

**PAPER TO THE INDUSTRIAL RELATIONS SOCIETY OF QLD
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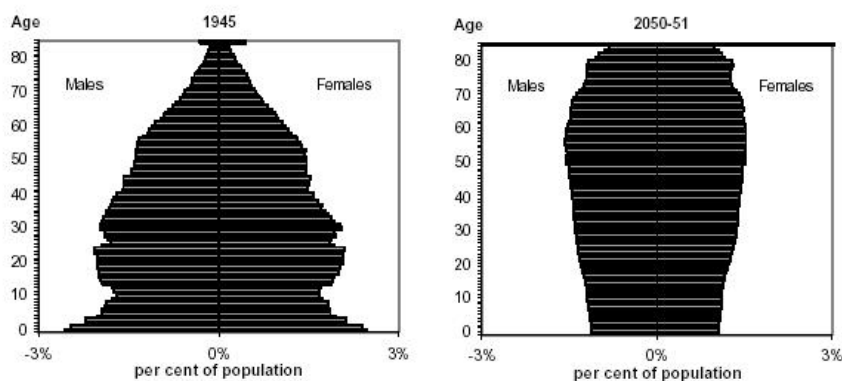
THE AGE OF EMPLOYMENT

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1 INTRODUCTION

The age structure of our population is changing (Banks 2004) and as Figure 1 illustrates, not only will this bring about an ageing of our workforce, but it is likely to significantly alter the practice of early retirement as we move into the next decade and beyond.

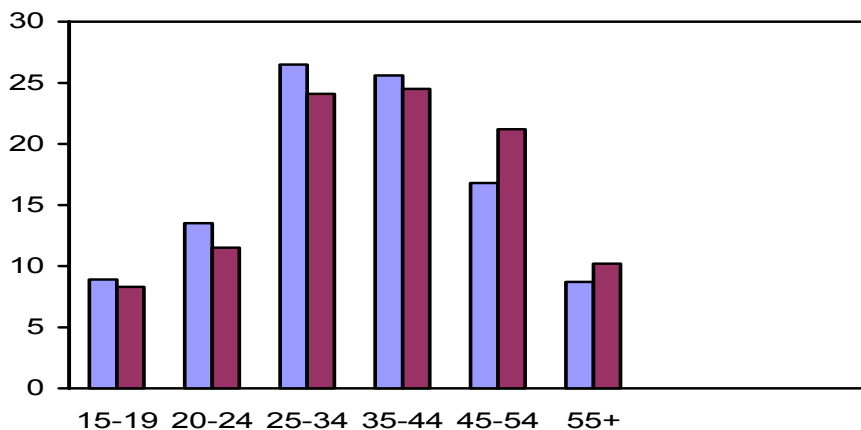
Figure 1 **From pyramid to coffin — the changing age structure of our population**
1945 and 2050-51



To better illustrate the point, Figure 2 provides a 10 year comparison of Australian labour force statistics in the period 1991 to 2001. What is evident is that there has been a

marked shift in the composition of the workforce particularly in the case of workers 45 years and above and the trend is likely to continue.

Figure 2
Age profile of Australia's workforce 1991-2001 (%)



Source: Australian Bureau of Statistics Catalogue No 6203.0

This shift in demographic coupled with the fact that the Australian labour force participation rates are traditionally lower than those of our OECD counterparts, presents new demands for industry, not the least of which will be the impact on employee relations and workplace health.

2 AGEISM AND DISCRIMINATION IN EMPLOYMENT

The term “ageism” was coined by Dr Robert Butler in 1975 to describe the prejudice that many people have toward older individuals in society. (Satola p583). The term is used to describe the practice of treating two persons or groups of people differently solely on the basis of their ages, especially when there is no reasonable basis for making the age distinctions.

Under the Queensland *Anti-Discrimination Act* 1991 and now also arising under the Commonwealth *Age Discrimination Act* 2004, such discrimination is unlawful, particularly in the context of pre-employment and employment scenarios, unless it can be determined that the discrimination is necessary based on the inherent requirements of a particular job or because of workplace health and safety considerations. For the sake of this discussion I will use the terms “inherent requirements” and “genuine occupational requirements” interchangeably.

