



**Professionals
Australia**

Respect, recognition and reward

Wasted Potential: recommendations to support mature-aged workers

Submission to the Australian Human Rights Commission by
Professionals Australia.



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Introduction

On 10 December 2014, the Australian Government provided Australian Human Rights Commission ('AHRC') with terms of reference to conduct an inquiry having regard to:

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

The AHRC subsequently launched its inquiry on 15 April 2015. As part of its inquiry, the AHRC has conducted public consultations and has released the following issues papers for comment:

- Issues Paper 1 - which focusses on employment discrimination against older Australians; and
- Issues Paper 2 – which focusses on employment discrimination against Australians with a disability.

Professionals Australia welcomes the opportunity to provide a submission to the inquiry.

Background

Professionals Australia is the trading name of the Association of Professionals Engineers, Scientists and Managers, Australia (APESMA). Professionals Australia is a registered organisation of employees under the *Fair Work (Registered Organisations) Act 2009*.

Professionals Australia exclusively represents the industrial and professional interests of managerial and professional employees. As the voice of managerial and professional employees in the workplace, Professionals Australia is very conscious of its role in promoting the rights of these employees to be represented and to fully participate in the industrial relations system. In this regard, Professionals Australia's submission will concentrate on matters which affect mature-aged managerial and professional employees in the workplace.

Professionals Australia's Workplace Advice and Support Team

As part of the services provided to members, Professionals Australia offers its members access to legal and industrial advice through its Workplace Advice and Support (WAS) Team. This service is nationally coordinated and operates in accordance with a Member Service Charter which sets out members' rights and obligations.

The WAS Team plays a crucial role in supporting individuals to navigate legal and industrial issues, understand their entitlements and how to enforce such entitlements. On a daily basis Professionals Australia's lawyers and industrial officers provide advice and dispute resolution services in relation to a diverse range of employment related matters including discrimination at work.

This submission will draw upon the evidence collected by the WAS Team including relevant case studies and the experience of team members.

2015 Professionals Australia Mature-Age Workers Survey Report

In order to understand the issues facing mature-age workers in the workplace, Professionals Australia conducted a survey of members over the age of 45 years old.

The findings of the survey were analysed and produced into a survey report titled ["Wasted Potential: the critical role of an experienced professional workforce in facing our key economic challenges"](#) ("Mature-Age Workers Report") which is appended to this submission. The Mature-Age Workers Report details the lived experience of Professionals Australia members in the workplace with respect to age discrimination and confirms that more needs to be done to promote greater engagement of mature-age professionals.

Supporting Mature-Aged Workers

Professionals Australia contends that Australia's economic and social prosperity to an extent is dependent on the contribution of mature-aged workers in the workforce. It is Professionals Australia's experience that whilst many employers have policies which seek to support mature-aged workers within their organisation, unfortunately these policies are not necessarily producing positive outcomes for mature-aged workers. In this regard, Professionals Australia is conscious of the need to bridge the gulf between good employer intentions and actual outcomes. In order to bridge the gulf, Professionals Australia surveyed its members to determine the issues mature-aged workers are facing in the workplace and finally developed recommendations which are aimed at supporting mature-aged workers to remain in the workforce.

Discussion Questions

Professionals Australia has limited its submission to providing comments with respect to select discussion questions raised in Issues Paper 1 and Professionals Australia's experience with advising and representing members experiencing a disability in the workplace.

What policies, workplace practices, programs or incentives assist with increasing participation of older workers? How adequate are these policies, practices and incentives? What is the role of Government, peak business and employee groups, and individual employers?

Disincentives to remaining in the workforce

Professionals Australia's Mature-Age Workers Survey Report found several disincentives for mature aged workers to remain in the workforce, which included:

- desire for better work life balance;
- stagnant pay and conditions;
- managers and decision-makers not understanding the importance of their skills and professional training;
- lack of challenges and or excitement; and
- lack of professional recognition or status.¹

In order to address the disincentives outlined above, respondents to the Mature-Aged Workers survey nominated the following initiatives which would act as incentives to remain in the workforce:

- transition to retirement arrangements;
- greater understanding amongst managers and decision-makers of the value of the skills of mature age workers; and
- availability of part-time work.²

Professionals Australia considers that addressing these disincentives should be high priority in order to encourage mature workers to remain in the workplace. Based on the initiatives proposed by our members, Professionals Australia has developed a number of recommendations for consideration.

