

## Discrimination

*...the problem with age discrimination and the negative stereotyping, where it is strongly expressed and accepted by everyone as normal, is that it creates a fertile ground for abuse and other crimes against older people.<sup>1</sup>*

### Introduction

- 6.1 Underpinning much of the discrimination against older people are negative attitudes towards ageing and stereotypes of older people.<sup>2</sup> Popular culture's obsession with youth and beauty, combined with negative portrayals of older people in the media reinforce this view of older people as incapable, frail and a burden. As Mr James Redner observed in regard to advertising and program content:

The media tends to portray seniors in a way that denigrates, demeans and mocks ageing. It makes the minority of frail and disabled seniors appear to be the majority. Social

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1 Ms Patricia Reeve, COTA Over 50s, *Proof Transcript of Evidence*, 17 August 2007, pp. 5-6.

2 See for example, Australian Pensioners and Superannuants' League Qld Inc, *Submission No. 10*, p. 3; Country Women's Association of NSW, *Submission No. 18*, p. 8; Catholic Women's League Australia, *Submission No. 27*, p. 1; Ms Margaret Jones, *Submission No. 47*, p. 2, and *Transcript of Evidence*, 14 May 2007, p. 20; Law Society of Western Australia, *Submission No. 50*, p. 4; Mrs Betty Roberts, Catholic Women's League of Australia, *Transcript of Evidence*, 5 July 2007, p. 23; Maida Lilley, *Transcript of Evidence*, 16 July 2007, p. 43.

attitudes are clearly linked to advertising and program content over the long-term.<sup>3</sup>

- 6.2 Older people, as is the case in the wider population, may also be subject to discrimination for a number of other reasons. Sexual orientation<sup>4</sup>, race and disability may intersect with age and result in what the State Government of Victoria termed ‘a compounding of disadvantage’.<sup>5</sup> However, an examination of discrimination more generally is outside the scope of this inquiry, and the Committee has focused on discrimination on the basis of age.
- 6.3 The Committee also noted that the term ‘discrimination’ was widely used in submissions and at public hearings during this inquiry as a synonym for unfairness, unjustness or indeed any situation where an individual felt that they had not received their desired outcome. For this reason, the chapter commences with a review of what discrimination is, in the legal sense, before going on to examine the legislative framework around anti-discrimination activities and the remedies available to those subject to illegal discrimination.

## Legislative framework

- 6.4 The *Age Discrimination Act 2004* (Cth) (ADA) came into operation in June 2004. The ADA addresses Australia’s obligations under a range of international human rights instruments, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. In addition, Australia has obligations under the UN endorsed Principles for Older Persons.<sup>6</sup>
- 6.5 The ADA ‘prohibits direct and indirect discrimination on the basis of age in key areas of public life’.<sup>7</sup> These include ‘employment, education, accommodation, provision of goods and services, the administration of Commonwealth laws and programs, access to premises, selling or other dealings with land, and requests for information’.<sup>8</sup> In addition, each state and territory jurisdiction has

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3 Mr James Redner, *Submission No. 61*, p. 3.

4 See for example Dr Jo Harrison, *Submission No. 6*.

5 State Government of Victoria, *Submission No. 121*, p. 37.

6 Australia’s international obligations are detailed in the Human Rights and Equal Opportunity Commission, *Submission No. 92*, pp. 52-63.

7 Human Rights and Equal Opportunity Commission (HREOC), *Submission No. 92*, p. 10.

8 HREOC, *Submission No. 92*, p. 12

legislation that prohibits discrimination against individuals and groups on the basis of age.<sup>9</sup> As the Human Rights and Equal Opportunity Commission (HREOC) observed, the ADA prohibits discrimination on the basis of age generally, and is not specifically aimed at older people or younger people.<sup>10</sup>

6.6 The simplified outline of the Act sets out a number of basic points. It is:

- unlawful to discriminate on the ground of age
- unlawful to discriminate on the ground of age in relation to work... and certain other areas...
- not unlawful to discriminate on the ground of age if a particular exemption is applicable...<sup>11</sup>

6.7 A number of exemptions to the ADA apply. For example, it is not unlawful for a person to discriminate against another person on the ground of the person's age, by an act that:

- Provides a bona fide benefit to persons of a particular age (e.g. discount for a particular service for holders of a Seniors Card or similar);
- Is intended to meet a need that arises out of the age of persons of a particular age (e.g. provision of welfare services to a particular age group); and
- Is intended to reduce a disadvantage experienced by people of a particular age (e.g. provision of additional notice requirements for older workers because they are more disadvantaged by retrenchment).<sup>12</sup>

6.8 Exemptions also apply to charities and religious bodies; admission and provision of benefits to members of voluntary bodies; matters dealing with superannuation, insurance and credit, based on actuarial or statistical data; the provision of credit, again based on actuarial or statistical data; and in compliance with a range of legislation in the areas of taxation, pensions and benefits, health, Commonwealth employment programs, migration and citizenship.<sup>13</sup> Other exemptions may be sought by application to HREOC.

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9 For details, see HREOC, *Submission No. 92*, p. 16.

10 HREOC, *Submission No. 92*, p. 12

11 *Age Discrimination Act 2004*, section 4.

12 *Age Discrimination Act 2004*, section 33.

13 *Age Discrimination Act 2004*, Part 4, Division 3.

- 6.9 HREOC has, as part of its mandate, responsibility for receiving complaints of unlawful discrimination, including on the basis of age, as well as promoting understanding and compliance with the act, and undertaking research and educational programs for the purpose of promoting the objects of the act.<sup>14</sup>

## Nature of age discrimination

- 6.10 The ADA makes it clear that discrimination can be both direct and indirect.<sup>15</sup> HREOC described the difference in the following terms:
- Direct discrimination takes place when an individual is disadvantaged or treated less favourably than another person because of a particular characteristic. An example of direct discrimination against an older person is failing to employ someone because of their age.
  - Indirect discrimination happens when a practice or policy appears to be fair because it treats everyone the same but actually disadvantages people from a particular group. An example of indirect discrimination against an older person might be requiring all people who apply for a certain job to pass a fitness test, even though a high level of fitness is not necessary for the job. This test might exclude more older people than younger people.<sup>16</sup>
- 6.11 HREOC noted that, although ‘many older people feel they have been discriminated against or treated unfairly because of their age, this treatment does not amount to unlawful discrimination under either federal or state law or may be perceived to be difficult to prove in the context of making a complaint’.<sup>17</sup>
- 6.12 Confusion over what constituted illegal discrimination was evident in a number of submissions.<sup>18</sup> For example, differences in the way in which increases to pensions for former public servants are calculated

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14 See *Age Discrimination Act 2004*, Part 6.

15 *Age Discrimination Act 2004*, Part 3, sections 14 and 15.

16 HREOC, *Submission No. 92*, p. 11.

17 HREOC, *Submission No. 92*, p. 11.

18 See for example, Mr Joseph Dignan, *Submission No. 144*, p. 2, where he claims discrimination as an older person as he is unable to vote in Australian elections due to his inability to have his 410 visa converted to permanent residency; and Mr Richard Manthorpe, *Transcript of Evidence*, 4 June 2007, p. 48 on issues related to his status under the 410 visa; see also Mr Neal Lucas, *Submission No. 147*, p. 2, citing discrimination on the basis of his legal claim being dealt with under common law rather than a statute; Mrs Dorothy Lyons, *Transcript of Evidence*, 16 July 2007, p. 41 regarding access to government pensions; Mr John Sullivan, *Transcript of Evidence*, 17 July 2007, p. 22, regarding provisions in retirement village legislation.

was characterised as a form of discrimination<sup>19</sup>, although it does not meet the definition of 'illegal discrimination'. In addition, it can be difficult to prove that illegal discrimination has occurred. The Country Women's Association of NSW observed:

How often does one hear a person claiming they didn't get the job because of their colour, race, religion, sex etc., when in fact they didn't get it because their qualifications were not as good as the other person, who just happened to be a different colour, race, religion, sex etc.<sup>20</sup>

## Level and nature of complaints

6.13 As of 30 June 2006, HREOC had received 184 complaints of age discrimination since the introduction of the ADA. Of these 29 were from people aged 65 years and over, and 44 from those in the group 55-64 years.<sup>21</sup> The majority of complaints were in the area of employment, with complaints in relation to the provision of goods and services (for example in insurance coverage) being the next two highest categories:

Age discrimination occurs primarily, although not exclusively, in the area of employment, and may be generated by negative attitudes and stereotypes about older people. The experience of age discrimination can generate enormous personal distress for older people and may prevent them from playing a valuable role both in the workforce and in the community generally.<sup>22</sup>

6.14 Of the 86 per cent of complaints so far finalised, HREOC reports:

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19 Mr David Bywaters, *Submission No. 137*; and Transcript of Evidence, 17 July 2007, p. 19; see also Mr Merv Hazell, *Submission No. 149*; Mr Garnet Foley, *Transcript of Evidence*, 16 July 2007, pp. 41-42. This matter was addressed in the report of the Senate Committee on Superannuation's 2002 report on Superannuation and standards of living in retirement, available at:

[http://www.aph.gov.au/Senate/committee/superannuation\\_ctte/completed\\_inquiries/2002-04/living\\_standards/index.htm](http://www.aph.gov.au/Senate/committee/superannuation_ctte/completed_inquiries/2002-04/living_standards/index.htm).

20 Country Women's Association of NSW, *Submission No. 18*, p. 8.

21 The age of 35 complainants was unknown. See HREOC, *Submission No. 92*, p. 14. Figures for the period from 1 July 2006 to 11 May 2007 were provided subsequently at a public hearing. Complaints were 'running at about the same level as they were for the 2005-06 year. Fifty per cent of these are from applicants 55 years or older, and 67 per cent relate to discrimination in employment', see The Hon John von Doussa, HREOC, *Transcript of Evidence*, 15 May 2007, p. 68.

22 The Hon John Von Doussa, HREOC, *Transcript of Evidence*, 15 May 2007, p. 67.

- 25.5 per cent have been resolved through conciliation;
  - 15 per cent have been withdrawn;
  - 25 per cent have been terminated by HREOC (of the 46 complaints terminated, 8 were terminated because the alleged conduct was not found to be unlawful; 33 were trivial, vexatious, misconceived or lacking in substance and in five cases there was no prospect of conciliation); and
  - The balance were closed for administrative reasons e.g. the complainant had previously lodged a complaint with a State anti-discrimination agency or they were not an aggrieved party.<sup>23</sup>
- 6.15 HREOC further advised that to date only one complaint of age discrimination under the ADA has been filed in the Federal Court of Australia and at the time of making submission to this inquiry, the complaint had not yet proceeded to hearing.
- 6.16 While a complaints system exists, the small number of complaints lodged is of concern, given the strong anecdotal evidence regarding the extent of discrimination against older Australians. National Seniors has called for action to address barriers to making discrimination complaints. These barriers include 'disempowerment; uncertainty on who to approach and how to lodge a complaint; inability to advocate for oneself; power differentials between the complainant and the respondents; and lack of evidence that the treatment is discriminatory'.<sup>24</sup>

## Work-related issues

- 6.17 As the State Government of Victoria noted, discrimination 'in employment is of primary concern, particularly in the context of an ageing workforce and skills shortages. It is vital to Australia's economy that the skills and experience of older people are utilised.'<sup>25</sup>
- 6.18 National Seniors noted that greater numbers of people may want or need to remain in the workforce beyond the age when many would have retired in the past. They note a common stereotype among employers that older workers are less productive in the workplace than younger workers:

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23 HREOC, *Submission No. 92*, p. 15.

24 National Seniors Association, *Submission No. 67*, pp. 14-15. See also NSW Law and Justice Foundation, *Submission No. 102*, p. 5.