2.1 Legislation

Sections 7(f) and 9 of the State Act and Section 18 of the Commonwealth Act, prohibits direct and indirect discrimination on the basis of age in the workplace.

Direct discrimination is defined at Section 10 of the State Act as follows:

10 Meaning of direct discrimination

- (1) *Direct discrimination on the basis of an attribute happens if a person treats, or proposes to treat, a person with an attribute less favourably than another person without the attribute is or would be treated in circumstances that are the same or not materially different.*
- (2) *It is not necessary that the person who discriminates considers the treatment less favourable.*
- (3) *The person's motive for discriminating is irrelevant.*
- (4) *If there are 2 or more reasons why a person treats, or proposes to treat, another person with an attribute less favourably, the person treats the other person less favourably on the basis of the attribute if the attribute is a substantial reason for the treatment.*
- (5) ...

Put simply, it occurs when a person is treated less favourably in the same or similar circumstances as someone of a different age would be.

An example might be to adopt a policy to place an age restriction on the engagement of customer service personnel on the basis that the general public give the impression that they like dealing with more youthful customer service staff.

While there is an expectation in Australian workplaces that comments such as “bringing in new blood” or wanting a “pretty young thing” or “getting a guy with a hot bod”, are becoming a thing of the past, there is still broad anecdotal evidence that we still have a long way to go.

By way of an illustration as to how things have been, I provide 2 earlier examples from the United States.

In Furr v At & T Technologies Inc 824 F2d, 1537 (10th Cir)(1987) , an employee was demoted in a downsizing and was refused a subsequent promotion when an opening became available. This employee was told he could not be promoted because he was “too damned old”. The manager said he could do nothing to help the employee because of his age. The evidence presented also revealed that managers had said this employee was too old for the position in a young mans game that had outgrown him.

In Meschino v Intern. Tel and Tel Corp., 563 F Supp 1066 (1983) , a comment that replacements for the downsized employees would ideally be thirty-five year old tigers was also potentially direct evidence of discriminatory intent in discharging the plaintiff, especially if accompanying remarks demonstrating bias against older employees. In this case, statements by a superior that the plaintiff was a sleepy kind of guy, droppy with no pizzaaz and old and tired were taken by the court as evidence that the superior may have made the decision to terminate him on the basis of such stereotypes. (216)

Surely these type of comments are a thing of the past?

Well maybe they are, as the straight jacket of political correctness is worn by more and more organisations, but what appears to be the future growth area, if it has not always been the case, is that of indirect discrimination.

Indirect discrimination occurs where apparently neutral policies and practices include requirements or conditions that a higher proportion of one group of people than another, in relation to a particular attribute can comply, and the requirement or condition is unreasonable under the circumstances. Under the State law it is given the following meaning:

11 Meaning of indirect discrimination:

- (1) *Indirect discrimination on the basis of an attribute happens if a person imposes, or proposes to impose, a term –*
 - (a) *with which a person with an attribute does not or is not able to comply; and*
 - (b) *with which a higher proportion of people without the attribute comply or are able to comply; and*
 - (c) *that is not reasonable.*
- (2) *Whether a term is reasonable depends on all the relevant circumstances of the case, including, for example –*
 - (a) *the consequences of failure to comply with the term; and*
 - (b) *the cost of alternative terms; and*
 - (c) *the financial circumstances of the person who imposes, or proposes to impose, the term.”*

An example of indirect discrimination may be a last on first off retrenchment policy or a recruitment and selection process that determines as a minimum selection criterion that applicants must have been engaged with the company for at least 10 years before being considered for the position.

2.2 Inherent and genuine occupational requirements

Both the State¹ and Commonwealth Act² provide for an exemption against unlawful discrimination if the discrimination amounts to what is termed “*occupational requirements for a position*” and “*inherent requirements of the particular employment*”, respectively. By way of illustration, under Section 25 of the *Anti-Discrimination Act 1991* (Qld) an employer may impose a genuine occupational requirement for a position, that may in other circumstances have rendered such action discriminatory.

