your rights: Age Discrimination, 2015)

Meeting the Inherent Requirements of the Job

Positive Discrimination[[32]](#footnote-32)

Employer Obligations: Reasonable Steps

Under the Age Discrimination Act 2004, employers have a legal responsibility to take all ‘reasonable steps’ to ensure a working environment and services free from age discrimination. (Age Discrimination, 2014) However, the ADA does not give a definition of ‘reasonable steps’ as they will vary between workplaces (i.e. what is ‘reasonable’ for one workplace may be unreasonable for others. (Mature Workers: 3. Employers Guide to Age Discrimination, 2015)

The Fair Work Act 2009 (FWA)

Objects

The Object of This Act is to Provide a Balanced Framework for Cooperative and Productive Workplace Relations That Promotes National Economic Prosperity and Social Inclusion for All Australians by: (Fair Work Act 2009)

1. Providing workplace relations laws that are fair to working Australians, are flexible for businesses, promote productivity and economic growth for Australia’s future economic prosperity and take into account Australia’s International labour obligations; and
2. Ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions through the National Employment Standards, modern awards, and national minimum wage orders; and
3. Ensuring that the guaranteed safety net of fair, relevant and enforceable minimum wages and conditions can no longer be undermined by the making of statutory individual employment agreements of any kind given that such agreements can never be part of a fair workplace relations system; and
4. Assisting employees to balance their work and family responsibilities by providing for flexible working arrangements; and
5. Enabling fairness and representation at work and the prevention of discrimination by recognising the right to freedom of association and the right to be represented, protecting against unfair treatment and discrimination, providing accessible and effective procedures to resolve grievances and disputes and providing effective compliance mechanisms; and
6. Achieving productivity and fairness through an emphasis on enterprise-level collective bargaining underpinned by simple good faith bargaining obligations and clear rules governing industrial action.

In Short, What Does the FWA Do With Respect Age Discrimination in the Workplace?

The Fair Work Act 2009 estops employers from taking adverse actions against an employee or prospective employee because of their age (among other qualities). (Issues paper… 2015; Willing to Work – Booklet 4, 2015) In particular, the FWA prevents employers from taking adverse action to:

1. Avoid hiring/ refuse to employ a prospective employee.
2. Dismiss/ Fire an employee.
3. Alter the requirements of ones job to the end that it can no longer be performed or to an employee’s disadvantage.
4. Treat an employee differently than others.
5. Not give an employee legal entitlements such as pay or leave; and
6. Offer a potential employee different (and unfair) terms and conditions for the job compared to other employees…

… on the grounds of age. (A quick guide to… 2015; Protections at work, 2015; Willing to Work – Booklet 4, 2015)

Areas Covered

In relation to employment, the FWA covers discrimination occurring:

1. To someone applying for a job as an employee
2. To a new employee who has yet to start work; and
3. To an employee at any time during the course of their employment. (Issues paper… 2015)

State and Territory Laws

**Australian Capital Territory**

* Discrimination Act 1991 (ACT)

**New South Wales**

* Anti-Discrimination Act 1997 (NSW)

**Northern Territory**

* Anti-Discrimination Act 1996 (NT)

**Queensland**

* Anti-Discrimination Act 1991 (QLD)

**South Australia**

* Equal Opportunity Act 1984 (SA)

**Tasmania**

* Anti-Discrimination Act 1998 (TAS)

**Victoria**

* Equal Opportunity Act 2010 (VIC)

**Western Australia**

* Equal Opportunity Act 1984 (WA)

Equal Opportunity Act 1984 (WA)

*“The right to work for those who want and need it belongs to everyone”* (Guide for Employers, 2014)

Long Title Amended

An Act to promote equality of opportunity in Western Australia and to provide remedies in respect of discrimination on the grounds of sex, marital status, pregnancy, sexual orientation, family responsibility or family status, race, religious or political conviction, impairment, age, or publication of details on the Fines Enforcement Registrar’s website, or involving sexual or racial harassment or, in certain cases, on gender history grounds.

Creation, Grounds, and Areas of Coverage

The Equal Opportunity Act 1984 was enacted by the Western Australian Parliament in 1984 and came into operation on 8 July 1985. (Equal Opportunity Act 1984, 2015) Its objective is to eliminate, so far as is possible, discrimination against persons on the grounds of age (among others) in areas of work (among others). (Equal Opportunity Act 1984, 2015) The Equal Opportunity Act 1984 sets out the grounds, or types of discrimination (i.e. age) which are unlawful, and the areas of public life where they apply. (EO for You, 2015) Two areas of public life (among many) are that of employment, and superannuation + insurance. (EO for You, 2015)

Objects

The Objects of This Act Are: (Equal Opportunity Act 1984)

1. To eliminate, so far as is possible, discrimination against persons on the ground of sex, marital status or pregnancy, family responsibility or family status, sexual orientation, race, religious or political conviction, impairment, **age**, publication of relevant details on the Fines Enforcement Registrar’s website or, in certain cases, gender history in the areas of work, accommodation, education, the provision of goods, facilities and services and the activities of clubs; and
2. To eliminate, so far as is possible, sexual harassment and racial harassment in the workplace and in educational institutions and sexual harassment and racial harassment related to accommodation; and
3. To promote recognition and acceptance within the community of the equality of men and women; and
4. To promote recognition and acceptance within the community of the equality of persons of all races and of all persons regardless of their sexual orientation, religious or political convictions or their impairments or **ages**.