25 State Government of Victoria, *Submission No. 121*, p. 37.

The Age Act appears to be having little effect on employers who, whilst subject to the laws prohibiting compulsory retirement and age discrimination, continue to harbour negative age stereotypes and practice discriminatory behaviour.<sup>26</sup>

6.19 For some individuals, discrimination occurs well before the age of 65:

...I know in the discrimination area we are finding, for example, public servants in their fifties who have been 'forced out' because of the superannuation rules. They are forced out and then when they try to get back in again, there is a discrimination problem. That definition rules them out strictly but I am sure somewhere along the line we will have to face that issue.<sup>27</sup>

6.20 Having a workforce that is broadly representative of the population is important. For some older people, being able to deal with a mature person is a benefit:

Certainly our members indicate that, on occasion, dealing with people who have not had the same life experiences or extent of life experience that they have is very important in terms of them being able to get the information that they need. I suspect, though, that the nature of our workforce and the fact that very shortly a quarter to a third of our population will be aged over 50 anyway will mean that that matter will start to resolve itself because older people will be continuing to be in the workforce.<sup>28</sup>

6.21 COTA went on to argue that while younger people are not necessarily unable to show empathy and understanding when dealing with older people, 'we would be looking for diverse and inclusive workforces, just as we like to see ethnic and gender diversity amongst the workforce'.<sup>29</sup> The Committee was heartened to note that, in regard to the Australian Public Service, the median age of employees at June 2006 was 42 years. Employees in the 45-54 age group represented 19.2 per cent of all employees 15 years ago, but now represent 30.1 per

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26 National Seniors Association, *Submission No. 67*, p. 15.

27 Mr Brendon Kelly, ACT Ministerial Advisory Council on Ageing, *Transcript of Evidence*, 22 May 2007, p. 14.

28 Ms Jane Fisher, COTA SA, *Proof Transcript of Evidence*, 17 August 2007, p. 5.

29 Ms Patricia Reeve, COTA Over 50s, *Proof Transcript of Evidence*, 17 August 2007, p. 5.

cent. The 55 years and over age group has increased from 5.7 per cent to 10.6 per cent over the past 15 years.<sup>30</sup>

- 6.22 The Committee supports this approach to diversity in the workplace, and would encourage both the public and private sectors to aim for a range of age groups and experience levels in their workforces. Ensuring that older workers are recognised as an important part of the Australian workforce will help address some of the negative attitudes that still exist towards this group.
- 6.23 COTA Over 50s pointed out that there are problems with workers compensation and rehabilitation acts in particular in regard to entitlement to weekly payments ceasing on account of age. 'This is a disincentive for seniors to remain in the workforce and is an inappropriate provision in an era of healthy ageing. It is also counter-productive in the current context, when all encouragement should be extended to seniors wishing to remain in paid work. This discrimination should be amended'.<sup>31</sup> Under current legislation, such treatment is not illegal.
- 6.24 The Committee took evidence from Mr Malcolm Burton in Perth on his experiences under the Commonwealth's *Safety, Rehabilitation and Compensation Act 1988*. Having sustained a workplace injury at the age of 62, his claim was accepted by Comcare and he underwent a series of operations that have to date failed to fully correct the original injury and he remains unfit for work:

...I am now 65. In a letter dated 7 May received from Comcare, they advised me that my fortnightly payments from Comcare would cease when I reached the age of 65. In other words, I am not recompensed for any of my loss of wages now. The legislation allows for reimbursement of medical expenses but not for loss of earnings. The government is encouraging people to work after the age of 65, but those with a work-related injury are not covered at all. If further surgery is required then my non-compensable time off work is likely to blow out to around 12 months in total. The reason for Comcare's decision not to compensate me is stated as in sections 23 of the SRC Act, and sections 19, 20, 21, 21A and 22. I was advised also that this decision will not be reviewed.

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30 Australian Public Service Statistical Bulletin, 2005-06, p. 7.

31 COTA Over 50s, *Submission No. 58*, p. 13.



The effect of this legislation is that I will lose many thousands of dollars in earnings purely because of my age. Somebody a lot younger than me gets recompensed right through until they are back at work again. I do not. I assume also that, as I receive no pay, I am no longer eligible to receive the nine per cent superannuation contribution. I understand that premiums paid for the workers compensation insurance of workers aged 65 or over are not adjusted downwards in keeping with the decrease in cover given those older workers under the current legislation. The SRC Act urgently needs amending to correct this discrimination.<sup>32</sup>

6.25 Mr Burton also stated that:

I was shocked to discover that the Safety, Rehabilitation and Compensation Act 1988 discriminates against workers aged 65 and over. A person whose injury occurs at work after his or her 65th birthday has no cover under workers compensation. It is also my understanding that a worker injured between his or her 63rd and 65th birthdays is limited to 104 weeks of compensation for loss of wages resulting from the injury.<sup>33</sup>

