



SUBMISSION TO

WILLING TO WORK

**THE NATIONAL INQUIRY INTO EMPLOYMENT DISCRIMINATION AGAINST
OLDER AUSTRALIANS AND AUSTRALIANS WITH A DISABILITY**

BY THE

**AGE AND DISABILITY DISCRIMINATION COMMISSIONER
AUSTRALIAN HUMAN RIGHTS COMMISSION**

**Prepared by
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COTA AUSTRALIA

COTA Australia is the national policy organisation of the State and Territory COTAs (Councils on the Ageing) in each of the eight States and Territories of Australia that make up the COTA Federation.

The COTA Federation is the national consumer peak body for older Australians and its more than 1,000 seniors' organisation members represent over 500,000 older Australians, in addition to over 30,000 individual members.

COTA Australia's focus is on national policy issues from the perspective of older people as citizens and consumers and we seek to promote, improve and protect the circumstances and wellbeing of older people in Australia. Information about and the views of our constituents and members are gathered through a wide variety of consultative and engagement mechanisms and processes.

INTRODUCTION

COTA congratulates the Age and Disability Discrimination Commissioner for conducting the *Willing to Work* Inquiry. We welcome the opportunity to contribute our views on this important issue.

There seems to be an extraordinary degree of international consensus about the need for a longer working life (often called active or productive ageing). Policy makers argue for it from the point of view of the three 'p's of economic growth (population, participation and productivity), the dependency ratio facing future generations and the public expenditure required to support an ageing population. Some older people and their advocates argue for it as a right, on the basis of the economic, social and health benefits it offers to some older workers. Yet, despite this consensus a number of barriers to a longer working life remain in place.

COTA supports removing barriers to enable a longer working life for Australians and the right of older Australians to work on as long as they wish and are able.

At the same time, we also argue that a greater understanding is needed about the impact of longer working lives on individual older people and on our society. Some of our key concerns are as follows:

- What do we know about the health and other circumstances of Australians over the age of 65, across all their varied population segments, both now and projected into the future, and how that will affect their capacity to work on to 70 years and beyond?
- What will happen to those whose health does not allow them to work on into later years if government uses levers such as older pension eligibility and superannuation preservation ages to enforce longer workforce participation?
- What will be the implications for the many people with illness or disability who currently rely on older family members to care for them, usually on an unpaid basis, if those carers are continuing longer in the paid workforce? What are the fiscal implications of this?
- How will the substantial volunteer contribution of older Australians in the community be replaced (or not) if they are working longer? What are the fiscal implications of this?
- What are the implications for workforce participation by parents of young children (particularly women) if the large number of grandparents who currently provide very substantial amounts of childcare to grandchildren extend their own working lives? What are the fiscal implications of this?

These factors imply important barriers to workforce participation around:

- care-giving roles;

- social contribution; and
- ill-health and disability.

We do not address these factors further in this submission, but COTA argues that they need to be borne in mind and responded to, alongside other efforts undertaken to support increased older age workforce participation. In this submission we will focus on some of the obstacles and barriers to greater mature age workforce participation that are embedded in:

- culture and attitudes;
- laws and regulations;
- labour market structures and work practices; and
- retirement incomes and tax arrangements.

Both direct and indirect discrimination continue in each of these areas that work against older Australians staying longer in the workforce and the Australian Human Rights Commission (AHRC) has an important role to play in combatting this denial of rights.

In this submission we highlight a number of issues that frustrate and limit mature age involvement in paid work. We take a broad view of the idea of ‘barriers to participation’, including a range of signals around value and inclusion given at all stages of engagement with work by older people – job search, recruitment, in the workplace, exiting work, training and more. While we by no means ‘cover the field’ we make a number of targeted recommendations for change and improvement to enable and encourage older Australians to continue making a contribution through employment.

While we welcome the *Willing to Work* Inquiry and are confident that it will uncover new evidence and ideas, COTA also considers that the area of mature age workforce participation in Australia has been extensively researched over the past five years. There have been a number of valuable reports produced by a range of players on the barriers facing older workers and possible solutions or directions for action to reduce barriers and improve outcomes. Therefore we make the following recommendation.

Recommendation:

The AHRC undertake a meta-evaluation of the findings of the numerous studies and consultation processes into barriers to mature age workforce participation in Australia over the past ten years or so.

We also argue at the outset for an integrated National Mature Age Workforce Strategy that involves federal and state jurisdictions, business, community and older worker representatives. The Australian Law Reform Commission 2013 Report, *Access All Ages*, called for a Mature Age Workforce Plan, and COTA has often made similar calls. We repeated the ALRC Report’s call in our contribution this year to the non-government organizations’ (NGO) contribution to the United Nations process known as the Universal Periodic Review.