Creation of statutory body to promote mature aged workers

Professionals Australia notes that Australian government promotes diversity in the workplace. For example, the Workplace Gender Equality Agency ('WGEA') is an Australian Government statutory agency charged with promoting and improving gender equality in Australian workplaces. The objectives of the WGEA are derived from the *Workplace Gender Equality Act 2012 (Cth)* ('WGE Act') which are to:

¹ Professionals Australia, *Wasted Potential: The Critical Role of an Experience Professional Workforce in facing out key economic challenges* (2015), page 28.

² *Ibid*, page 29.

- promote and improve gender equality (including equal remuneration between women and men) in employment and in the workplace;
- support employers to remove barriers to the full and equal participation of women in the workforce, in recognition of the disadvantaged position of women in relation to employment matters;
- promote, amongst employers, the elimination of discrimination on the basis of gender in relation to employment matters (including in relation to family and caring responsibilities);
- foster workplace consultation between employers and employees on issues concerning gender equality in employment and in the workplace; and
- improve the productivity and competitiveness of Australian business through the advancement of gender equality in employment and in the workplace.

To meet these objectives the WGEA undertakes functions including but not limited to:

- advising and assisting employers in promoting and improving gender equality in the workplace;
- developing, in consultation with relevant employers and employee organisations, benchmarks in relation to gender equality indicators;
- issue guidelines to assist relevant employers to achieve the purposes of the WGE Act;
- reviewing compliance with the WGE Act by relevant employers, review public reports lodged by relevant employers and deal with those reports in accordance with the Act;
- undertaking research, educational programs and other programs for the purpose of promoting and improving gender equality in the workplace; and
- promoting and contributing to understanding and acceptance, and public discussion, of gender equality in the workplace.

Professionals Australia considers that the functions undertaken by the WGEA are required with respect to mature-aged workers and there would be significant merit in the government considering the establishment of a standalone agency to address the issues faced by older workers.

The WGEA awards employers with an 'Employer of Choice for Gender Equality' citation for demonstrating leading practice in gender equality in the workplace. Professionals Australia suggests a similar citation could be adopted for employers who demonstrate leading practice in the recruitment and retention of mature-aged workers.

Recommendation 1

Australian Government establishes a statutory agency that:

- improves participation of mature aged workers in the Australian workforce
- supports employers to remove barriers to the full and equal participation of mature aged workers in the workforce;
- promotes, amongst employers, the elimination of discrimination on the basis of age relation to employment matters;
- foster workplace consultation between employers and employees on issues

concerning mature aged workers in employment; and

- improves the productivity and competitiveness of Australian business through the promoting the value that mature aged workers have in the workplace.

Accountability for workplace policies

Professionals Australia recognises that many employers implement policies that seek to increase the participation of older employees in the workforce. Despite this, as detailed in the Mature-Age Workers Survey Report, 20 per cent of respondents considered that whilst their workplace had policies that supported diversity, their employer's organisational culture did not support the policies.³

The following comments were made by survey respondents with respect to workplace policies.

Comments made with respect to workplace policies

"The problem is not with the policies themselves so much as the way in which the policies are implemented by managers."

"Saying one thing and having written policies is different from actually encouraging mature-age workers."

"The workplace has policies to work to but it is the individuals responsible for carrying out the policies that are at fault. These people need educating to ensure policies are upheld at all levels from executive down to the lower levels of responsibility to ensure policies are upheld."

"In our enterprise agreement, we have entitlements such as working from home, development/training, flexible working hours, part-time work, unpaid annual leave and study leave. However my manager and their manager will not let me access these entitlements."

"Diversity policies exist, but appear to be largely spin."

"Good policies are in place but not followed."

Having regard to the survey results and feedback received, Professionals Australia considers that the effectiveness of workplace policies aimed at increasing the participation of mature-aged workers in the workplace requires that individuals are held accountable for the policies. Professionals Australia suggests that government, peak business and employer groups and employee organisations have an important educative role to play in ensuring that employer policies are not merely lip service.

³ Ibid, page 20.

Recommendation 2

Following on from the recommendation of the creation of a statutory body that promotes mature aged workers the workforce, it would be envisaged that the statutory body would provide an educative function to employers with the support of peak business and employer groups and employee organisations to ensure that employers understand their anti-discrimination obligations. It is further envisaged that the body would encourage employers to develop policies that suit their business needs and builds trust and confidence with employees that the employer understands the issues they are facing in the workplace.