6.26 The financial implications for an individual who fully expected to work beyond the age of 65 can be severe, placing at risk financial plans for their eventual retirement. However, simply amending the legislation to establish a later chronological age where income support ceases would not resolve the problem. Commenting on proposed amendments to workers compensation in South Australia to provide for the payment of weekly income support benefits to ill and injured workers over the age of 65, COTA SA argued:

While the intention is laudable, the effect is simply to shift discrimination from workers who are aged more than 65 to those who are aged more than 70 years. The framework in which older workers are employed requires consideration in its entirety rather than being addressed piecemeal if discrimination is to be removed. For example, access to training and career development opportunities throughout a workers life is... key to fairness for older citizens in the workforce. Likewise, the use of redundancy as a de facto

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32 Mr Malcolm Burton, *Transcript of Evidence*, 30 July 2007, p. 39.

33 Mr Malcolm Burton, *Transcript of Evidence*, 30 July 2007, p. 39.

form of retirement continues to be a form of discrimination against older workers.<sup>34</sup>

- 6.27 Taking a broader view of these issues was also supported by National Seniors, who indicated they would like to see 'greater uniformity of legislation throughout Australia in areas such as compulsory and voluntary retirement, redundancy packages and workers compensation'.<sup>35</sup>

#### **Recommendation 42**

- 6.28 **The Committee recommends that the Australian Government, in cooperation with state and territory governments, review the application of workers compensation legislation to ensure that older workers are not disadvantaged.**

## **Proposals for legislative amendment**

### **The 'dominant reason' test**

- 6.29 Section 16 of the ADA sets out what is known as the 'dominant reason' test. It states:

If an act is done for 2 or more reasons, then, for the purposes of this Act, the act is taken to be done for the reason of the age of a person only if:

- (a) one of the reasons is the age of the person; and
- (b) that reason is the dominant reason for doing the act.<sup>36</sup>

- 6.30 The insertion of this provision into the act was opposed by HREOC when the legislation was before Parliament in 2003. HREOC remains concerned:

...that a dominant reason test would make it harder for people to make successful complaints as an act will only be taken to be done on the basis of the age of a person if their age is the dominant reason for doing an act.<sup>37</sup>

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34 Council on the Ageing SA, *Submission No. 77*, p. 6.

35 National Seniors Association, *Submission No. 67*, p. 15.

36 *Age Discrimination Act 2004*, section 16.

37 HREOC, *Submission No. 92*, p. 22.

- 6.31 HREOC also noted that the ‘dominant reason’ test was not the same test that applied under other discrimination legislation:

In most events in life there is usually more than one thing that is acting to produce a result in a complex situation.

To identify the dominant purpose is difficult. It was removed from the Racial Discrimination Act in 1990 because it was perceived then as effectively rendering the act almost useless in providing a remedy. My personal view, when I saw the dominant purpose sneaking in here, was that it was largely gutting what was otherwise going to be an effective remedial process. I suspect that as cases start to unfold we are going to find people who are able to prove that age was one of the factors that brought about a result but fail to prove that it was a dominant reason as opposed to one of perhaps equal or lesser importance than some other issue.<sup>38</sup>

- 6.32 This question was considered by the Senate Legal and Constitutional Affairs Committee in its review of the Age Discrimination Bill in 2003. That Committee noted:

3.9 The Committee is concerned that the dominant purpose has been proposed without broad consultation. This test was removed from the Racial Discrimination Act in 1990 on the basis of its impractical application. In the Committee’s view, the proposed test’s inconsistency with other anti-discrimination law will present significant problems for the bill, particularly in achieving the aim of attitudinal change. A more stringent test than other anti-discrimination law signals to the community the lesser importance of age discrimination when compared with other prohibited discriminatory conduct.

*Recommendation 1*

*The Committee recommends that ‘dominant reason’ referred to in clause 16 be defined to minimise the risk of uncertainty over the scope of the term and specify who is to bear the onus of proving the reason.*<sup>39</sup>

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38 The Hon John Von Doussa, HREOC, *Transcript of Evidence*, 15 May 2007, p. 70.