There is an increasing sense of urgency to bring together the significant amount of knowledge, understanding and motivation already available to take a more systematic and thorough approach to workforce participation by older people.

Recommendation:

The federal government take the lead to engage appropriate stakeholders (government, business, employees and community) in the creation and implementation of a comprehensive National Mature Age Workforce Participation Strategy.

DEMOGRAPHIC BACKGROUND

Along with other developed OECD countries, Australia is experiencing unprecedented levels of population ageing. This is part of the success story of life in Australia; we are living healthier and longer lives. Life expectancy at birth in 2010 was around 79 years for men and 83 years for women and is expected to increase steadily to 84 for men and 89 for women at birth in 2050¹.

Changes in the composition of the population necessarily flow into the demography of the workforce. In 2014 the labour force participation rate (people working or looking for work) for those aged over 55 was 35%. This compares to 23% in 1984². (See our discussion below on the 'Early Exit Culture'.) Labour force participation rates for the 55-64 and 65-69 cohorts have been increasing over the past two decades.

However on current trends it is not surprising that the dependency ratio is on the rise, as numbers of people in older age groups increases significantly. An increasing number of older people (traditionally those over 65) will depend on a dwindling number of those of working age (traditionally between ages 15-64). In 1980 this old age dependency ratio was 15%; by 2012 it had risen to 20%; by 2050 it is expected to reach 36%³. This is however offset to some degree by a decreasing dependency ratio for those 14 and under.

In economic terms a smaller working population supporting a larger non-working population presents challenges. However estimates suggest that a five percentage point increase to the labour force participation rate of 50-69 year olds is projected to be worth 2.4% of GDP in 2050⁴, with commensurate offsets in the economic impact of population ageing. It is interesting to observe that if Australia had the same mature age participation rates as New Zealand our GDP would be 4% higher⁵.

¹ CEPAR 2013, *Population Ageing Fact Sheet*, http://www.cepar.edu.au/media/115866/cepar_fact_sheet_for_screen.pdf

² Australian Institute of Health and Welfare, 2015. *Australia's Health and Welfare 2015*. Australia's Welfare Series no. 12. Cat. No. AUS 189 P.228

³ Chomik, R. and Piggott, J. 2012, *Mature Age Labour Force Participation*, CEPAR Briefing Paper 2012/01, P.1

⁴ Ibid (Exec Summary)

⁵ Ibid P.2

The economic value of keeping and getting older workers into regular paid work has been well documented in the 2015 report by the Productive Ageing Centre on appreciating and measuring the economic and social contribution of mature Australians found that older workers contribute around \$45 billion to the formal economy⁶.

There are a number of factors encouraging people to remain in the workforce, such as better health, stronger attachment to a career and economic necessity. Women are particularly compelled to remain in work given that, as a group, they are increasingly entering the traditional retirement years with less financial security than men. The stark picture of the gender imbalance in superannuation includes that:

- on average women retire with half as much in their super accounts as men;
- 90% of women will retire with inadequate savings to fund a comfortable retirement; and
- one in five women yet to retire has no superannuation⁷.

"I am still working full time because it would be impossible to live on a single pension. I earn between \$40 and \$45,000 pa I raised two children on my own after a marriage break up. I have worked since I was 14 ... I do not have any superannuation left. I cashed it in and had to use it to pay living expenses while looking for work. I eventually set up my own freelance book keeping business as I could not find employment. My superannuation payout was very poor as it did not come in until the 1990s." S. P., Victoria

However, mature age workers remain relatively more vulnerable to under-employment and long periods of involuntary unemployment⁸. Unemployment for someone who wants to work not only means lost opportunities to accumulate financial resources, but is also linked with mental health issues including depression and lower life satisfaction.

Older people are over-represented in long term unemployment benefit (Newstart) statistics. About one third of long term Newstart Allowance recipients were mature aged. Mature aged women (50-65) were the largest group (15.72%) of the long term Newstart recipients, and the number of women in the 50-59 age range significantly outstripped other age and gender cohorts of long term Allowance recipients⁹.