Responsibilities (Age Specific)

Under the Equal Opportunity Act 1984, employers must ensure they provide a working environment and services that are free from age discrimination, and they must take all ‘reasonable steps’ to prevent it from happening. (Complaints Process Fact Sheet, 2013) However, the Equal Opportunity Act 1984 does not provide a definition of ‘reasonable steps’. (Mature Workers: 3. Employers Guide to Age Discrimination, 2015)

Exceptions[[33]](#footnote-33)

While it is unlawful under the Act to discrimination against employees (potential or actual) on the basis of age, there are exceptions. (Guide for Employers, 2014) Broadly speaking, exceptions fall into two categories:

1. Inherent requirements; and
2. Positive discrimination. (Exceptions to EO Act, 2015)

Inherent Requirements

Under the Equal Opportunity Act 1984 it is not against the law to refuse someone a job if, because of their age, they cannot perform the ‘inherent requirements’ of the position. (Exceptions to EO Act, 2015) In other words, a person must be able to carry out the essential duties of the job; they must be genuinely qualified. (Exceptions to EO Act, 2015) It is the employer’s responsibility to define the essential ‘duties’ of a job and those ‘genuine qualifications’ necessary to perform them. (Mature Workers: 3. Employers Guide to Age Discrimination, 2015)

Inherent Requirement Exceptions Under the Act (not exhaustive)

1. A genuine occupational qualification; and
2. Where the terms and conditions imposed in relation to employment comply with reasonable health and safety considerations. (Complaints Process Fact Sheet, 2013; Guide for Employers, 2014)

Positive Discrimination

The Equal Opportunity Act 1984 also says that it is not against the law to provide a genuine benefit to people of a particular age group or to do something that helps meet an identified need of people of a certain age group (e.g. putting in place measures intended to achieve equality for a group with specific characteristics). (Exceptions to EO Act, 2015)

Positive Discrimination Exceptions Under the Act (not exhaustive)

1. Measures intended to achieve equality
2. Bona fide benefits or concessions provided to someone of a particular age; and
3. Establishments providing accommodation to employees of a particular age. (Complaints Process Fact Sheet, 2013; Guide for Employers, 2014)

Miscellaneous Exceptions Under the Act (not exhaustive)

1. Offering voluntary retirement to someone of a particular age
2. Superannuation and insurance if based on reasonable statistical data; and
3. Acts done in compliance with a written law of Western Australia (Complaints Process Fact Sheet, 2013; Guide for Employers, 2014)

Miscellaneous Laws (and Policies)

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

1. Superannuation.
2. Retirement ages.
3. Licensing or re-qualification requirements.
4. Workers compensation schemes; and
5. Work, health and safety laws. (Issues paper… 2015)

Current Policies That Apply to Older Australians

Moreover, there exist a number of policies aimed at supporting older Australians seeking employment. Of particular note is the Restart Wage Subsidy.

Restart Wage Subsidy

Started in 2014, the Restate Wage Subsidy provides financial support to employers who give jobs to people over 60 years old that have been looking for work. (Willing to Work – Booklet 4, 2015)