Encouraging flexible work arrangements

The lack of flexible working arrangements available to mature-aged workers was a key issue that emerged from the Mature-Age Workers Survey Report. Respondents reported that there appeared to be employer reluctance to provide flexible working hours to more mature workers which would assist in the transition to retirement as compared to younger more junior employees.⁴ In addition, the Mature-Aged Workers Survey Report demonstrated that, 52.6 per cent of respondents indicated a desire to obtain flexible working arrangements to manager carer responsibilities.⁵ However, employers did not necessarily recognise this with 20.1 per cent of respondents specifying that that they had considered leaving the workforce in order to cater for their carer responsibilities.⁶

The right to request flexible work arrangements contained in section 65 of the *Fair Work Act* 2009 (Cth) enables employees to make a formal written request⁷ to change their working arrangements due to certain circumstances which include:

- a) the employee being parent, or has responsibility for the care, of a child who is of school age or younger;
- b) the employee being a carer (within the meaning of the *Carer Recognition Act* 2010);
- c) the employee having a disability;
- d) the employee being 55 or older;
- e) the employee experiencing violence from a member of the employee's family; and
- f) the employee providing care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because the member is experiencing violence from the member's family.⁸

Upon receipt of a written request, an employer is required to respond in writing within 21 days notifying whether the request is granted or refused.⁹ An employer is only able to refuse a request on reasonable business grounds, which include:

- (a) that the new working arrangements requested by the employee would be too costly for the employer;

⁴ Ibid, page 16.

⁵ Ibid, page 31.

⁶ Ibid.

⁷ *Fair Work Act* 2009 (Cth), s 65(3).

⁸ Ibid, s 65(1A).

⁹ Ibid, s 65(4).

- (b) that there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested by the employee;
- (c) that it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the new working arrangements requested by the employee;
- (d) that the new working arrangements requested by the employee would be likely to result in a significant loss in efficiency or productivity;
- (e) that the new working arrangements requested by the employee would be likely to have a significant negative impact on customer service.¹⁰

Professionals Australia acknowledges that employees have no avenue to dispute an employer's decision not to grant a request for flexible working arrangements on the basis of "reasonable business grounds". Given that employers can simply reject a claim without being held accountable for this decision, it is uncertain as to whether all employers are genuinely considering requests for flexible work arrangements. Professionals Australia submits that there needs to be a viable mechanism that enables employees to challenge an employer's refusal of a request on alleged "reasonable business grounds". Preferably this should be through the Fair Work Commission as the means through which disputes may be resolved expeditiously and cost effectively. Further, Professionals Australia proposes that breaches of section 65 should attract civil remedies. The prospect of being subject to a civil penalty could be a necessary impetus for employers to adopt flexible workplace arrangements in their workplace through proper and thorough consultation with an employee.

Recommendation 3

Section 65 of the *Fair Work Act 2009* (Cth) should be amended to provide a mechanism that enables employees to challenge an employer's refusal of a request on alleged "reasonable business grounds". Further, employer breaches of section 65 should attract civil remedies.

Encouraging employer led transition to retirement

Professionals Australia considers that employers should have an obligation to assist their employees to transition to retirement. Whilst a growing number of enterprise agreement contain provisions that facilitate transition to retirement, Professionals Australia considers that having regard to the magnitude to the decision to retire, that all employees should be supported in the process so far as reasonable practicable for an employer to do so. Professionals Australia suggests that the obligation to assist with transition to retirement could be based on the same obligation principles required under the *Fair Work Act 2009* (Cth) for flexible work arrangements (outlined above).

Professionals Australia envisages that employer led transition to retirement would involve:

¹⁰ Ibid, s 65(5A).

1. Notification of impending retirement - an employee informing their employer that they wish to transition to retirement;
2. Consultation - employer and employee having meaningful consultation regarding how the transition would occur in order to be mutually beneficial; and
3. Documentation and Implementation – documenting transition to retirement plan and implementing it.

Professionals Australia considers that transition to retirement obligations are beneficial to employers in the sense that it requires a business engage in a process of succession planning to identify and develop employees to fill positions which are to be made vacant by an retiring employee.

Professionals Australia suggests that a transition to retirement plan may include the following:

- Flexible work arrangements, job sharing and/or gradual reduction in hours of work;
- Whether accrued leave will be used during the transition period to supplement income lost by undertaking flexible work arrangements, job sharing or reduction in work hours;
- Employer financial support for retirement planning;¹¹
- Structured handover period;
- Appointment to a role focussed on training and mentoring other employees;¹²and
- Confirmed date of termination of employment.