For the grouping of people who subsist on Newstart later in working life, often for extended periods in the decade preceding retirement, the loss of income and savings can be catastrophic for longer term economic security. Many eat into and exhaust savings and other resources to manage through the time on the Allowance, and indeed the conditions for receipt of Newstart

⁶ Productive Ageing Centre, 2015, *Appreciating Value: Measuring the Economic and Social Contributions of Mature Aged Australians*, National Seniors

⁷ ANZ, 2015, *ANZ Women's Report*, P.9. <http://www.women.anz.com/the-conversation/anz-womens-report>

⁸ Chomik and Piggott, *Op Cit*, Pp.7-8

⁹ Department of Social Services, *Statistical Paper No. 12 Income support customers: a statistical overview 2013*, Canberra, Pp, 36-38.

require the draw-down of financial resources other than superannuation. Clearly this will have an impact on their ability to fund retirement.

It remains the case that too many older people of pre-Age Pension age who are still in the workforce face significant barriers to retaining their job and to re-entering employment if they become unemployed. Further, the 2014-15 Budget measure (still policy but not yet legislated) to continue extending the pension eligibility age out to 70 years over time creates a significant worry that many older people, unemployed due to age and sex discrimination and lack of jobs, will stay on Newstart Allowance for years longer.

“If people are expected to work to a retirement age of 70, something needs to be done about ensuring they can’t just be sacked or forced out of their jobs because of their age. It isn’t reasonable to impose a retirement age of 70 if there is no reasonable expectation that workers who are willing to work to that age are able to remain in employment.” S. C., Darwin

Recommendation:

The Age Pension eligibility age should not be increased further before the Government implements an agreed package of measures to remove discrimination and other barriers to mature age employment.

CULTURE AND ATTITUDES

There are many aspects of culture and attitudes that create barriers to workforce participation by older people. In this section we focus one very broad area (ageism and age discrimination) and a more specific area (the early exit culture). However, we view pervasive ageism as underpinning most of the barriers faced by older workers and agree with the AHRC that ageism in employment is reflected in and reinforced by attitudes to older age found more broadly in our community¹⁰.

Ageism and Age Discrimination

The term ‘ageism’ is attributed to the late Dr Robert N Butler (physician, gerontologist and psychiatrist) of Columbia University in the US. It has become standard terminology in referring to discrimination against and stereotyping of people on the basis of age, across a range of fields including employment¹¹.

According to Butler, ageism, as it applies to older people, has three components:

- prejudicial attitudes towards older people, old age, and the ageing process;

¹⁰ Australian Human Rights Commission, 2010, *Age Discrimination – exposing the hidden barrier for mature age workers*, AHRC, P.vii

¹¹ Columbia University, *Legacy of Dr. Robert N. Butler*, <http://aging.columbia.edu/about-columbia-aging-center/legacy-dr-robert-n-butler>, viewed online December 2015

- discriminatory practices against older people; and
- institutional practices and policies that perpetuate stereotypes about elderly people¹².

COTA receives regular reports from members and the general public of their experience of ageism in employment and attempts to return to employment after losing a job or taking a career break. These complaints cross all three of Butler's components of ageism. The Australian Human Rights Commission (AHRC) report on age discrimination and mature age employment in 2010 provides a comprehensive and persuasive review of ageism in the workforce. It links a pervasive, ageist culture within the community with stereotyping of older workers as a basis for age discrimination¹³. We believe the Report's findings are still current and relevant.

A way to summarise those attitudes is by reference to a 'deficit model of ageing'. This model assumes a set of particular weaknesses that older workers as a group and as individuals will have. It sits on a foundation of negativity towards the ageing process in general and is blind to anything other than perceived problems. The deficit model seems to maintain a particularly strong hold on workforce culture in Australia, steering the choices of not only some gate-keepers (employers and recruiters) but sometimes older workers themselves.

While the deficit model is a potent barrier and has to be countered, this needs a deft approach. Given the power of underlying ageism, there is a danger that special initiatives designed to overcome barriers to mature age workforce participation may unwittingly reinforce the stigma attached to employing older workers.

This caution extends to the style and messaging of awareness campaigns. COTA congratulates the Age and Disability Discrimination Commissioner for her success in placing mature age workforce participation on the public agenda and encourages further work in this area. We also encourage government to keep improving the effectiveness of messages around inclusion of marginalised groups such as older workers.

But this is not an easy task. When promoting the employment of older people by reference to a set of positive characteristics that they supposedly hold, in opposition to younger cohorts, we necessarily engage in stereotyping (of both young and old). Attempts to make a business case for employing older workers on the basis of particular characteristics such as loyalty, reliability, wisdom and corporate knowledge can result in "...a reliance on shallow arguments that are unlikely to elicit much interest from the intelligent employer and which leave their proponents wide open to accusations of ageism."¹⁴. We therefore make two main contributions on this issue.