Whether or not though the specific requirement is a genuine occupational requirement, is an objective test to be determined on the facts.

For example, in *Flannery v O’Sullivan* (1993) EOC 92-501, the Queensland Police Service refused to employ a 40 year old candidate on the basis that he had failed the eyesight standard. This was despite the fact that Flannery had corrected visual acuity of 6/6, a history of successful wearing of contact lenses, experience in withstanding assaults and pursuing and tackling offenders.

On that occasion, the Queensland Anti-Discrimination Tribunal held, that

“to say that is a genuine occupational requirement that Mr Flannery must have a certain eyesight standard is to confuse whether he can perform genuine occupational requirements with his means of doing so”.

A similar meaning was given to what is described as the “inherent requirement” when Brennan CJ in *Qantas Airways Ltd v Christie* (1998) 193 CLR 280 at [1], cast the concept in these terms,

***“the question whether a requirement is inherent in a particular employment must be answered by reference not only to the terms of the employment contract but also by reference to the function which the employee performs as part of the employer's undertaking and, except where the employer's undertaking is organised on a basis which impermissibly discriminates against the employee, by reference to that organisation”*(*Qantas Airways Ltd v Christie*)**

¹ Section 25(1) Anti Discrimination Act 1991

² Section 18(4) Age Discrimination Act 2004

In *Christie's case*, it was not enough that a 60 year old employee could physically perform the task, but that he could do so in the context of the work organisation. The court found that Christie could not perform the task when his capacity to do so was restricted by being unable to fly a large number of international routes.

But would that decision be reached today and should there be an expectation that an employer could adjust the work arrangement in order to accommodate the inability to perform all of the requirements of the position? Such a question becomes more challenging when issues of age and physical disability co-exist. To consider this issue further, we turn to consider what constitutes unjustifiable hardship and reasonable accommodation for an employer.

2.3 Unjustifiable hardship and reasonable accommodation

Section 36 of the *Anti Discrimination Act 1991* (Qld) provides that it is not unlawful for an employer to discriminate on the basis of impairment against another person with respect to a matter that is otherwise prohibited if the circumstances of the impairment would impose unjustifiable hardship on the first person.

Whether the circumstances of the impairment would impose unjustifiable hardship depends on all of the relevant circumstances of the case, including, for example:

- (a) the nature of the impairment; and
- (b) the nature of the work or partnership.

Similarly under Section 15 of the *Disability Discrimination Act 1992* (Cth), the discrimination by an employer against a person on the ground of the person's disability will not be unlawful if, because of his or her disability, the person would, in order to carry out those requirements, require services or facilities that are not required by persons without the disability and the provision of which would impose an unjustifiable hardship on the employer.

Under both state and federal law, the relevant principle is that an employer must make reasonable adjustment to accommodate the impaired worker, unless this is outweighed by what is regarded as an unjustifiable hardship.

Whether the supply of special services or facilities would impose unjustifiable hardship on a person depends on all the relevant circumstances of the case, and include:

- (a) the nature of the special services or facilities;***

- (b) *the cost of supplying the special services or facilities and the number of people who would benefit or be disadvantaged;*
- (c) *the financial circumstances of the person;*
- (d) *the disruption that supplying the special services or facilities might cause; and*
- (e) *the nature of any benefit or detriment to all people concerned.*

The Decisions of the Tribunal indicate that there is an onus on an employer to demonstrate that in enabling an employee to carry out the inherent requirements of the employment, an unjustifiable hardship would be imposed. It is this area of law in the context of an ageing workforce that we are likely to experience the greatest area of growth in the future years. The reason for this will no doubt be, that that the industrial parties will seek to determine how much modification to a workplace should take place to accommodate the ageing worker, until such time as the accommodation is deemed to impose an unjustifiable hardship on the employer.

