



Australian
Human Rights
Commission

Australia's response to the right of older persons to work and access to the labour market

Submission to the Open-ended Working Group on Ageing

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1 Introduction

1. The Australian Human Rights Commission (the Commission) makes this submission. The Commission is an 'A status' national human rights institution established and operating in compliance with the Paris Principles. Information about the Commission can be found at: www.humanrights.gov.au
2. The submission provides an overview of Australia's rights of older persons with regard to work and access to the labour market.

1.1 National legal and policy framework

3. Australia is party to seven core international human rights treaties
4. The right to work and labour market participation is contained in Article 23 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and four conventions.¹
5. The *Age Discrimination Act 2004* (Cth) aims to ensure that people are not treated less favourably on the ground of age in various areas of public life including employment.²
6. The role of Age Discrimination Commissioner, established in 2011, is currently held by the Hon Dr Kay Patterson AO.

1.2 Legal provisions and policy frameworks

7. Each state and territory has anti-discrimination or equal opportunity legislation to ensure everyone is treated equally and has the same opportunities as others.³
8. The Fair Work Act 2009 (Cth)⁴ and Fair Work Ombudsman also provide legislative and policy frameworks to support the employment rights of older persons.

1.3 Challenges faced by older persons

9. Ageism and age discrimination in the forms of conscious and unconscious bias are relevant to all stages of the employment process: recruitment and selection, employment terms and conditions, training and development, promotion and transfers, and termination of employment. These are key challenges faced by older persons remaining in or re-entering the work force.

10. The Australian Human Rights Commission in conjunction with the Australian Human Resources Institute (AHRI) conducted a survey of AHRI members regarding age discrimination, culminating in the *Employing Older Workers* (2018) report.⁵
11. Key findings include that almost a third (30 per cent) of respondents indicate their organisation has an age above which they are reluctant to recruit workers. The majority (68 per cent) of respondents disclosing reluctance indicate that there is an unwillingness to hire workers over the age of 50.
12. According to the Centre of Excellence in Population and Ageing Research (CEPAR), in addition to ageism, rigid work contracts that don't enable flexible work arrangements are two of the major barriers to workforce participation by older persons.⁶
13. In 2016 the Australian Human Rights Commission released the *Report of the Willing to Work National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability* ([Willing to Work report](#)).⁷ The Inquiry examined practices, attitudes and Commonwealth laws that deny or diminish equal participation and made recommendations as to Commonwealth laws that should be made or amended, and action that should be taken to address employment discrimination against older Australians and Australians with disability.

1.4 Data, statistics and research regarding older persons and informal work

14. The Australian Bureau of Statistics (ABS) collects data relating to older persons and informal work.
15. For example, data is collected by age and gender on 'Other types of economic participation', including carers and volunteers.⁸
16. There is a gap in collecting data on conditions of informal work and its economic value. The Australian Bureau of Statistics stopped collecting time use data in 2006. However, they have been funded to conduct a time use survey during the 2020–21 financial year, with data to be released in 2021.⁹

2 Availability, accessibility, acceptability and quality

2.1 Steps taken to ensure labour market access of older persons

17. A number of Australian Government initiatives in recent years seek to ensure the labour market participation of older Australians.
18. The *More Choices for a Longer Life Package* includes measures to support jobs and skills for mature age Australians¹⁰, such as,
 - Collaborative Partnership on Mature Age Employment
 - Career transition assistance
 - Skills Transferability Tool
 - Assistance for retrenched workers, including immediate access to employment services and retraining opportunities
 - Restart wage subsidies to encourage employers to employ older workers
 - Encouraging entrepreneurship, and
 - Skills and Training Incentive.
19. The Australian Human Rights Commission report *Willing to Work*¹¹ includes recommendations to support the workforce participation of older persons.
20. In addition, state and territory governments have implemented initiatives to support the right of older persons to work and access to the labour market. For example, the New South Wales Department of Communities and Justice Ageing Strategy includes strategies around working and retiring as one of its five key priorities.¹²

2.2 Availability of specialised services to assist older persons to identify and find employment

21. There are a range of specialised services, as listed in 2.1 above. While some programs are national, others may either target rural and remote regions, or have limited availability in rural and remote regions.

22. In addition, the Skills Checkpoint for Older Workers Program¹³ provides targeted support for eligible older Australians to stay in or enter the labour market.
23. A number of private, community and local government organisations also undertake activities to support older persons identity and find employment.