¹²Wilkinson J and Ferraro K, 2002, *Thirty Years of Ageism Research*. In Nelson T (ed). *Ageism: Stereotyping and Prejudice Against Older Persons*. Massachusetts Institute of Technology, 2002

¹³ AHRC, 2010, Op Cit, P.4

¹⁴ Taylor, P. "Introduction" in Taylor, P. (ed) 2013 *Older Workers in an Ageing Society*, Cheltenham UK, Edward Elgar, P.14

Firstly, we consider that it is worth exploring the idea of awareness campaigns that promote ‘a whole working life’ (the life course approach) and diversity in the workforce (that is not only already in place, but that is needed to achieve national, family and individual economic prosperity). Long term campaigns that try to influence a broader notion of who belongs in a broad-based workforce may have greater success than those that champion one competing demographic group over another.

Recommendation:

The Age and Disability Discrimination Commissioner continue her excellent work in raising awareness about age discrimination in employment and the value of employing older Australians, while exploring the potential for collaboration with appropriate stakeholders on an awareness campaign that addresses workforce participation over the life-course.

Secondly, COTA notes that the Prime Minister has established a team of advisors in his department to explore the use of ‘behavioural economics’ tenets in policy development. We suggest that mature age employment could be a useful case study for that unit to consider.

Recommendation:

The Age and Disability Discrimination Commissioner refer mature age employment to the Prime Minister’s Behavioural Economics Advisor Team in PM&C as a case study, with the aim of increasing workforce participation through countering ageism in employment and achieving better outcomes for older workers.

Early Exit Culture

An area that COTA believes still needs to be tackled is the early exit culture in employment.

In Australia between the 1970s and the 1990s a number of government policies and the popular narrative were focused on addressing high youth unemployment by removing older workers from the labour market¹⁵. Policy levers to encourage this can still be found in a number of policy contexts such as taxation and superannuation law (we address one of these outmoded levers elsewhere in this submission). Perhaps even more importantly, there appears to be a long shadow from those policies still impacting on the attitudes of both employers and middle aged/older employees. Even though early exit pathways are closing fast¹⁶, the dominant narrative around mature age workforce participation from the past four decades still holds a grip on the minds of many.

The transition between policy positions (particularly when the transition is a backflip) can be a rough experience for those people directly affected. Having signed up to the previous narrative around early retirement and experiencing the vicissitudes of being an older worker

¹⁵ Taylor, P. 2013 Op Cit, P.12.

¹⁶ Taylor, P. 2013 Op Cit, P.2.

facing ageism, it may seem a harsh outcome to many that an early exit from work is increasingly no longer possible.

Awareness campaigns and political narratives need to recognise the sweep of history in this regard and the disorientation caused to both employees and employers by the redirection of policies. Clear explanation for policy shifts and acknowledgement that previous policy was headed in different directions is essential.

There is also the danger that while the early exit narrative still lingers in popular culture, it can easily be provoked into activity in the face of economic downturns. COTA is aware that it is just below the surface in current debates around the appalling rate of youth unemployment in Australia.

LAWS AND REGULATIONS

COTA has not undertaken a review of Commonwealth and State/Territory laws and regulations to identify instances of age discrimination or disincentives for older people to remain in employment or return to employment when unemployed. We are aware that instances of discrimination may exist in some (but not all) age based rules in the legal areas of: workers compensation; employment insurance; superannuation; taxation; social security; and employee relations. We rely on our colleagues in other stakeholder organisations to bring these to the surface for the Inquiry.

However, the COTAs were involved in the Australian Law Reform Commission review, *Access All Ages – Older Workers and Commonwealth Laws*, in 2013. Although the report was tabled in the Australian Parliament in May 2013, we are not aware of a government response, nor have we been able to establish which of the recommendations have been accepted and acted upon.

Recommendation:

The government publicly announce the outcomes of the ALRC 2013 report, Access All Ages, in particular identifying which:

- ***recommendations have been accepted; and***
- ***accepted recommendations have been acted upon.***

In this submission we will focus on one issue that involves both anti-discrimination legislation and taxation law. We view this issue as raising important questions about:

- the effectiveness of the Age Discrimination Act in some regards; and
- the policy signals given by government that can contribute to discouraging older workers from seeing themselves as valued in the workforce.

In the broad sense, we view both of these as barriers to older age workforce participation.

Anti-discrimination and Tax Law

In its report on age discrimination in employment, the AHRC invokes the Age Discrimination Act to clarify that age discrimination in the workplace is unlawful. It also acknowledges that the Act is only one part of the toolkit needed to tackle broader systemic barriers of ageism and discrimination¹⁷. COTA agrees strongly with this sentiment.