39 Senate Legal and Constitutional Affairs Committee, report on the *Age Discrimination Act 2003*, p.7, available at [http://www.aph.gov.au/Senate/committee/legcon\\_ctte/completed\\_inquiries/2002-04/age03/report/report.pdf](http://www.aph.gov.au/Senate/committee/legcon_ctte/completed_inquiries/2002-04/age03/report/report.pdf).

- 6.33 In a dissenting report, three Senators recommended ‘replacing the proposed test with the test that is used in other Commonwealth anti-discrimination law’.<sup>40</sup>
- 6.34 Concerns were raised in a number of other submissions about this provision. For example, the ACT Government recommended that further thought should be given to the provision as ‘establishing that age was the dominant reason for a refusal [e.g. in regard to employment or advancement] could be problematic...’<sup>41</sup> The Caxton Legal Centre observed:
- As you are probably aware by now, there has been very little uptake of the age discrimination provisions and, aside from the huge evidentiary burden of actually proving discrimination, that dominant reason test makes it that much harder to succeed.<sup>42</sup>
- 6.35 The Committee can see no reason why the ‘dominant reason’ test should apply only to age discrimination legislation, and believes this matter should be reconsidered by Government, with a view to standardising the application of anti-discrimination legislation.

### Recommendation 43

- 6.36 **The Committee recommends that the *Age Discrimination Act 2004* be amended to remove the ‘dominant reason’ test contained in section 16, thus bringing this legislation into line with other anti-discrimination statutes.**

### Other suggested legislative changes

- 6.37 HREOC also raised concerns about the ‘breadth and details of exemptions and the issue of coverage of ‘relatives or associates under the ADA’.<sup>43</sup> As the President of HREOC explained:
- HREOC believes that the capacity of the legislation to protect older people still requires some further strengthening... There is the removal of the exemption for direct compliance with

40 Senate Legal and Constitutional Affairs Committee, report on the *Age Discrimination Act 2003*, p. 37, available at [http://www.aph.gov.au/Senate/committee/legcon\\_ctte/completed\\_inquiries/2002-04/age03/report/report.pdf](http://www.aph.gov.au/Senate/committee/legcon_ctte/completed_inquiries/2002-04/age03/report/report.pdf).

41 ACT Government, *Submission No. 108*, p. 4.

42 Mr Scott McDougall, Caxton Legal Centre, *Transcript of Evidence*, 16 July 2007, p. 19.

43 HREOC, *Submission No. 92*, p. 42.

Commonwealth laws and orders, particularly insofar as that exemption applies to the Defence Force. There is the removal of the exemption for religious bodies. Failing the complete removal of that, the exemption should be limited to acts necessary to avoid injury to the religious sensibilities of adherents to the religion. There is also the removal of the exemption for voluntary organisations. We would argue for the extension of the act's coverage to include relatives and associates of older people within the range of people who may bring a complaint.<sup>44</sup>

- 6.38 The Committee received very little evidence on this matter, other than the views of HREOC itself. The Committee does not feel it is in a position to make a substantive recommendation in favour of or against these provisions at this stage. However, the Committee would like to see a review of the operations of the Act in 2009 (5 years after its passage) and would propose that the nature and range of exemptions be examined in that review.

#### **Recommendation 44**

- 6.39 **The Committee recommends that an independent review be undertaken in 2009 of the effectiveness of the *Age Discrimination Act 2004*. The review should consider, among other things, the nature and range of exemptions provided for under the Act.**

## **Public awareness and attitudes**

- 6.40 Having legal redress may assist in some cases of illegal discrimination, but it is not the only solution:

...studies indicate that legislation alone is not adequate to change attitudes and put an end to discrimination there must be education of employers, recruitment agencies and the public in general.<sup>45</sup>

- 6.41 HREOC recently commissioned research on community awareness about age discrimination. Key findings included:

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44 The Hon John Von Doussa, HREOC, *Transcript of Evidence*, 15 May 2007, p. 68.