2.3 Good practices in terms of ensuring older persons enjoyment of their right to work and access to the labour market

24. The Australian Human Rights Commission released Good Practice Examples: A Resource for Employers¹⁴ in 2016, in tandem with the Willing to Work¹⁵ report.
25. The Centre of Excellence in Population Ageing and Research (CEPAR) undertakes research, reports on and provides resources in the priority area of organisations and the mature workforce¹⁶. This includes good practice resources to ensure older persons enjoy the right to work and labour market access.
26. The Diversity Council of Australia also undertakes research and develops resources to assist employers attract, engage, and retain workers of all ages.¹⁷

2.4 Protections to ensure older persons enjoy just and favourable work conditions, including fair wages and equal remuneration, safe working conditions

27. The Australian Human Rights Commission Act 1986,¹⁸ the Age Discrimination Act 2004 and the Fair Work Act 2009 provide a national legislative framework to ensure protections of older persons to enjoy favourable work conditions.¹⁹ This framework of protections is age neutral.
28. Under the modern awards and enterprise agreements system, expanded employer obligations were introduced in 2018, including Individual Flexibility Arrangements (IFAs).²⁰ These are age-neutral and cover all employers and employees in the relevant sectors.
29. Australia has a range of Commonwealth and State and Territory laws to protect and ensure the rights of all Australians, irrespective of age, to safe working conditions.²¹

30. In addition, there are state and territory-based anti-discrimination and equal opportunity regulations and governing bodies in all jurisdictions.²²
31. With regards to the informal sector, the Commonwealth Carer Recognition Act 2010²³ and state-based Carers Recognition Acts are in place.²⁴
32. For organisations covered by workplace health and safety legislation, volunteers are recognised as workers and are covered under the same conditions as paid employees. Volunteers for 'volunteer associations' are not covered, as the Work Health and Safety Act 2011²⁵ does not apply to such organisations.²⁶

3 Equality and non-discrimination

3.1 Is age a prohibited grounds for discrimination in relation to work in Australia

33. Workplace discrimination on the basis of age is prohibited at the national level by several laws: The Australian Human Rights Commission Act 1986,²⁷ the Age Discrimination Act 2004 and section 351 of the Fair Work Act 2009.²⁸

4 Remedies and redress

4.1 Mechanisms for older persons to lodge complaints and seek redress for denial of right to work

34. Under the Age Discrimination Act 2004 (Cth)²⁹, the Australian Human Rights Commission has a complaints-handling function for Australians who wish to lodge a complaint and seek redress for denial of their right to work and access to the labour market on the basis of age discrimination.
35. The Fair Work Act 2009 (Cth)³⁰ also covers age discrimination in the workplace. The Fair Work Ombudsman provides a complaints-handling mechanism for age discrimination-related employment complaints under this Act.
36. State and Territory-based anti-discrimination legislation and governing bodies³¹ also have complaints handling mechanisms for age discrimination-related employment complaints.

¹ Article 23 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Further detail is provided in articles 5(e)(v) and 7 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD), articles 10 and 14(2)(d) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), articles 13, 17, 28 and 29 of the Convention on the Rights of the Child (CRC), and articles 9, 21, 24 and 26 of the Convention on the Rights of Persons with Disabilities (CRPD).

² *Age Discrimination Act 2004* (Cth)

³ State and territory acts include: *Discrimination Act 1991* (ACT); *Anti-Discrimination Act 1977* (NSW); *Anti-Discrimination Act 1996* (NT); *Anti-Discrimination Act 1991* (Qld); *Equal Opportunity Act 1984* (SA); *Anti-Discrimination Act 1998* (Tas); *Equal Opportunity Act 2010* (Vic); *Equal Opportunity Act 1984* (WA)

⁴ *Fair Work Act 2009* (Cth)

⁵ Australian Human Rights Commission and Australian Human Resources Institute, *Employing Older Workers* (2018). At <https://www.humanrights.gov.au/our-work/age-discrimination/publications/employing-older-workers-2018> (viewed 21 October 2019).

⁶ Centre of Excellence in Population and Ageing Research (CEPAR), *Legal Protections for Older Workers*. At <http://cepar.edu.au/sites/default/files/cepar-fact-sheet-legal-protections-for-mature-workers.pdf> (viewed 17 October 2019).