A simple illustration of how the case law will evolve can be evidenced in the case of *Perlidis v Brambles Security Services Limited Trading As Brambles Armoured* (2003) EOC 93-264, that was an application by a security guard who suffered a lower back injury that was deemed a "disability" under the *Anti-Discrimination Act 1977* (NSW).

Perlidis had his employment terminated because of his apparent lack of capacity to continue in his employ, however the New South Wales Anti-Discrimination tribunal found that was no evidence before it, that the respondent had considered the possibility of the applicant returning to normal duties with assistance. On that basis it was determined that the respondent had failed to make out a case that were it to provide assistance to the worker to enable him to carry out the inherent requirements of his particular employment, that it would have imposed an unjustifiable hardship.

That is not to say that in making the reasonable adjustment, that there is a requirement for the employer to alter the nature of the work.

In *Cosma v Qantas Airways Limited* (2002) EOC 93-206, it was held that the assessment of whether an employer has provided special services or facilities to remove the possibility of discrimination at work, does not

“require the employer to alter the nature of the particular employment or its inherent requirements. Rather it is a question of overcoming an employee's inability, by reason of disability, to perform such work. This is to be done by provision of assistance in the form of "services", such as providing a person to read documents for a blind employee, or "facilities" such as physical adjustment

like a wheel chair ramp. The "services" or "facilities" are external to the "particular employment" which remains the same."

In Cosma's case the situation was quite simple. A bag handler need to handle luggage. There simply was no way of getting around that point.

It is in the context of providing a safe and healthy workplace for an ageing workforce, that an interrogation of the issues of what are the special services and facilities that are required, becomes all the more important.

2.4 Exceptions for acts of discrimination done in compliance with other laws

Anti discrimination legislation in all the states and territories provide exceptions for acts of discrimination done in compliance with other legislation. This would include acts done in compliance with occupational health and safety legislation. In addition, the South Australian legislation exempts acts done in compliance with a state industrial award or agreement.

For example, the *Coal Mining Safety and Health Act 1999 (Qld³)* provides that the site senior executive must ensure that a person under the age of 16 does not work as an underground coal mine worker.

2.5 Acts done for the reasonable protection of health and safety

In Queensland, acts done to protect or preserve health and safety are exempt from constituting unlawful discrimination by virtue of Section 108. Yet a more wider ranging form of health exemption is now provided for under Section 42 of the Commonwealth Act.

What Section 42 does is that it allows health programs to be established that would for example, be targeted at older persons with a specific purpose of providing benefit to that age group.

The example given within the Commonwealth legislation is that of a program for providing free influenza vaccines to older people, based on evidence showing that older people are at greater risk of complications as a result of influenza than are people of different ages

2.6 Positive discrimination

More broadly though, the Commonwealth Act provides at Section 33, a capacity for employers to embark on a process of positive discrimination toward older persons as follows:

³ Section 272

33 *Positive discrimination*

This Part does not make it unlawful for a person to discriminate against another person, on the ground of the other person's age, by an act that is consistent with the purposes of this Act, if:

- (a) the act provides a bona fide benefit to persons of a particular age; or*
- (b) the act is intended to meet a need that arises out of the age of persons of a particular age; or*
- (c) the act is intended to reduce a disadvantage experienced by people of a particular age.*

The examples give rise to some interesting scenarios.

For example, could an employer provide that older employees are entitled to more days sick leave per year ?

Can industrial organisations calls for higher wages for mature aged apprentices on the basis that they have greater financial responsibilities?.

Would these acts of positive discrimination be consistent with the objectives of the Commonwealth Act that at Section 3(e) (i) provides *to respond to demographic change by removing barriers to older people participating in society, particularly in the workforce;*

2.7 **Conclusion**

The future way in which the state and federal laws will co-exist will no doubt provide much interest in the next couple years as issues of constitutionality and inconsistency arise.

3 ADVANCING THE CASE OF THE OLDER WORKER

3.1 Positive steps taken by employers to prolong work life of employees

There are many areas of workplace relations that require review in the context of this discussion.