Nonetheless, COTA believes more can also be done to strengthen the anti-discrimination framework.

COTA is a strong supporter of the framework of federal anti-discrimination legislation, of which the Age Discrimination Act is an important part. The exercise of human rights under the Age Discrimination Act is essential recourse for individual older workers and serves a larger role in educating employers, workplaces and the broader community. The importance of the Act to Australian workers is exemplified by the fact that the AHRC receives the greatest number of age discrimination complaints in the area of employment¹⁸.

In order to strengthen this framework further for older Australians we make a recommendation that relates to the international human rights system that gives us our basis for the federal anti-discrimination framework. COTA has long argued the need for a UN Declaration on the Rights of Older People. It is an obvious gap in the international human rights framework and will become even more important in the face of population ageing around the world, including in Australia.

Recommendation:

The Australian Government

- ***take a more active role in relevant international forums to pursue the United Nations adoption of a dedicated, binding international agreement on the rights of the older person; and***
- ***ratify the agreement when it has been adopted by the UN.***

A second recommendation that we make relates to exemptions under the Age Discrimination Act that COTA believes unnecessarily and unfairly limit redress. This issue was brought to our attention by a member.

COTA was contacted by Chris, a woman over the age of 65, who reported to us that when she had been made redundant from her job she discovered that she would not receive the tax exemption applied to all redundancy payouts for those 64 years and younger. She did have the standard 65+ tax offsets applied to the payout in the same way as to her previous salary, but this arrangement was not as advantageous as the redundancy tax exemption would have been.

¹⁷ AHRC, 2010, Op Cit, P.vii.

¹⁸ AHRC, 2010, Op Cit, P.9.

Our investigation of the situation revealed the following.

- Chris was correct. She was not eligible for the tax exemptions that her younger colleagues could access, simply because she was 65 or over.
- This direct discrimination has been enshrined in tax law since 1985.
- We understand that the explanatory material accompanying the legislation at the time appears to imply that the cut off age of 65 for tax exemption status was based on some view that either everyone would have retired by that age voluntarily, or have been required to do so under industry age limits.

COTA investigated the situation further and found that there appears to be no recourse through the Age Discrimination Act as there is an exemption under the Act for discriminatory actions done in compliance with taxation law (S40). We noted the advice to this effect given to a complainant to the Administrative Appeals Tribunal in 2013, reported in *Workplace Info*¹⁹.

We also investigated whether the issue had been taken up through the ALRC Report, *Access All Ages*. The Report noted²⁰ that three stakeholders had raised the issue of tax treatment of redundancy payments, with one of them pointing out that ‘as an employee now generally cannot be compulsorily retired at any particular age...this restriction...is now effectively obsolete’. Nonetheless, the ALRC took a very narrow view, stating that it did not consider this issue to sit within its Terms of Reference as a ‘barrier’ to workforce participation. It also did not have a view as to whether the different tax treatment is a disincentive to older workers, who are made redundant, seeking further work.

COTA rejects the ALRC view and considers their exercise missed an important opportunity to right a wrong. Clearly, direct age discrimination, embedded in Commonwealth law, resulting in financial detriment to a group of workers simply on the basis of their older age is unacceptable. It sends a clear signal to a whole age cohort and employers that the contribution and worth of older workers is valued less than their younger colleagues and that they are less deserving of support during work displacement simply because of their age.

At least 26,530 people (as at 8 December 2015) agree with the same position that COTA holds on this issue – it is discriminatory. They have signed an online petition, begun just over a month ago by an individual effected by the provision, calling for the Treasurer to remove the discrimination²¹.

COTA is greatly concerned that the Age Discrimination Act offers no redress in regard to such a straight-forward case of age discrimination because of exemptions in the legislation. COTA expects the Act to be able to deliver results in common sense situations such as this example on tax treatment of redundancy payouts.

¹⁹ Workplace Info, 2013, *Not a Genuine Redundancy Payment*
<http://workplaceinfo.com.au/termination/termination-payments/cases/not-genuine-redundancy-payment-taxpayer-over-age-65#.VmZdkHYrLLs>

²⁰ Australian Law Reform Commission, 2013, *Access All Ages – Older Workers and Commonwealth Laws*, Commonwealth of Australia, Sydney, P.31

²¹ <https://www.change.org/search?q=redundancy>

Recommendation:

The federal government review the exemptions under the Age Discrimination Act to ensure that when faced with unjustifiable, detrimental age discrimination in other Commonwealth Laws legal redress is available to a complainant.