⁷ Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, 2016. At: https://www.humanrights.gov.au/sites/default/files/document/publication/WTW_2016_Full_Report_A_HRC_ac.pdf (viewed 21 October 2019).

⁸ Australian Bureau of Statistics, *Economic Participation of Older Australians (Aged 65 Years and Over) With and Without Disability*. At

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- <https://www.abs.gov.au/ausstats/abs@.nsf/7d12b0f6763c78caca257061001cc588/ae2eb0bd228d5a59ca2581a000206d99!OpenDocument> (viewed 17 October 2019).
- ⁹ Emma Albirici, ABC News, *Replacing all our unpaid work would cost the Victorian economy \$205 billion, report finds*. At <https://www.abc.net.au/news/2019-07-08/value-of-unpaid-work-to-the-economy/11282840> (viewed 17 October 2019).
- ¹⁰ Information about More Choice for a Longer Life package is at: https://www.dca.org.au/topics/agehttps://docs.employment.gov.au/system/files/doc/other/more_choices_for_a_longer_life_jobs_and_skills_for_mature_age_australians_timeline.pdf (viewed 22 October 2019).
- ¹¹ Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, 2016. At: https://www.humanrights.gov.au/sites/default/files/document/publication/WTW_2016_Full_Report_A_HRC_ac.pdf (viewed 21 October 2019).
- ¹² NSW Department of Communities and Justice, *NSW Ageing Strategy 2016–2020*. At: <https://www.facs.nsw.gov.au/download?file=382829> (viewed 21 October 2019).
- ¹³ Information about Skills Checkpoint for Older Workers, Department of Employment, Skills, Small and Family Business at: <https://www.employment.gov.au/skillscheckpointprogram> (viewed 21 October 2019).
- ¹⁴ Australian Human Rights Commission, *Good Practice Examples for Employers*, 2016. At https://www.humanrights.gov.au/sites/default/files/document/publication/WTW_2016_Resource_WEB%20FINAL.pdf (viewed 22 October 2019).
- ¹⁵ Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, 2016. At: https://www.humanrights.gov.au/sites/default/files/document/publication/WTW_2016_Full_Report_A_HRC_ac.pdf (viewed 21 October 2019).
- ¹⁶ CEPAR, *Legal Protections for Mature Workers*. At: <https://www.cepar.edu.au/research/research-program-2017-2024/organisations-and-mature-workforce> (viewed 22 October 2019).
- ¹⁷ Information about Diversity Council of Australia's activities relating to age and the labour force at: <https://www.dca.org.au/topics/age>
- ¹⁸ *Australian Human Rights Commission Act 1986* (Cth)
- ¹⁹ *Age Discrimination Act 2004* (Cth)
- ²⁰ Information about awards and workplace agreements at: <https://www.fwc.gov.au/awards-and-agreements/agreements> (viewed 22 October 2019).
- ²¹ Information about safe working conditions at: <https://www.safeworkaustralia.gov.au/whs-laws-your-jurisdiction> (viewed 22 October 2019).
- ²² Centre of Excellence in Population and Ageing Research (CEPAR), *Legal Protections for Older Workers*. At <http://cepar.edu.au/sites/default/files/cepar-fact-sheet-legal-protections-for-mature-workers.pdf> (viewed 17 October 2019).
- ²³ *Carer Recognition Act 2010* (Cth) <https://www.legislation.gov.au/Details/C2010A00123>
- ²⁴ Centre of Excellence in Population and Ageing Research (CEPAR), *Legal Protections for Older Workers*. At <http://cepar.edu.au/sites/default/files/cepar-fact-sheet-legal-protections-for-mature-workers.pdf> (viewed 17 October 2019).
- ²⁵ *Work Health and Safety Act 2011* (Cth)
- ²⁶ Information about safe working conditions at: <https://www.safeworkaustralia.gov.au/topic/volunteers> (viewed 22 October 2019).
- ²⁷ *Australian Human Rights Commission Act 1986* (Cth)
- ²⁸ *Age Discrimination Act 2004* (Cth)
- ²⁹ *Age Discrimination Act 2004* (Cth)
- ³⁰ *Fair Work Act 2009* (Cth)

³¹ Centre of Excellence in Population and Ageing Research (CEPAR), Legal Protections for Older Workers. At <http://cepar.edu.au/sites/default/files/cepar-fact-sheet-legal-protections-for-mature-workers.pdf> (viewed 17 October 2019).