For the purposes of illustration only and given the overwhelming evidence emerging of the deleterious health effects for older workers required to work 12 hour shifts, it may be the case that soon we will see the stakeholders jointly applying for exemptions to permit older employees to work a shorter roster system than their younger colleagues. Imagine the tension emerging in workplaces where older workers or their employers, seek to impose restrictions as to the number of daily hours they can work?

Although the fight to secure changes will not always be that easy as the case of *Leslie v Barrister's Sickness & Accident Fund Pty Limited*⁴ demonstrates.

⁴ [2003] NSWADT 216

Mr Arthur Leslie QC complained to the NSW Anti-Discrimination Board (ADB) that the Barrister's Sickness and Accident Fund Pty Limited discriminated against him unlawfully in the provision of goods and services. He complained that he was discriminated against on the grounds of age because it would not renew cover for persons who attained the age of 70.

The decision of the Fund not to offer renewal of sickness and accident insurance policies to members over 70 was made in light of the advice received by it from its actuaries that the prevalence of disability increases rapidly with increasing age and that insurance of older members was likely to result in significant losses for the Fund.

Evidence was tendered by actuaries that no life insurer, that they were aware of, offers new disability cover to underwrite individuals past the age of 60 nor is renewal of such cover offered past 65 common in the Australian market.

The New South Wales Board found that the Fund's decision, although based on the applicant's age, was also based on actuarial or statistical data and was reasonable having regard to the data available and to the nature, size and financial viability of the Fund and therefore its actions were not unlawful.

Although the complaint was dismissed, it highlights that specific attention is going to have to be paid to the range of issues relevant to older workers at work. But there may also exist greater disincentives for older workers if the current workplace health and safety data that is available on the topic is anything to go by.

3.2 Issues of workplace health and safety

With some notable exceptions, (Parker & Worringham 2004) there has been little Australian based research that relates to the workplace health and safety needs of an ageing workforce, although clearly the tide in this regard is also turning. Much work has already taken place in the case of the United States and Europe (particularly Finland) and it is against some of those learning frameworks that I now turn to consider the issues.

In a study by Hartley and others looking at occupational fatal injuries for older workers in the United States(2002), as an age group, workers 55 years and older were almost twice as likely to suffer a fatality at work than employees between the range 16 to 54 years.

**Table 1
Number, Rate and Mean Cost of U.S Occupational Fatal Injuries**

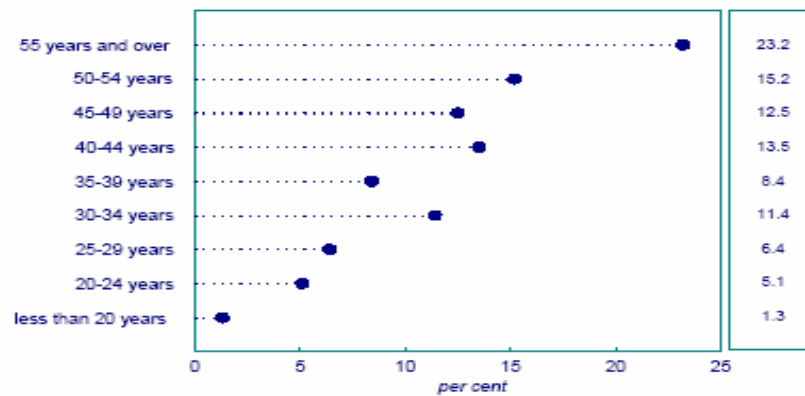
Year	Number of Fatalities		Rate per 100,000 workers	
	16-54 years	55 years and older	16-54 years	55 years and older
1980-1984	25,908	6,738	5.6	9.7
1985-1989	22,806	6,176	4.7	8.4
1990-1994	20,819	5,487	4.0	7.7
1995-1997	12,423	3,486	3.7	10.3
All years	81,956	21,887	4.6	8.3

Source: Hartley, Biddle, Grosch & March, 2002.

