

Australia's Aging Workforce: Navigating the Challenges and Opportunities for Labour Regulation

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I Introduction

Australia's aging workforce presents opportunities and challenges for policymakers, businesses, and workers. As demographic shifts alter the composition of the labour market, policy responses must address the needs of an older workforce while ensuring continued economic growth and workplace equity. This report examines the implications of an aging population for Australian labour law and broader policy interventions, focusing on issues such as age discrimination protections, flexible work rights, retirement and pension policies, and career transition and recruitment initiatives for older workers.

The report identifies key regulatory and policy gaps within Australia's employment framework, revealing a system that is largely failing to act proactively in managing Australia's aging workforce. However, age diverse workforces offer important benefits to workplaces and the broader Australian economy. The report concludes with recommendations for legal and policy interventions to foster an inclusive and sustainable labour market, leveraging the skills and experience of older workers to meet the evolving needs of Australia's economy.

II The Current Situation of Aging and Retirement in Australia

There is no fixed definition of the elderly, in Australia, but 'older Australians' are typically defined as individuals aged 65 and over.¹ As of 30 June 2020, one in 6 people in Australia were 65 years old or older, comprising 16% of Australia's total population (4.2 million people).² Projections suggest that this cohort will make up 21–23% of the total population by 2066.³

The employment rate among older Australians has increased significantly over the last 20 years. From April 2001 to 2021, the labour force participation rate rose from 10 to 19% for older men, and from 3 to 11% for older women.⁴ However, older Australians are working less than they would like to. In April 2021, 6.1% of older Australians were underemployed (ie wanting or available for more hours of work than they currently worked).⁵ 18,400 older Australians (2.9%) were unemployed with approximately half looking for only part-

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¹ Australian Institute of Health and Welfare, 'Older People', *Australian Institute of Health and Welfare* (Web Page, 15 August 2023) <<https://www.aihw.gov.au/reports-data/population-groups/older-people/overview>>.

² Australian Institute of Health and Welfare, *Older Australians* (Web Report, 2 July 2024) <<https://www.aihw.gov.au/getmedia/73a6a317-b508-4ecc-834a-cb0a54378b9d/older-australians.pdf?v=20240702075543&inline=true>> 3.

³ Ibid.

⁴ Ibid 113.

⁵ Ibid 116.

time work and the remainder looking for full-time work.⁶ This contributes to an underutilisation rate of 8.8% (ie the sum of people unemployed and underemployed, expressed as a percentage of the labour force), increasing from 5.7% in April 2011 and 5.1% in April 2001.⁷

As of May 2021, most older Australians were employed in professional, managerial, clerical and/or administrative roles.⁸ The most common industries for older Australians to be employed in were health care and social assistance, agriculture, forestry and fisheries, and education and training.⁹ Since April 2016, 74% of older full-time workers were men, while the proportion of older part-time employees remained relatively equal between men and women.¹⁰ The participation rate for older workers is influenced by various factors, including personal health and financial circumstances, job availability, family support/ caring commitments, increased life and disability-free life expectancies, and changing eligibility criteria for superannuation and Age Pension access.¹¹

In 2022, the average age of retirement amongst all retirees was 56.9 years old.¹² However, the average retirement age of people retiring in 2022 was 64.8 years old,¹³ and the average intended retirement age was 65.4 years old.¹⁴ On average, women retire sooner than men although this gap is closing.¹⁵ The average age of retirement amongst women in 2022–23 was 54.7 years old as compared to 59.4 years old amongst men.¹⁶

In 2022-23, the top three reasons for retirees to leave their last job was achieving eligibility for pensions (31%), sickness, injury or disability (13%), or being retrenched, dismissed or having no work available (5%).¹⁷ However, many Australian workers do not remain in retirement permanently. In 2018-19 approximately 143,500 workers had previously retired.¹⁸ Reasons for rejoining the workforce included financial needs, boredom, no longer needing to care for someone, and losing a partner.¹⁹

⁶ Ibid.

⁷ Ibid.

⁸ Ibid 114.

⁹ Ibid 114–15.

¹⁰ Ibid.