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1. The Australian government might also learn from studying the practices of those countries identified as better than Australia at employing and keeping older workers in the workforce; notable examples being the US, the UK, Canada, Iceland, Japan and New Zealand. (Mature workers means business, 2008) [↑](#footnote-ref-1)
2. Such policies include flexible work arraignment to accommodate those with family or carers responsibilities among others. (Ten steps… 2015) [↑](#footnote-ref-2)
3. Notable Methods include: conducting staff surveys with current employees or an exit interview with departing employees; and reviewing work units with high rates of absenteeism or staff turnover. (Ten steps… 2015) [↑](#footnote-ref-3)
4. See “Stakeholder Analysis’ for more information. [↑](#footnote-ref-4)
5. If the business does not have sufficient resources to train all staff, focus on those in management and human resources (note recommendation 12). (Ten steps… 2015) [↑](#footnote-ref-5)
6. Note: the following recommendations are designed to help employers develop a consistent method of recruitment, encourage applications for the widest possible pool of candidates and meet their obligations under federal anti-discrimination laws. (Mature Workers: 4. Help for Employers, 2015) [↑](#footnote-ref-6)
7. Critical in the event complaints of discrimination materialize. [↑](#footnote-ref-7)
8. A written policy makes it clear to everyone what sort of behavior is not acceptable and may be referred back to on occasion. (Mature Workers 4. Help for Employees, 2015) [↑](#footnote-ref-8)
9. Where relevant, the policy should be translated for people without a background in the corporate language. (Mature Workers 4. Help for Employees, 2015) [↑](#footnote-ref-9)
10. Research shows that organizations with grievance procedures are often ‘healthier’ than those without. (Mature Workers 4. Help for Employees, 2015) [↑](#footnote-ref-10)
11. Informal complaint procedures focus on resolving a complaint rather than factually proving or substantiating the complaint. (Mature Workers 4. Help for Employees, 2015) Formal complaint procedures focus on looking at whether a complaint can be substantiated, or at least, whether the parties can be brought together to try and reach a satisfactory outcome. (Mature Workers 4. Help for Employees, 2015) [↑](#footnote-ref-11)
12. Research shows that these arrangements can increase staff loyalty, satisfaction and the overall productivity of an organization; and reduce barriers to mature age participation. (Mature Workers 4. Help for Employees, 2015) [↑](#footnote-ref-12)
13. Flexible work practice examples include: job sharing; leave for carers of family members who are sick, older or who have disabilities; child care requirements, etc. (Mature Workers 4. Help for Employees, 2015) [↑](#footnote-ref-13)
14. A further limit on the superannuation scheme affects those over the age of 75 years who want to make after-tax contributions to their superannuation fund. (Working past our 60s, 2012) [↑](#footnote-ref-14)
15. Moreover, workers without (sufficient) insurance are likely to be unemployable. (Working past our 60s, 2012) [↑](#footnote-ref-15)
16. Income protection insurance can be taken out by workers to ensure regular payments of up to 85% of income can be paid during a period of illness or incapacity. (Working past our 60s, 2012) Income protection insurance provides cover for the self-employed, sole traders and independent contractors who are not covered under workers compensation schemes. (Working past our 60s, 2012) It is also available to workers who are covered by workers compensation, but want the added security of protection in case of non-work-related illness or injury. (Working past our 60s, 2012) [↑](#footnote-ref-16)
17. 22% of business decision makers do not expect older employees to have the same technical skills as younger employees. (Fact or Fiction?, 2013) In fact, 44% expect the skills of mature employees (potential and actual) to be out-dated. (National prevalence survey… 2015) [↑](#footnote-ref-17)
18. See Mythbusting: The Truth About Mature Age Workers and Their Benefits to Business (Part 2) below. [↑](#footnote-ref-18)
19. 51% of business decisions makers believe that older employees are more likely to be sick. (Fact or Fiction?, 2013) [↑](#footnote-ref-19)
20. By 2056 it is estimated that around 25% of the Australian population will be 65 and over (up from approximate 14.7% in 2014). (Mature workers mean business, 2008; Population projections Australia, 2006 to 2101, 2008; Australian Demographic Statistics, 2014) [↑](#footnote-ref-20)
21. 23% of business decision makers believe that older employees will not be in the role as long as younger employees. (Fact or Fiction?, 2013) [↑](#footnote-ref-21)
22. 29% of business decision makers believe that older employees have difficulty adapting to change. (Fact or Fiction?, 2013) 33%, that older employees have difficulty learning complex tasks; and 23-30% that it is difficult to teach older employees new things. (Fact or Fiction?, 2013) [↑](#footnote-ref-22)
23. As the Australian government heavily subsidies health spending for the aged, the fact that the cost of delivering heath care tends to rise over time relative to other costs in the economy means for additional strain. (Increasing participation among… 2012) With Australia’s population aging, reduced workforce participation and thus retirement savings, government spending will be forced to rise at a time when the workforce is shrinking. (Increasing participation among… 2012) [↑](#footnote-ref-23)
24. 54% of those who experience employment-related age discrimination report it as having had a negative impact on their family. (National prevalence survey… 2015) [↑](#footnote-ref-24)
25. Employment-related age discrimination has a negative psychological effect on the majority (80%) of those who experience it. (National prevalence survey… 2015) [↑](#footnote-ref-25)
26. 60% of those who experience employment-related age discrimination report a loss of self-esteem or a negative impact on mental health, or that it caused them/ is causing them stress. (National prevalence survey… 2015) Moreover, 33% report becoming discouraged from looking for work. (National prevalence survey… 2015) [↑](#footnote-ref-26)
27. 49% of those who experience employment-related age discrimination report considering changing their occupation. (National prevalence survey… 2015) 23% actually do. (National prevalence survey… 2015) [↑](#footnote-ref-27)
28. See ‘Individual Benefits’ for more information. [↑](#footnote-ref-28)
29. Note: A 2.7% increase in mature age participation is expected by 2024-2025. Increasing participation among… 2012) [↑](#footnote-ref-29)
30. These principles do not have the legal status of a convention. (United Nations Principles… 1991) [↑](#footnote-ref-30)
31. Those laws that apply to everyone in Australia. (Mature Workers: 3. Employers Guide to Age Discrimination, 2015) [↑](#footnote-ref-31)
32. See The Equal Opportunity Act 1984 below for more information. [↑](#footnote-ref-32)
33. Note: if an individual or organization relies upon an exception under the Act when a complaint is made against them, they must justify the use of that exception to the Commissioner for Equal Opportunity. (Complaints Process Fact Sheet, 2013) [↑](#footnote-ref-33)