Recommendation 4

Introduction of a legislative requirement for employers to consult and develop a transition to retirement plan with employees seeking to transition to retirement. Further, the supplementing of the proposed legislative requirement with provisions in Modern Awards which have regard to any industry or occupation specific requirements.

How adequately do existing laws protect older Australians from employment discrimination? How effective are the legal remedies for older workers who have experienced discrimination? How could existing laws be amended or supplemented?

Professionals Australia recognises that the objectives of the *Age Discrimination Act 2004* (Cth) are to:

- a) 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

¹¹ Clause 37 of the Fair Work Ombudsman Enterprise Agreement 2011-2014, provides one-off reimbursement payment up to a total of \$500 (inclusive of GST) for employees aged 54 years and over who are approaching or genuinely considering retirement to obtain financial advice from a registered financial advisor.

¹² As per Clause 65 of the VicRoads Enterprise Agreement 7.

- and facilities, accommodation, the disposal of land, the administration of Commonwealth laws and programs and requests for information;
- b) 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;
 - c) 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;
 - d) promote recognition and acceptance within the community of the principle that people of all ages have the same fundamental rights; and
 - e) respond to demographic change by:
 - a. removing barriers to older people participating in society, particularly in the workforce; and
 - b. changing negative stereotypes about older people.

Whilst the objectives are certainly desirable, they are purely aspirational and need to be examined in the greater context of the Australian workplace relations legal framework.

Managerial employees

Professionals Australia notes that for most employees, their most basic employment terms and conditions are provided by the National Employment Standards (NES) contained in the *Fair Work Act 2009* (Cth). Pending coverage, Modern Awards provide an additional layer of protection for employees. In addition, an employer may choose to bargain with its employees to create an enterprise agreement which provides protections, terms and conditions that would leave an employee no better off than if they were simply Award covered.

Whilst many professional and some managerial employees have coverage under a relevant Modern Award, some more senior and mature-aged managerial and professional workers can sometimes find it difficult to participate effectively in the workplace relations system. Professionals Australia considers that this can be attributed to a lack of basic rights and protections that are afforded to such employees. In addition, this is often exacerbated by what is often a significant power imbalance in favour of the employer.

A major drawback for senior managerial employees is that most will not be award covered, which can result in managerial employees being more vulnerable to being dismissed without recourse. This is because they are unable to pursue a claim for unfair dismissal in instances where the manager earns in excess of the high income threshold. The majority of professional employees including those who earn in excess of the high income threshold have always enjoyed the right to seek relief when they feel that they have been unfairly dismissed by virtue of being classified in accordance with an Modern Award. However, the situation for managerial employees who are above the high income threshold and not covered by an award is very different with no unfair dismissal rights, The only option which is available for this group is to make an adverse action claim in accordance with section 340 of the *Fair Work Act 2009* (Cth).

Case Study

A member contacted Professionals Australia's WAS Team to seek assistance to respond to a 'show cause letter'. The letter detailed a number of allegations against the member.

Professionals Australia assisted the member to draft responses to the allegations and produce evidence that demonstrated that the allegations were unfounded. The member felt that her employer was trying to terminate her employment due to her age.

After submitting the response to the allegations, the member was asked to attend a meeting to discuss her ongoing employment. The member was terminated at the meeting. Due to her age, the member felt she would struggle to obtain any future employment and was understandably disappointed that because she earned in excess of the high income threshold and did not have award coverage. As a result, the member was prohibited from making a claim of unfair dismissal.

Professionals Australia is concerned that some employers are taking advantage of the fact that many mature aged managerial employees do not often have the legal right to make an unfair dismissal claim and as such, they can often targeted to be targeted for redundancy.

Redundancy

Professionals Australia's Mature-Age Workers Survey Report found that 20.6 per cent of respondents believed that professionals had been targeted for redundancy in their workplace due to their age.¹³ This statistic queries whether anti-discrimination is protecting these individuals in the workplace.

Commentary from survey respondents below suggests that employers consider mature aged workers to be an 'expense'.

Comments made regarding mature aged workers and redundancy

"Older professionals can be targeted for redundancy because they are paid more after years of experience and pay rises. Younger replacements are cheaper because they just have not been around as long. This is purely a finance decision because experience doesn't have a line in the spreadsheet."

"Older age professionals tend to claim a larger salary than younger staff – understandably based on knowledge and expertise – so they can be targeted in redundancy situations."