¹¹ Ibid 114.

¹² Australian Bureau of Statistics, 'Retirement and Retirement, Intentions Australia, *Australian Bureau of Statistics* (Web Page, 22 May 2024) <<https://www.abs.gov.au/statistics/labour/employment-and-unemployment/retirement-and-retirement-intentions-australia/latest-release>>.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ *Older Australians* (n 2) 118.

¹⁹ Ibid.

These patterns of returning to work post-retirement and later intended retirement ages, coincide with growing scepticism around the affordability of retirement. In one study, 55.7% of Australians reported that they did not believe they would have enough money to retire.²⁰ Only 52% of respondents in a separate study believed that they could save the amount they were aiming for in retirement with greater pessimism amongst women.²¹ More than half of the respondents in this study believed that superannuation would be a stable investment for retirement, but 48% thought it unlikely that the age pension would exist when they reached retirement, reflecting pessimism about the state's continued support of older Australians.²²

It is therefore increasingly understood that retirement will occur later in life. However, age discrimination in the workplace remains prevalent. Older workers face longer periods of unemployment (approximately 68 weeks).²³ Over a quarter of Australians aged over 50 years old reported experiencing some form of workplace age discrimination in the last two years.²⁴ The three most common reported types of discrimination being — limiting employment opportunities (52%), negative perceptions relating to job performance (44%), or jokes or derogatory comments (42%).²⁵ One third of the most recent reported incidences of work-related age discrimination took place during the application process.²⁶ A third of people who experienced age discrimination consequently gave up their job search.²⁷

III Policy Responses

A Employment Policies

1) Anti-Discrimination and General Protections Frameworks

Australians are legally protected against direct and indirect discrimination on the basis of their age. Direct discrimination involves treating an employee less favourably because of a relevant protected characteristic.²⁸ Indirect discrimination results from facially neutral policies that have a discriminatory effect,²⁹ where this policy is not reasonable.³⁰

²⁰ Nicholas Biddle, Robert Breunig and Dinith Marasinghe, *Attitudes Towards and Experiences of Retirement and Social Security Income during the COVID-Recession and Initial Recovery* (Report, 4 May 2021) 15.

²¹ Department of the Prime Minister and Cabinet, *Retirement Planning, Saving and Attitudes: Survey Report* (Report, August 2020) 7.

²² Ibid 5.

²³ Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination against Older Australians and Australians with Disability* (Fact Sheet, 2016).

²⁴ Australian Human Rights Commission, *National Prevalence Survey of Age Discrimination in the Workplace* (Report, 2015) 9.

²⁵ Ibid 33.

²⁶ Ibid.

²⁷ Ibid 45.

²⁸ K Lee Adams, 'Indirect Discrimination and the Worker-Carer: It's Just Not Working' (2005) 23 *Law in Context* 18, 20.

²⁹ Ibid.

³⁰ Queensland Human Rights Commission, 'Review of Queensland's Anti-Discrimination Act' (Discussion Paper, November 2021) 34.

However, despite the prevalence of age discrimination in Australian workplaces, there has been only one successful case under the *Age Discrimination Act 2004* (Cth) to date.³¹ There have also only been a few successful age discrimination cases under Australia's state and territory anti-discrimination legislations.³² This is partly explained by early settlements during the conciliation process, a required first step in resolving discrimination claims.³³ Conciliation has important benefits, including cost savings and providing a less intimidating process.³⁴ Although, the confidentiality of the process has been critiqued for its lack of transparency,³⁵ potentially complicating decisions for future claimants and limiting deterrent effects.³⁶

Workers are also often faced with procedural and substantive hurdles when bringing an age discrimination claim.³⁷ These include strict time limits, high costs, and difficulties proving the required facts and elements, especially given the narrow and non-purposive interpretation of discrimination that has been adopted by the courts.³⁸ Age discrimination is also sometimes viewed as a less serious form of discrimination, potentially due to internalised ageism.³⁹ This can result in older workers failing to recognise discriminatory behaviour, leaving such behaviour unchallenged.⁴⁰ This speaks to one of the central critiques of Australia's anti-discrimination framework as a system 'that relies on traditionally disempowered individuals being able to navigate the legal system to enforce rights'.⁴¹

³¹ See *Gutierrez v MUR Shipping Australia Pty Ltd* (2023) 324 IR 58; *Gutierrez v MUR Shipping Australia Pty Ltd* [2023] FCA 567.