Within Australia, the national statistics for compensated fatalities tells a similar tale, with workers over 55 years, accounting for in excess of 23% of all compensated fatalities in 2001-2002. Given that in 2001, workers over 55 years represented only 10.2% of the workforce, begs the question why the inordinately higher number of fatalities for this group?

Figure 3

Compensated Fatalities in 2001-2002 Occurred at The 55 Years and over age group



(Source: Compendium of Workers Compensation Statistics Australia, 2001-2002)

A similar picture is revealed when one considers occupational injury and disease data.

For example, if we examine the employment injuries that are the result of a single traumatic event, then as **Table 2** shows the older workforce experiences a far higher frequency rate of occupational injury than any other age group.

A similar picture is evident in an examination of new disease cases by age, as **Table 3** reveals. Again, when one examines the incidence and frequency rates of workers in the Age 55 years and above category, they represent not only a disproportionately higher percentage of the total cases reported (17.2%), but also the highest incidence and frequency rate for any age group.

Table 2 - Injury and Poisoning Cases by Age 2001-2002

Age Group	Number			% of total claims	Incidence Rate	Frequency Rate
	Fatal	Non-fatal	Total			
55 years and over	30	10 900	10 930	9.5	14.2	8.7
50-54 years	31	11 930	11 960	10.4	15.1	8.5
45-49 years	24	13 230	13 260	11.8	14.2	8.0
40-44 years	28	15 020	15 050	13.1	14.9	8.4
35-39 years	20	14 070	14 090	12.3	14.5	8.3
30-34 years	24	13 940	13 970	12.1	14.2	8.1
25-29 years	17	12 780	12 800	11.1	12.5	7.0
20-24 years	15	11 430	11 440	9.9	11.4	7.2
less than 20 years	1	5 680	5 680	4.9	8.4	8.3
Not stated	8	5 840	5 850	5.1	*	*
TOTAL	198	114 830	115 030	100.0	14.1	8.4

Source: Compendium of Workers' Compensation Statistics Australia 2001-2002

Table 3 – Disease cases by age 2001-2002

Age Group	Number			% of total claims	Incidence Rate	Frequency Rate
	Fatal	Non-fatal	Total			
55 years and over	39	4 050	4 090	17.2	5.3	3.3
50-54 years	14	3 470	3 490	14.6	4.4	2.5
45-49 years	13	3 450	3 460	14.5	3.7	2.1
40-44 years	12	3 310	3 320	14.0	3.3	1.9
35-39 years	5	2 800	2 800	11.8	2.9	1.6
30-34 years	10	2 370	2 380	10.0	2.4	1.4
25-29 years	2	1 850	1 850	7.8	1.8	1.0
20-24 years	0	1 300	1 300	5.5	1.3	0.8
less than 20 years	3	440	450	1.9	0.7	0.7
Not stated	1	640	640	2.7	*	*
TOTAL	99	23 680	23 780	100.0	2.9	1.7

Source: Compendium of Workers' Compensation Statistics Australia 2001-2002

While the conclusions that can be drawn from this brief exposure to the national compensation statistics are illustrative only, they should nonetheless provide warning bells for all stakeholders. Put simply, the older workforce has a far higher proportion of fatalities, injuries and disease reported than coincides with their representation in the labour market. Given that the age spread within the workforce is predicted to shift considerably over the next decade and beyond, the current situation is likely to get worse not better. To that end, obligation holders need to consider what, if any, implications exist in terms of the preventative measures that need to be deployed in the workplace to accommodate the existing and future needs of workers.

3.3 Duty of Care

Much has been written over time in relation to how the duty of care owed by the various stakeholders at the workplace should be discharged. For example, Section 22 of the *Workplace Health and Safety Act 1995* (Qld) identifies a four staged risk management process through which workplace health and safety can generally be managed. But is there evidence that the workplace health and safety standards and systems that underpin these processes recognise the special needs of the older worker?