The continuation of this arrangement in the tax law also flies in the face of current government policy that recognises the importance of workers remaining in employment until later ages. The Intergenerational Report 2015 argued that mature age workforce participation is necessary for productivity growth and to manage growing social services outlays in an ageing society²². Maintaining a nonsensical provision in the tax law that then punishes ongoing workforce participation past the age of 65 is bad policy as well as discrimination.

Recommendation:

The federal Treasurer undertake an immediate review of the tax law provisions excluding people 65 and over from tax exemptions on redundancy payments, with the aim removing the discrimination.

LABOUR MARKETS AND WORK PRACTICES

The scope of labour market and workplace issues acting as participation barriers for older workers is vast. We pick up just a few of them below, but reiterate our view from above that a national strategy is needed to identify and respond to a range of barriers, including in the organisation of work and the operation of labour markets.

Labour demand issues

Some labour market analysts argue that labour demand is the key determinant of whether or not older workers will be welcome in the workforce, and that employers always choose prime age workers where they can, only extending into younger and older labour markets when they cannot recruit enough of their preferred workforce.

Martin O'Brien from Wollongong University argues

...concentrating only on the supply side of the economy leaves out half the story. The stalling economy and slackness in the labour market since the GFC (ie. lacklustre demand) is the reason older worker participation rates are stagnant. Participation rates will not increase simply because there are more older Australians.²³

Similarly, John Buchanan from Sydney University argues,

I want to know where the jobs are coming from. Labour demand at that end of the life course is very limited. For many years they've been flogging the supply side of this, but Australia has a labour underutilisation rate of about 15%. There's a lot of older workers who

²² Commonwealth of Australia, 2015, *2015 Intergenerational Report*, Canberra, Commonwealth of Australia, P.iii

²³ Martin O'Brien, *Hockey looks to 'armies' in Intergenerational Report: experts react*, The Conversation, March 5, 2015 <http://theconversation.com/hockey-looks-to-armies-in-intergenerational-report-experts-react-38372>

want to work, but can't.²⁴

If this deterministic approach is correct, and demand for labour is the key participation barrier/enabler, there are at least two key implications for older workers. The first, the need for economic growth and a buoyant economy, is outside the scope of this Inquiry. The second, however, is relevant here and relates to equity in a competitive labour market.

It is up to researchers, employer and employee groups, policy makers and advocates to challenge the assumptions about the characteristics of various segments of the labour market, that create hierarchies of value based largely on prejudice and history. In addition, the value of a mixed and diverse workforce to employers needs to be demonstrated rather than just asserted. Government could play an important role partnering with employer bodies to counter discriminatory attitudes and practices on-the-ground in employment that disadvantage older workers, by developing and disseminating:

- better practice case studies;
- business cases;
- guidance resources;
- training materials;
- the influence of employer champions; and
- other support identified by employers.

Recommendation:

A National Mature Age Workforce Strategy should include a component that encourages acceptance of a broader and more diverse workforce by demonstrating the value proposition and business case to employers and providing support for them to shift employment practices.

Addressing these issues now is also important in the face of an ageing workforce. If the labour demand theory is right, sooner or later employers will need to draw much more heavily on the older labour market whether they want to or not. If their businesses are to thrive, they will need the right mindset and practices in place to accommodate older employees at the core, rather than the margins of their workforce. It simply makes business sense.

Recruitment

There has been a substantial amount of work done in the field of recruitment practice and older workers. COTA believes that this area particularly lends itself to the meta-evaluation of existing research and policy proposals, recommended above. Nonetheless we still make a few brief comments here because, as the AHRC has said (partly based on COTA input in an earlier consultation), the first battle of unlawful age discrimination must be fought in the

²⁴ John Buchanan, *Hockey looks to 'armies' in Intergenerational Report: experts react*, The Conversation, March 5, 2015 <http://theconversation.com/hockey-looks-to-armies-in-intergenerational-report-experts-react-38372>

recruitment context²⁵.

This year COTA ACT undertook a Canberra-based qualitative research project on recruitment agency attitudes to mature aged workers. The researcher found no evidence of blatant discrimination by recruitment agencies towards older workers. A strong theme from the agencies was that recruitment opportunities are simply market driven with no age component involved, and that it is up to older workers themselves not to create a focus on age²⁶. Two concerns arise from this.

Firstly, the focus on the market reflects back to the discussion above on labour demand and also demonstrates a concerning degree of denial of reality, given the long-term unemployment statistics regarding older workers (see above). Secondly, there is a flavour of 'don't mention the war' about the insistence that older applicants ought not draw attention to their age.