³² Alysia Blackham, 'Defining "Discrimination" in UK and Australian Age Discrimination Law' (2017) 43 *Monash University Law Review* 760, 770; Therese MacDermott, 'Resolving Federal Age Discrimination Complaints: Where Have All the Complaints Gone?' (2013) 24 *Australasian Dispute Resolution Journal* 102, 105. For a sample of some cases where age discrimination was found to have taken place at the state/ territory level see, eg, *Austin Health v Tsikos* (2023) 324 IR 1; *McEvoy v Acorn Stairlifts Pty Ltd* [2017] NSWCATAD 273; *McCauley v Club Resort Holdings Pty Ltd (No 2)* [2013] QCAT 243; *Bloomfield v Westco Jeans Pty Ltd* (2001) EOC 93-161.

³³ Alysia Blackham, 'Why Do Employment Age Discrimination Cases Fail? An Analysis of Australian Case Law' (2020) 42(1) *Sydney Law Review* 1, 2, 6; Alysia Blackham, 'Federal Age Discrimination Law Finally Coming of Age: *Gutierrez v MUR Shipping Australia Pty Ltd*' (2023) 36 *Australian Journal of Labour Law* 289, 289. See also Alysia Blackham and Dominique Allen, 'Resolving Discrimination Claims outside the Courts: Alternative Dispute Resolution in Australia and the United Kingdom' (2019) 31(3) *Australian Journal of Labour Law* 253. Allen and Blackham (n 109) 412–3.

³⁴ Belinda Smith and Joellen Dilsy, 'Family-Friendly Work Practices and the Law' (2004) 26 *Sydney Law Review* 395, 402; Dominique Allen and Alysia Blackham, 'Under Wraps: Secrecy, Confidentiality and the Enforcement of Equality Law in Australia and the United Kingdom' (2019) 43 *Melbourne University Law Review* 385, 412, 412.

³⁵ Allen and Blackham (n 34) 413.

³⁶ Smith and Dilsy (n 34) 402. Cf Dominique Allen, 'In Defence of Settlement: Resolving Discrimination Complaints by Agreement' (2014) 14 *International Journal of Discrimination and the Law* 200, 210, which found that settlement processes were more conducive to establishing substantive outcomes that tribunals cannot order or enforce.

³⁷ Blackham, 'Why Do Employment Age Discrimination Cases Fail?' (n 33) 1, 2, 6, 7.

³⁸ *Ibid* 7.

³⁹ Blackham, 'Federal Age Discrimination Law Finally Coming of Age' (n 33) 298.

⁴⁰ Belinda Smith, 'It's About Time — For a New Regulatory Approach to Equality' (2008) 117, 132–3, citing Sara Charlesworth, 'Managing Work and Family in the "Shadow" of Anti-Discrimination Law' (2005) 23 *Law in Context* 88, 93.

⁴¹ Smith and Dilsy (n 34) 402.

Recent amendments to Australia's discrimination framework have attempted to ameliorate some of these challenges. For example, implementing costs protection provisions for claimants,⁴² introducing proactive inquiry powers for the Australian Human Rights Commission,⁴³ and introducing the option for representative discrimination applications to be brought by bodies such as unions or human rights organisations under certain circumstances.⁴⁴ However, in most cases, discrimination claims are still only brought after the harm has taken place and the employment relationship has been severed.⁴⁵ Remedies are also typically compensatory, precluding systemic remedies that would change workplace culture.⁴⁶

Some states/territories have imposed a positive duty to eliminate discrimination and to accommodate or provide adjustments for workers' special needs resulting from age and other protected characteristics.⁴⁷ Most of these duties are owed to the extent of what would be 'reasonable' considering factors like an employer's resources, or the practicality and cost of implementing appropriate steps.⁴⁸ However, as most of these duties are also relatively new or have yet to come into effect at the time of writing,⁴⁹ their impact on creating age diverse workplaces remains to be seen.