Certainly it is accepted that the ageing process affects individual workers differently. Consider for a moment some of the health issues that may impact on the older worker as they continue to be engaged in the workplace. Issues such as respiratory and cardiovascular disease, musculoskeletal degeneration, vision impairment, noise induced hearing loss, reduced levels of strength and agility, mental and physical stress and reduced perception, responsiveness and alertness.

Should greater attention be placed on these issues within the context of the risks assessments taken by all of the obligation holders and is there a need to modify the workplace and its processes as a consequence of all of this?

Is there a need to review this tension that may exist between the rights of individuals and the responsibilities imposed on the obligation holders, in a way that becomes less responsive to the 'onslaught of old age' but more adapting to the changing physical and mental capabilities of the worker as a consequence of the ageing process?

4 DEVELOPING NEW MODELS FOR IMPROVING THE WORKABILITY AND EMPLOYABILITY OF OUR AGEING WORKFORCE

There are many issues to consider in the context of providing an ageing worker with a non-discriminatory, safe, healthy and productive workplace.

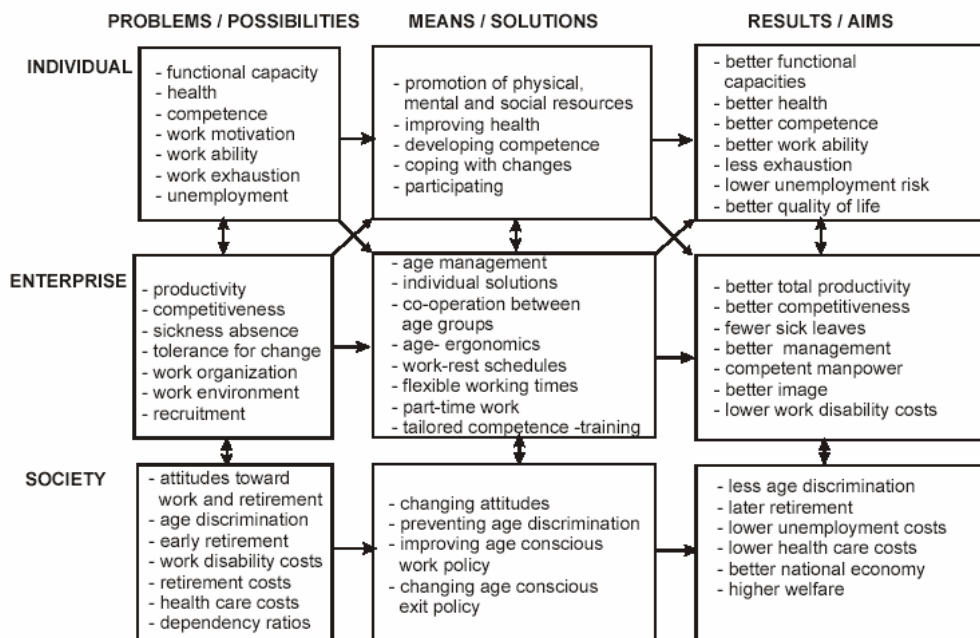
In the context of the overseas experience, particularly as it has been driven by the Finnish and European agenda, much of the focus on sustainability of the workforce, has been

concerned with the inter-relationship that exists between the individual, the enterprise and society.

The ability of the worker ('workability') and the capacity to deploy the worker ('the employability') arising from this assessment, are two central drivers within the European model. Put simply, the rights of a worker to work and the health and safety of a worker needs to be considered within a construct of an employee having a job for life. Too often the Australian workplace has been characterised by a 'not my problem' culture where responsibilities for the ongoing employability and health of an employee are regarded as transient.

If there is to be a genuine response to these issues, then a far more integrated and embracing approach is required.

Figure 4 – An Integrated Model for Enhancing Workplace Issues for Ageing Workers



Source: Ilmarinen J, (2002)

5 ASSESSING THE CAPACITY OF THE WORKER

An essential first step in any revised framework for addressing these issues, is in ensuring that an objective evaluation of the worker's ability and deployability is available.