International research suggests that despite a continuing increase in the availability of older workers there appears to be a continuing preference for younger job applicants. Busch says, ...while productivity constraints depend on the employment history of the individual, an explanation for the lower hiring probability of older workers continues to be the attested higher performance level of younger workers.²⁷

She argues that our attitudes to productivity remain stuck in an industrial age where it may have made sense that younger workers were preferred. However, given that the large majority of workers (85% of the workforce in Australia according to a 2007 Parliamentary report²⁸) now work in service industries, with performance requirements based on intellectual, not physical capabilities, it makes no sense that ageism in hiring is still observed²⁹.

More importantly, Busch argues that research shows that in reality, performance of individuals in a group diverges with increasing age, and productivity is more distributed among groups of job applicants, the older the members of the group are. There are older high performers showing greater capability than in earlier years; others maintaining their performance across age; and others still whose performance decreases over working life. In other words, Busch says that the research shows the older the applicant, the less meaningful the factor of age as an indicator for their productivity³⁰. Yet as we know, the older the applicant the more weight that tends to be negatively attached to age as an indicator of

²⁵ AHRC, 2010, Op Cit, P.12

²⁶ Suchy, S. 2015, *Mature Aged Employment: Recruitment Agency Attitudes to Mature Aged Workers*, Canberra, COTA ACT, <http://117.55.227.121/~s1045646/wp-content/uploads/2015/10/COTA-Research-Report-Stage-2-Success-Factors-002.pdf>

²⁷ Busch, V. *Rethinking Recruitment Processes in an Ageing Society*, in Taylor, P. (ed), 2013, *Older Workers in an Ageing Society*, Edward Elgar, Cheltenham UK.

²⁸ House of Representatives Standing Committee on Economics, Finance and Public Administration, 2007, *Servicing our Future*, Canberra, The Parliament of the Commonwealth of Australia

²⁹ Busch, 2013, Op Cit, P.172.

³⁰ Ibid, P.173.

productivity.

As well as challenging deeply held, often unexamined, prejudices in the minds of recruiters and employers, more sophisticated recruitment processes are needed to enable better information to reach recruiters about the individual in front of them.

Recommendation:

The package of recommendations regarding recruitment practice proposed in the ALRC Report, Access All Ages, provide a strong basis for removing age discrimination in recruitment. Government should review and report on progress on their adoption and implementation.

Labour Market Programs

The federal government currently takes direct action around the recruitment of older workers only through the Labour Market Programs (LMP), Restart.

The use of government employment subsidies is both an important and a vexed strategy in overcoming recruitment and retention barriers to mature age employment. On the one hand it can play to the deficit model of ageing, and can stigmatise all older workers as so deficient that they require subsidies to be employed³¹.

On the other hand, it gives the opportunity to those who would otherwise not be able to get a job to earn a wage, rebuild confidence after a period of unemployment, update skills and knowledge and demonstrate what they have to offer.

COTA continuously advised government that programs such as Restart only work in conjunction with other measures to address unemployment such as immediate intervention at the time of retrenchment and a range of other support services, including for people who do not qualify for or are prepared to meet the draconian financial requirements of Newstart.

We note that Restart was not a very successful program in 2014 and we were disappointed by the changes announced to the program by the government in its 2015 Budget. Our view is that the Budget measure merely tinkered with the existing Restart program, including reducing the time an employer needs to keep an older person on before receiving a full incentive payment. We are concerned that this could lead to some employers churning older employees through jobs on short contracts. While we understand that the introduction of this change was in order to encourage stronger employer participation in the program, we remain unconvinced that it will have a lasting value.

We are also concerned that the incentives to employers only apply in regard to older people who have been unemployed and on income support for six months. Earlier eligibility would make the older person more attractive to an employer. COTA also remains convinced

³¹ Taylor, P. 2012 in Suchy, S. 2015, Op Cit

that, in order to overcome the significant barrier of ageism facing older unemployed people and the impact this has on their own confidence and subsequent employability, it is essential that they are assisted back into the workforce within the first three months after job loss.

Recommendation:

That Restart is reviewed in light of substantial evidence that such interventions are ineffective on their own.

Workplace Readiness

How ready are Australian employers and their workplaces to accommodate the presence of increasing numbers of older workers and what would this look like? There are many issues that can be considered in response to the question, but we will focus on just one in this submission; flexibility, particularly in regard to time worked.