Under the *Fair Work Act 2009* (Cth), employees are also protected from adverse action taken 'because of' of their age and other protected characteristics.⁵⁰ However, there have been similarly few successful cases relating to this provision to date.⁵¹ This has been attributed in part to the difficulty of establishing 'causation' in these cases (ie that an adverse action was taken *because of* a worker's age). This hurdle of establishing causation has been described as 'nearly impossible to surmount' despite the provision having a reverse onus of proof.⁵² The system is also similarly reactionary and predominantly reliant on individual prosecution.

⁴² *Australian Human Rights Commission Amendment (Costs Protection) Act 2023*.

⁴³ *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022* (Cth) sch 3, amending Australian Human Rights Commission Act 1986 (Cth) by inserting a new div 4B.

⁴⁴ *Ibid* sch 4, amending the *Australian Human Rights Commission Act 1986* (Cth).

⁴⁵ Barbara Pocock, Sara Charlesworth and Janine Chapman, 'Work-Family and Work-Life Pressures in Australia: Advancing Gender Equality In "Good Times"?' (2013) 33 *International Journal of Sociology and Social Policy* 594, 603.

⁴⁶ Allen (n 36) 205.

⁴⁷ See, eg, *Anti-Discrimination Act 1992* (NT) ss 18B, 24; *Discrimination Act 1991* (ACT) ss 74, 75.

⁴⁸ *Anti-Discrimination Act 1992* (NT) ss 18B(3), 24(3); *Discrimination Act 1991* (ACT) ss 74(2), 75(3).

⁴⁹ The positive duty to eliminate discrimination in the Northern Territory came into effect on 2 January 2024: Northern Territory Anti-Discrimination Commissioner, 'Positive Duty', *Northern Territory Anti-Discrimination Commission* (Fact Sheet) <https://adc.nt.gov.au/_data/assets/pdf_file/0006/1428801/Postive-Duty-Factsheet.pdf>. The ACT's duty to make reasonable adjustments commenced in April 2024 and the positive duty to eliminate discrimination has a staged commencement, applying first to government bodies as of April 2025 and later all duty-holders from April 2027: ACT Human Rights Commission, 'ACT Discrimination Act Positive Duty', *ACT Human Rights Commission* (Web Page) <<https://www.hrc.act.gov.au/discrimination/act-discrimination-act-positive-duty#:~:text=The%20positive%20duty%20requires%20any,sexual%20harassment%20and%20unlawful%20vilification>>.

⁵⁰ s 351(1) ('*FW Act*').

⁵¹ See, eg, *Fair Work Ombudsman v Theravanish Investments Pty Ltd* [2014] FCCA 1170; *Australian Building and Construction Commissioner v Corestaff WA Pty Ltd (No 2)* [2021] FCA 1149.

⁵² Blackham, 'Why Do Employment Age Discrimination Cases Fail?' (n 33) 22.

2) Flexible Work Rights

Australians over the age of 55 also have a right to request flexible working arrangements,⁵³ if they are full-time, part-time or long-term casual employees.⁵⁴ Employers must respond to an eligible, written request within 21 days and may only refuse requests on ‘reasonable business grounds’.⁵⁵ An employer’s failure to respond appropriately can leave employers liable to pay significant financial penalties.⁵⁶

Where an employee is not satisfied with an employer’s response, disputes can be escalated before the Fair Work Commission (‘FWC’), Australia’s quasi-judicial body for resolving employment disputes.⁵⁷ The FWC will generally mediate and conciliate flexible work disputes in the first instance, but may also arbitrate disputes and issue a flexible work order, if necessary.⁵⁸ Contravening these orders will leave employers liable for similar financial penalties.⁵⁹