Taxation of Eligible Termination Payments

An issue that has been raised with Professionals Australia's WAS Team is the taxation of eligible termination payments (ETP) due to genuine redundancy for employees over the age of 65. Currently, Section 83-175 of the *Income Tax Assessment Act 1997* (Cth) and Tax Ruling (TR) 2009/2 provides that an employee that receives payments that meet conditions of a 'genuine redundancy' then the payment is tax free up to a limit based on the employee's years of service with their employer. Despite this, age based limits apply which require that an employee be less than 65 years old at the time of dismissal for a redundancy payment to qualify as a genuine redundancy payment in order to receive favourable tax treatment.

¹³ Professionals Australia, *Wasted Potential: The Critical Role of an Experience Professional Workforce in facing out key economic challenges* (2015), page 12.

Professionals Australia considers this to be a substantial financial disincentive for employees to continue to work past the age of 65. Further, it is considered that employees who are aware of the different tax treatment depending on age may to accept a voluntary redundancy if they are close to age 65 and as a result may be forced into retirement if they are unable to secure future employment.

A recent case study outlined below.

Case Study

A Professionals Australia member contacted the WAS Team and indicated that he was being made redundant.

The member had 35 years of continuous service with his employer and was aged 66 years old at the time redundancy. Despite the fact that the redundancy was genuine, TR 2009/2 meant that the member was heavily taxed on his redundancy payment due to his age. The member considered that the taxation treatment was discrimination based on age.

Professionals Australia notes the case of *Harste and Commissioner of Taxation* [2013] AATA 544. Harste brought a claim to to the Administrative Appeals Tribunal (AAT) to determine whether the Employment Termination Payment (ETP) he received was capable of being classified as a genuine redundancy and whether the initial assessment of his ETP unlawfully discriminated against him on the basis of his age. As Harste was 67 years old when he received his ETP, the AAT determined that the ETP was not capable of being classified as a genuine redundancy. With respect to Harste's claim of discrimination, the AAT noted that the *Age Discrimination Act 2004* (Cth) provides a number exemptions including for taxation laws. Notwithstanding this, Harste questioned why parliament would pass legislation that enabled discrimination. The AAT informed Harste that if he wished to pursue the matter further, he could lobby for legislative change.

Professionals Australia does not consider that the age of an employee should be considered as part of determining whether a redundancy is genuine. Professionals Australia asserts that all employees should be subjected to the same favourable tax treatment in the event that their job is no longer required to be performed. Professionals Australia notes that a severance payment is supposed to compensate an employee for the fact that their employment is being terminated through no fault of their own. In this regard, employees should be able to retain their full entitlement on the basis that they may be unable to secure future employment.

Recommendation 5

Amendment to the *Income Tax Assessment Act 1997* (Cth) to enable employees over the age of 65 years old to qualify for the tax free limit based on years of service due to genuine redundancy.

Forms of action taken against discrimination

Professionals Australia's Mature-Age Workers Survey Report uncovered that when faced with age discrimination in the workplace, 54% of respondents did not take any action and 15.1% decided to leave the workplace all together.¹⁴ Professionals Australia considers these statistics alarming as employers are not necessarily being held accountable to their anti-discrimination obligations and further, an employer may not even be aware that they have acted in a discriminatory way.

The experience of Professionals Australia's WAS Team is consistent with the findings of the survey in the sense that mature workers are often reluctant to act any action on behaviour they consider to be discriminatory on the basis that no benefit would come from it. An example of this is illustrated in the case studies below.

Case Study

A member contacted Professionals Australia's WAS Team to raise concerns about an email sent by the CEO of his employer. The email stated that the organisation would be moving to transition older staff members to retirement, whilst newer and younger staff members were to be retained. The member expressed concern that imposing a transition to retirement for older workers was a way to avoid having make older staff with several years of service redundant.

The member felt that as a mature worker that he could be targeted to transition to retirement, however was extremely hesitant to make a complaint about the contents of the email as he felt that it would negatively impact on his career.

Case Study

A member contacted Professionals Australia's WAS Team to raise concerns that he was being discriminated by his employer on the basis of age. The member reported that he had applied several times for higher positions within his employer over a period of several years. When the member queried the reasons why he was not selected, he was not provided with cogent reasons. The member advised that all the positions were given to younger employees who he was required to mentor when they joined the employer.

The member decided that his only option was to leave his employment as the employer's actions damaged the members trust and confidence in the employer.