45 Public Trustee NSW, *Submission No. 72*, p. 12.

- Age discrimination is prevalent in Australia; widespread reports of age discrimination are not commensurate with the small number of complaints registered by anti-discrimination agencies as many were wary of making a complaint;
- The experience of age discrimination generates enormous personal distress. Older people frequently feel demeaned, rejected or ignored on the basis of age;
- There are considerable barriers to preventing age discrimination. Prejudicial stereotypes about older people form a significant part of this problem;
- On its own, the ADA is limited in its effectiveness in preventing age discrimination in the community;
- There was little awareness among employers of the benefits of recruiting older people, such as higher productivity, lower recruitment costs and higher retention rates; and
- Older people wanted public education that was positive about their contribution and role and were concerned that campaigns focusing solely on the complaints process could have a negative impact.<sup>46</sup>

6.42 The negativity towards older Australians appears widespread and likely to emerge in a number of different ways:

When you are first treated like a silly old cow, it is offensive, but after a while you just accept it as inevitable. It does not happen to men as much as it happens to us. My husband is an academic. The first time it happened to him, when he was treated like an idiot by the bank, he came home in shock. I said, 'I've been putting up with that for years.' ...it is worsening and because the larger part of the population is about to be older people. They are deserving of respect. It is particularly bad in nursing homes, where people who have achieved much in their lives are treated like children – or backward children, really.<sup>47</sup>

6.43 National Seniors advocates a public awareness campaign about the Age Discrimination Act and how to use it.<sup>48</sup> 'A media campaign

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46 HREOC, *Submission No. 92*, pp. 20-21.

47 Mrs Betty Roberts, Catholic Women's League of Australia, *Transcript of Evidence*, 5 July 2007, p. 28.

48 National Seniors Association, *Submission No. 67*, p. 15.

directed at the value of older people and the positive contribution they make to the community would go some way to addressing this'.<sup>49</sup>

- 6.44 The NSW Ministerial Advisory Committee on Ageing noted that, while there was legislation at both state/territory and federal level to address age discrimination:

...the effectiveness of these laws in transforming social attitudes and practices has been limited. In part, this is due to the difficulties associated with bringing a successful discrimination case.

...

The Committee recommends a greater focus on community education to deal with the range of age discrimination experienced by older people.<sup>50</sup>

- 6.45 The Caxton Legal Centre indicated it had 'serious concerns that there is a lack of community awareness about age discrimination and believed that the government must do more to promote awareness about age discrimination.'<sup>51</sup> Similarly, the Public Trustee NSW would like to see HREOC, under the role given to it by the ADA, 'hold public awareness and education campaigns, develop monitoring strategies and develop effective policies against age discrimination'.<sup>52</sup>

- 6.46 As noted earlier, HREOC has a statutory responsibility for promoting understanding and compliance with the act, and educating the community more generally about the objects of the act. HREOC advised that the 'act does not create a statutory position of age discrimination commissioner. However, HREOC appointed one of its commissioners to be responsible for age as soon as the act commenced and committed staff to assist the commissioner. In promotion of the act, the commissioner has given speeches, made press releases and published opinion pieces.'<sup>53</sup> Further:

Whilst the act aims to operate as a catalyst for attitudinal change, this goal cannot be achieved by legislation alone. It must be complemented by community education awareness about age discrimination. Work to this end is being

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49 National Seniors Association, *Submission No. 67.1*, p. 4.

50 NSW Ministerial Advisory Committee on Ageing, *Submission No. 103*, p. 6.

51 Caxton Legal Centre, *Submission No. 112*, p. 26.

52 Public Trustee NSW, *Submission No. 72*, p. 12.

53 The Hon John Von Doussa, HREOC, *Transcript of Evidence*, 15 May 2007, p. 68.

undertaken by HREOC and the responsible commissioner. To date HREOC's work on age discrimination has been focused primarily on improving accessibility to the complaints mechanism and has targeted younger workers as well as older workers. However, HREOC is currently in the process of developing a national community awareness campaign about age discrimination, which in particular promotes the benefits of engaging older employees. It is envisaged that this campaign will be released in the second half of this year. HREOC will tie it in with its current Work Out Your Rights campaign in the employment situation.<sup>54</sup>

- 6.47 The Committee supports this initiative by HREOC and would like to see the effectiveness of such a program assessed as part of the review of the Act in 2009 (see Recommendation 44).

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54 The Hon John Von Doussa, HREOC, *Transcript of Evidence*, 15 May 2007, p. 68.