However, to make an eligible flexible work request, workers must prove ‘a nexus between the request and [their] particular circumstances’.⁶⁰ Two recent cases illustrate the potential difficulties for older workers to prove this required ‘nexus’. In *Lloyd v Australia and New Zealand Banking Group*, for example, the FWC found no nexus between the 62 year old employee’s age and her request to work flexibly to reduce the risk a COVID-19 infection.⁶¹ The FWC found that the ‘generalised risks of COVID infection and serious illness said to increase with age’ could not be applied to her ‘individual circumstances’ and so no nexus existed.⁶²

Shortly after this decision, a 61 year old’s application in relation to their request to work two days from home in preparation for retirement was also dismissed in *Fogo v Boeing Aerostructures Australia Pty Ltd*.⁶³ Focussing again on the required nexus, the Fair Work Commission found no indication of why working from home would be necessary for his future retirement.⁶⁴ These cases highlight the practical challenges older workers may face in attempting to secure a flexible work arrangement.⁶⁵

⁵³ *FW Act* s 65.

⁵⁴ *Ibid* ss 65(1)–(1A), (2).

⁵⁵ *Ibid* s 65A.

⁵⁶ Where an employer fails to comply with the NES, an employee or an inspector of the Fair Work Ombudsman could apply to the courts for a civil remedy of up to 600 penalty units for serious contraventions or 60 penalty units in other cases: *Ibid* ss 44(1), 539(2). The indexed penalty unit rate from 1 July 2023 is \$313 per penalty unit and indexed annually: Crimes (Amount of Penalty Unit) Instrument 2023 (Cth) s 5.

⁵⁷ *FW Act* s 65A.

⁵⁸ *Ibid* ss 65B–65C.

⁵⁹ *Ibid*. See (n 56) for information on penalties.

⁶⁰ Explanatory Memorandum, Fair Work Bill 2013 (Cth) 17 [27].

⁶¹ [2024] FWC 2231.

⁶² *Ibid* [55].

⁶³ [2024] FWC 3037.

⁶⁴ *Ibid* [69].

⁶⁵ See further, Amanda Darshini Selvarajah, ‘Proving the Right to Request Flexible Work: The Concerning Consequences of Comments in *Quirke v BSR*’ (2024) 37 Australian Journal of Labour Law 295 for a critique of the FWC’s approach to

Even if a worker successfully establishes their eligibility to make a flexible work request, their request may be legitimately refused on reasonable business grounds. This includes instances where the employers' reasons are fuelled by biased views on the impacts of flexibility on productivity, as opposed to genuine practical constraints. For example, the FWC has accepted that 'it is desirable for there to be face to face contact within [a] team', and that an employee's 'knowledge and experience could be more easily accessed by less experienced team members on a face to face basis', when finding in favour of an employer's decision to refuse a request from an employee to work from home.⁶⁶ The arguments in this case were based entirely on the employer's preferences without corresponding evidence as to the validity of these claims. Although, in more recent cases, the FWC has found some employers' refusals to be unreasonable.⁶⁷

In summary, while there are protections for older workers in Australia's employment landscape, these largely rely on individual, reactionary measures with limited positive duties on employers to meaningfully embrace older Australians as part of their workforce.

3) Employment Promotion Measures

The government has, for their part, implemented several programs to more proactively promote elderly employment. For example, Workforce Australia's Career Transition Assistance program, is a free program for individuals over 45 years old to gain necessary skills and confidence, increase their competitiveness in the job market, and help with career transitions or finding a new job.⁶⁸ The Department of Employment and Workplace Relations provides information to support businesses in employing 'mature age workers', including training modules on employing and retaining such workers, a specific guide for employing such workers, and hiring posters that are inclusive of all ages.⁶⁹

B Pension Legislation

Government payments and private pension schemes are key income sources for older Australians. Under Australia's superannuation (private pension) rules, you must either be retired and 60 or 65 (whether you're

assessing eligibility. Cf *Linda Farquharson v CCL Label Australia* [2024] FWC 670 [27]–[28]: where the acting Deputy President of the FWC accepted that Ms Farquharson, who made her request on the basis of being over 55, needed to alter her work to accommodate volunteering obligations as her work/life balance was increasingly important as she neared retirement.