Professionals Australia notes that there is protection provided against adverse action for exercising a workplace right through the general protection provisions of the *Fair Work Act* 2009 (Cth). However, it is readily apparent that individuals perceive that by speaking out against discriminatory behaviour that they will somehow be targeted and understandably are not willing to take the risk of exercising their right in the first place.

¹⁴ Professionals Australia, *Wasted Potential: The Critical Role of an Experience Professional Workforce in facing out key economic challenges* (2015), page 15.

What difficulties are there for employers in understanding and complying with legal obligations?

Employers need to play a proactive role in preventing discrimination against older workers, but this role is predicated on employers understanding and complying with their legal obligations. In Victoria, this positive obligation is codified in the *Equal Opportunity Act 2010* (Vic) which employers to take reasonable and proportionate measures to eliminate discrimination.¹⁵ Whilst Professionals Australia acknowledges that many employers acknowledge and understand their obligations to the extent that they implement policies and procedures to assist the retention and recruitment of older workers, there is an underlying concern that employers, particularly small businesses owners, do not understand their obligation to prevent discrimination from occurring.

The overall finding of Professionals Australia's Mature-Age Workers Survey Report was that age discrimination was widespread in the professional workforce. To some extent, Professionals Australia considers that is confirmation that some employers may not necessarily understand their obligations.

- 16.6% of respondents reported that they had received less favourable treatment on the basis of their age and 13.7% of respondents said they had experienced other age-related bias.¹⁶
- 5.7% of respondents said they had experienced indirect discrimination on the basis of their age due to a workplace policy or rule.¹⁷
- 20.6% of respondents agreed or strongly agreed with the statement that professionals had been targeted for redundancy in their workplace due solely or primarily to their age.¹⁸

Employer obligations against age discrimination are found under both federal and state legislation and include the:

- *Age Discrimination Act 2004* (Cth);
- *Fair Work Act 2009* (Cth);
- *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); and
- *Equal Opportunity Act 1984* (WA).

As each of the acts referenced above operate in different ways and contain various exemptions, it is understandable that employers, particularly those without dedicated human resource practitioners may not fully appreciate what their obligations are. It is accepted in

¹⁵ *Equal Opportunity Act 2010* (Vic), s 15.

¹⁶ Professionals Australia, *Wasted Potential: The Critical Role of an Experience Professional Workforce in facing out key economic challenges* (2015), page 15.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

law that employers come in various shapes and sizes and have different levels of resourcing available. In Victoria, determining whether an employer has discharged their duty to take 'reasonable and proportionate measures' to eliminate discrimination in Victoria is assessed based on the following factors:

- (a) the size of the person's business or operations;
- (b) the nature and circumstances of the person's business or operations;
- (c) the person's resources;
- (d) the person's business and operational priorities;
- (e) the practicability and the cost of the measures.

Professionals Australia considers that there needs to be a strong focus on educating employers to ensure that they understand obligations and reiterates the need to have a statutory body responsible for promoting mature-aged workers in the workforce.

Disability in the workplace

When seeking assistance with an issues they are experiencing at work, Professionals Australia members often disclose to a member of the WAS team that they are experiencing a disability that their employer is not aware of and that may be impacting their ability to perform their duties.

Professionals Australia is concerned that many employers do not facilitate a work environment where employees are confident with disclosing a disability. Professionals Australia suggests that employers need to educate themselves to understand how to support employees who experience disabilities (with reasonable adjustments or otherwise) as failure to do so results in employees being unable to fully participate in the workplace and stigmatises disability.

Conclusion

By making this submission, Professionals Australia aims to contribute to the national discussion around improving the participation rates of mature-age workers in the professional workforce. The findings of Professionals Australia Mature-Aged Workers Survey provides evidence that mature-aged workers continue to experience discrimination on the basis of age in the workforce and that employers need to do more to combat discrimination.

Professionals Australia has provided a number of practical recommendations in this submission which have the potential to ensure Australia's economic and social prosperity with mature aged-workers being empowered to actively participate in the workforce.

There is a clear need encourage policy-makers and employers to look at ways to tackle entrenched bias in work practices, provide flexible work arrangements, address cultural impediments to mature-age workers' retention in the professional workforce and bring about the changes needed to become contemporary flexible and equitable workplaces that maximise the diversity advantage. Professionals Australia is hopeful that it's Mature-Aged Workers Survey Report and the recommendations made in this submission will act as a catalyst for positive change.