The most frequently expressed desire that COTA hears from members and the general public about the workplace they want and need in order to continue on in employment is that it must be flexible and allow them to work fewer hours. This is partly in response to achieving a work-life balance in the face of factors such as care-giving responsibilities, or because individual health and energy levels do not support full-time working effort, or as a phased approach to full retirement.

This is a recurring theme in the literature. Taylor³² reports that surveys demonstrate the willingness of older workers to continue working on the condition that they can reduce their hours or work more flexible hours.

We raise two matters in regard to flexible work for older workers.

Firstly, COTA strongly welcomed the extension of the right to request flexible working arrangements to workers over the age of 55 under the National Employment Standards (NES). This is an important guarantee. However, what do we know about how it is operating in practice for older workers? Some key questions are:

- How well-known is the 'right to request' among older worker cohorts?
- What is the incidence of request from the group; what is the level of employer agreement; and how does this compare with the incidence and rate of agreement for other eligible reasons, such as responsibility for young children?
- Given the sense of job insecurity expressed by many older workers, based on their perception of ageism in the workplace, how comfortable is this group exercising its right under the NES?
- Is this pathway the most useful or successful way for older workers to approach employers?

³² Taylor, P. 2013, Op Cit, P.13

- What do employers think about the ‘right to request’ for older workers – do they take it as a signal that the commitment and capacity of the employee is waning?

Recommendation:

The Fair Work Commission analyse the data recently collected in the Australian Workplace Relations Study to assess if it can contribute any insights into the operation of the right to request flexible working arrangements for older workers.

Given that so many hopes are being pinned on flexible and reduced working hours as a way to keep older people in employment, it is essential that we know much more about this how this process is currently working for them and whether it can deliver the key to longer working lives. There has been a lot of research into flexible working arrangements over a long period of time, by a large range of interested parties. However, it is unclear how much of the research has focused on its application to older workers in practice.

Recommendation:

A specific component of the meta-evaluation recommended above be devoted to reviewing the findings related to flexible working arrangements for older workers, in particular highlighting analysis of its actual application in workplaces.

Secondly, COTA notes the caution raised by some academics and advocates that reduced hours or a gradual switch from work to non-work will not be an option for many older workers³³, due to economic reasons, lack of employer support, unsuitability of job role to accommodate reduced hours, personal preference to be engaged in the work full-time, or other reasons. For those who do not wish to have reduced hours, it could be viewed as a form of unemployment or underemployment³⁴. COTA agrees that it is important to maintain vigilance in regard to this potential.

RETIREMENT INCOMES AND TAXATION

The concept of retirement

One invention of the 20th century that is likely to disappear early in the 21st century is the concept of retirement. Retirement has come to mean that after a period of income-generating work lasting until age 65 or, in recent times, age 60 or even 55, one should cease income generating work. The “final” phase of life is expected to be one dominated by leisure, paid for by savings and benefits accumulated in the employment phase of life.³⁵

COTA does not consider that ‘retirement’ will disappear, but we acknowledge that it will be a different experience in the years to come because of factors such as:

- later commencement of working life due to improved participation in education;

³³ Taylor, P. 2013, Op Cit, P.13

³⁴ Ibid, P.14

³⁵ Hiemstra, G. 1999, *The End of Retirement is Near*, <http://www.futurist.com/articles-archive/the-end-of-retirement-is-near/>

- larger populations living longer (often in better health than predecessors) and related changes in labour market demographic profiles;
- the closure of early exit pathways; and
- for some, the negative impact of global economic instability on retirement savings.

For a great many older workers retirement is less likely to be a fixed state in the coming 30 years than it was in the last 30 years. It is more likely to be fluid state in which people change their work patterns away from permanent, full-time employment towards more flexible working arrangements including part-time and intermittent contract work much later into the traditional “retirement space”.

This will create particular challenges for the way in which retirement incomes are understood and organised. It will further complicate the interaction between superannuation, transfer payments and the tax system, and will make additional demands on financial planning and management capability of older Australians. The complexity involved in the retirement incomes system could act as a significant barrier to many continuing on in work.

COTA has argued for an independent, holistic Retirement Incomes Review since March 2014 that would take into account the rapidly evolving labour market, fragmented working lives, plus dealing with various risks that tend to favour unhealthily conservative investment strategies that diminish retirement earnings – including longevity risk, major event risk and cyclical investment risk in the retirement period - plus paying for health and aged care; and reviewing options for utilising home equity.

It is now too late in the Australian triennial electoral cycle for government to be comfortable with an independent review unless both government and opposition agree that such a review should be held across the election period. Failing that, such a review needs to be held in the earliest possible time after the next election, whichever party is in government.

Ends