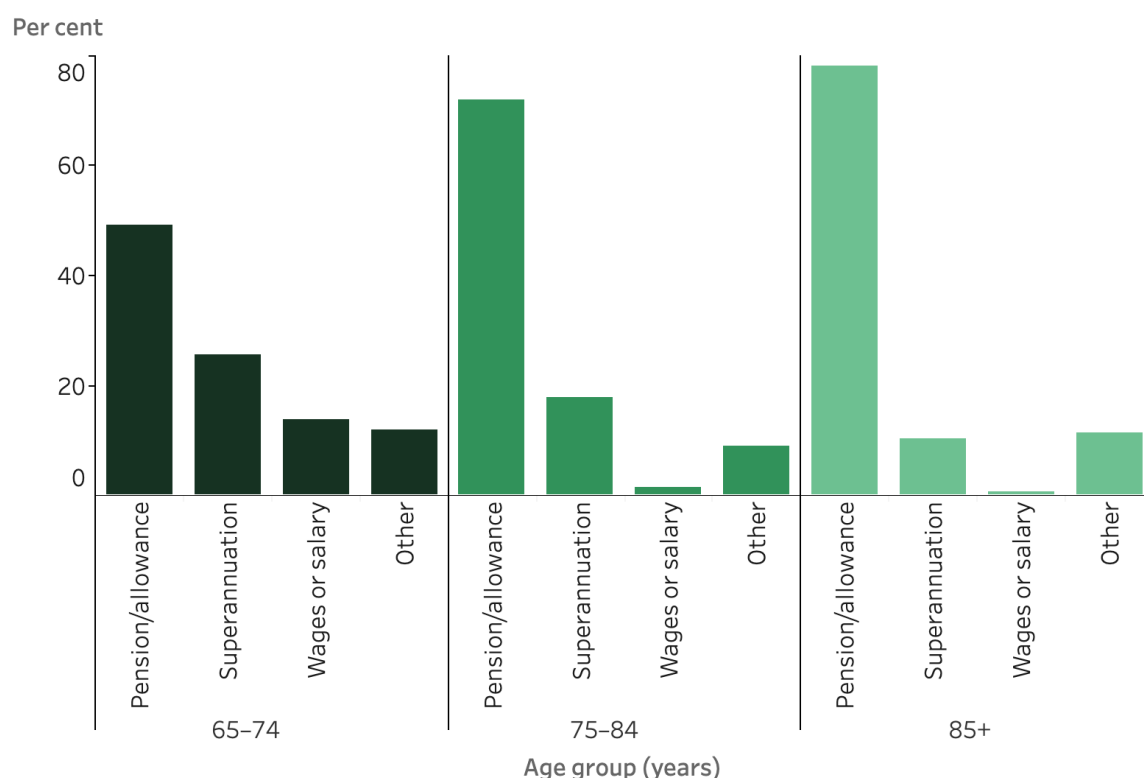
⁶⁶ *Gregory v Maxxia Pty Ltd* (2023) 328 IR 364, 376 [45] (Commissioner Platt). See similarly, *Elizabeth Naden v Catholic Schools Broken Bay Limited as Trustee for the Catholic Schools Broken Bay Trust* [2025] FWC 317.

⁶⁷ See, eg, *Kent Aoyama v FLSA Holdings Pty Ltd* [2025] FWC 524 [43]; *Ms AB v Australian Nursing and Midwifery Federation — New South Wales Branch* [2025] FWC 338.

⁶⁸ 'Assistance for Individuals Aged 45 and Over', *Workforce Australia* (Web Page) <<https://www.workforceaustralia.gov.au/individuals/training/activities/career-transition-assistance>>.

⁶⁹ 'Support for Businesses', *Department of Employment and Workplace Relations* (Web Page, 19 February 2025) <<https://www.dewr.gov.au/mature-age-hub/support-businesses>>.

still working or not) to access your superannuation payments tax free.⁷⁰ After the age of 67, you are then able to access the Age Pension which is a government sponsored payment for older Australian residents that meet certain assets and income tests.⁷¹ Public pensions play a crucial role in providing financial support to retirees, while superannuation often serves as a supplementary income source.⁷² Eligible individuals can receive pensions while still working, subject to income tests.⁷³ A Work Bonus is also offered to eligible workers to incentivise continued workforce participation by offsetting some of their income when calculating their pension eligibility.⁷⁴ An overview of older Australians' income sources is set out in Figure 1, below.



Source: AIHW analysis of ABS 2019.

Figure 1: Older Australians' main source of income by age group, 2018.

⁷⁰ Australian Taxation Office, 'Accessing Your Super to Retire', *Australian Taxation Office* (Web Page, 11 June 2024) <<https://www.ato.gov.au/individuals-and-families/jobs-and-employment-types/working-as-an-employee/leaving-the-workforce/accessing-your-super-to-retire>>.

⁷¹ Services Australia, 'Who Can Get It', *Services Australia* (Web Page, 26 April 2024) <<https://www.servicesaustralia.gov.au/who-can-get-age-pension?context=22526>>.

⁷² *Older Australians* (n 2).

⁷³ Ibid.

⁷⁴ Services Australia, 'How it Works', *Services Australia* (Web Page, 14 February 2025) <<https://www.servicesaustralia.gov.au/how-work-bonus-works?context=22561>>.

Employers must pay the equivalent of at least 11.5% of an employee's earnings into their superannuation accounts, with this percentage set to increase to 12% from 1 July 2025.⁷⁵ This 'super guarantee' applies to all full-time, part-time, and casual employees over the age of 18, and those under 18 years of age who work over 30 hours per week.⁷⁶ There is a gender gap in superannuation savings. Potential causes include the gender pay gap, the higher proportion of females in part-time and casual roles, unpaid care work, the breakdown of relationships, and gender gaps in financial literacy.⁷⁷ Women's lower superannuation savings is particularly troubling given their typically earlier retirement ages, as discussed above.

Some independent contractors are also entitled to superannuation contributions under the *Superannuation Guarantee (Administration) Act 1992* (Cth).⁷⁸ However, hirers can sometimes be unaware of this obligation and fail to comply.⁷⁹ Workers who do not receive superannuation contributions from their employers or hirers must make voluntary contributions. This can leave such individuals in more vulnerable positions in retirement, highlighting the importance of continued work opportunities for many older Australians.⁸⁰

III Impact on Companies and Workers

The continued attachment of older workers in the workforce would likely also be beneficial to many organisations with research suggesting that the departure of older workers often results in a loss of key skills within organisations.⁸¹ However, a survey of HR professionals found that one in six organisations would not consider hiring people older than 65 years old and only a quarter were open to hiring from this cohort 'to a large extent'.⁸²

In a study of HR practices for employing and retaining older workers, the top three recruitment practices were offering flexible work arrangements (48.7%), ensuring the advert content attracted diverse age groups (44.4%), and excluding the date of birth from application forms (36.8%).⁸³ However, very few organisations reported using age-specific job boards (1.6%), or proactively recruiting older workers (9.7%), which could

⁷⁵ *Superannuation Guarantee (Administration) Act 1992* (Cth) s 19 ('SGA Act').

⁷⁶ 'Tax and Superannuation', *Fair Work Ombudsman* (Web Page) <<https://www.fairwork.gov.au/pay-and-wages/tax-and-superannuation>>.

⁷⁷ See David Hetherington and Warwick Smith, 'Not So Super, For Women: Superannuation and Women's Retirement Outcomes' (Research Report, Per Capita, July 2017); Caitlin Power, 'SDG 10 Reducing Inequalities' in Isabel B Franco et al (eds), *Actioning the Global Goals for Local Impact* (Springer, 2019) 153; Elisa R Birch and Alison C Preston, 'Women, COVID-19 and Superannuation' (2021) 24(2) *Australian Journal of Labour Economics* 175.

⁷⁸ *SGA Act* s 12.

⁷⁹ See Brett Freudenberg and Scott Sargent, 'Not So Guaranteed: Superannuation Guarantee and Australian Small Businesses' (2015) 30(1) *Australian Tax Forum* 89.

⁸⁰ See, eg, Aaron Elkhishin, Tracey West and Kristen MacDonald, 'Understanding the Retirement Savings of Self-Employed Tradespeople in Australia' (2019) 22(2) *Australian Journal of Labour Economics* 75.

⁸¹ Australian Human Resources Institute and Australian Human Rights Commission, 'Employing and Retaining Older Workers' (Report, April 2021) <<https://www.ahri.com.au/employing-older-workers-report-2021>> 21.

⁸² Australian Human Rights Commission, 'Ageism Keeping Older People Out of the Workforce' (Press Release, 2 May 2023).

⁸³ Australian Human Resources Institute and Australian Human Rights Commission (n 81) 15.

be seen as more targeted, affirmative measures. 23% of respondents reported no recruitment practices to encourage age diversity.⁸⁴

Moreover, 46.7% of respondents ‘reported that there was an age above which their organisation would be reluctant to recruit workers’ and 17.4% suggested this age was 65. The perception of ‘older workers’ amongst HR professionals, however, appears to be trending younger. The proportion of workers between 51–55 being classified as older by HR professionals increased from 10.8% to 16.9% between 2018 to 2021.⁸⁵

While 30% of workplaces reported no obstacles in recruiting older workers, the three greatest reported obstacles were a lack of applications from older workers (24.9%), salary expectations being too high (22.6%), and a lack of technological skills (18.8%).⁸⁶ A lack of applications might be explained by the prevalence of age discrimination during the application process discussed above, which employers troublingly appear to do little about. 49.3% of respondents in this study reported that their organisations seldom or never offers unconscious bias training for employees and 47.2% of organisations that did offer such training did not address age-related biases.⁸⁷ It is therefore clear that employers are not proactively tackling the opportunities and challenges posed by Australia’s aging workforce.

IV Conclusion: Future Challenges and Initiatives for Longer Working Lives

In February 2023 alone, there were 439,000 job vacancies.⁸⁸ Two thirds of HR professionals report currently experiencing recruitment difficulties.⁸⁹ Employing older workers could ameliorate these challenges.⁹⁰ Especially since older Australians today are healthier and more educated than ever before.⁹¹ However, Australia’s policy responses must be alert to barriers for older workers related to health, care responsibilities, upskilling and training, age discrimination and inhospitable work conditions.⁹²

Older workers remain unemployed for longer periods of time and are particularly vulnerable when attempting to re-enter or shift roles within the workforce. They are also likely to face discrimination during their application processes, which can further discourage their labour market participation. Career training for workers has been shown to decline post-mid-careers, leaving older workers at risk of skill obsolescence,

⁸⁴ Ibid.

⁸⁵ Ibid 4.

⁸⁶ Ibid 18.

⁸⁷ Ibid 26.

⁸⁸ ‘Ageism Keeping Older People Out of the Workforce’ (n 82).

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ ARC Centre of Excellence in Population Ageing Research, ‘Tapping into Australia’s Ageing Workforce: Insights from Recent Research’ (Research Brief, June 2021) 3.

⁹² Ibid.

an issue compounded by negative stereotypes about older workers' adaptability and technological proficiency.⁹³

To create an age-inclusive workforce, employers and government must work together to reimagine their workplaces and meet the inevitable demands of a multi-generational workforce. HR practices should ensure equal access to training and career development for older workers, offer tailored career pathways and role modifications, and promote knowledge sharing initiatives.

Government policies should continue investments and incentives for skill development and reskilling, particularly for workers over 65. Job transition programs and self-employment and entrepreneurship funding could further strengthen work opportunities for older Australians. Enhanced positive duties within Australia's anti-discrimination framework to implement suitable accommodations could prevent age-related workplace biases. Expanding flexible work rights and related caregiving entitlements such as grandparents' leave and carers' leave entitlements, could also help accommodate the needs of an ageing population.

In conclusion, Australia's ageing workforce presents challenges and opportunities. By addressing age-related barriers and implementing proactive employment strategies, businesses and policymakers can enhance economic productivity while ensuring the active participation of older Australians in the workforce.

⁹³ Ibid.