In terms of a worker's physical capacity, the requirement to undertake a health assessment fairly and impartially has long been recognised by the industrial tribunals. In *D.T.Lewis v Mobil Oil Australia*, [Print Q0400 24 November 1997], a Full Bench of the Australian Industrial Relations Commission held that when determining whether an

employee can be validly terminated because of incapacity, the longer run prognosis cannot be adequately decided by a tribunal unless:-

- *A current functional assessment of the employee's capacity to undertake the duties was undertaken by a qualified expert recommended by (in that case) both medical witnesses; and*
- *A report from a commonly agreed independent expert, as distinct from the consultants retained by either of the parties was considered.*

So too should the same requirements be imposed on a person charged with assessing a worker's intellectual and productive capacity. For such an approach to take place will nonetheless require widespread shifts in current organisational practice.

For example, it has been a common practice across many industries at various stages to offer a 'retirement carrot' or voluntary redundancy package to certain workers as a means of thinning out the older employees from the company's ranks. The case law abounds in this area where undue influence and coercion have often in the past coloured the discussions leading to voluntary separation arrangements. An alternative scenario to this is planning for age. That is understanding within the workforce the need to design jobs, allow for employee job succession and to reskill based on the changing requirements of the organisation and the employee alike.

6 DEVELOPING NEW SOLUTIONS AT THE WORKPLACE

One issue that appears high on the agenda is the need to enhance the level of employer, union and worker understanding of the implications of all of these issues, with the hope that as a consequence a more informed and objective response to the issues can take place. According to Ilmarinen, such issues could canvas subject matter such as the basic demographics within the company and the industry, participation rates, work ability and employability, the issues specific to age, productivity and growth; functional capacity of ageing workers, learning techniques for older workers and the like. In the broader context, all of the parties should better understand the underlying and overwhelming evidence in our community at the moment, of the problems confronting older workers with ageism and discrimination.

Notions of gaining jobs for life have taken a heavy blow in Australia over the past 25 years. Nonetheless there would appear to be a need for industry to consider what if any obligation it has in ensuring that even if an employee remains with a company for a short period of time, that there is an obligation beyond the immediate time frame to ensure that the longer term health issues and employability of the worker are also protected. This may not be such an easy commitment to secure, particularly when employees are free to resign from their employment with as little as 2 weeks notice. It would be most difficult for a company to swallow the investments costs of training and nurturing when employee's commitment to remaining within the firm, may not be that easy to maintain. A significant challenge for human resource and workplace health and safety professionals will be in seeking to find ways to accommodate the ageing workers while still ensuring that the inherent requirements of the worker's job are being met. This challenge if approached with fresh eyes will no doubt impact on workplace systems, policies and

procedures in a variety of ways. For example, a better understanding of issues of work redesign and currency of employee skills would seem a key requirement. So too would be the reliance on a more sympathetic succession planning scheme.

Finally and probably most importantly would be for greater attention to be directed toward understanding the implications of the occupational hygiene factors that impact on a worker's health and safety, from commencement within an industry through to retirement. Issues such as manual handling, hazardous substances, noise and vibrating machinery, ergonomics and workplace stress, are all issues that need to be considered in terms of the ageing process, particularly where there are high correlations between exposure to the hazards and time in employment. But there are many other issues that need review. These include the skills currency of the older workers, technological adjustment capacities both in terms of training and retraining; and the basic communication processes at work in the workplace. This last issue is a significant one as it is becoming quite clear that workplaces with 'generation gaps' are likely to be futile grounds for future actions in indirect discrimination.

7 CONCLUSIONS

To conclude, the key question to be asked is can we provide a work environment for our older workers, that provides them with equal opportunities, while at the same time guaranteeing that those environments are safe and productive workplaces.

What is required is a paradigm shift. An employee must be engaged, trained and deployed at work as if he or she has a job for life. That means all of the life issues of the employee must be considered in the context of his or her employment as a matter of course. There is need for significant stakeholder education now and hopefully with that increased level of awareness, will bring about a review of some of the issues identified in this paper by industrial organisations, employers and employees alike.

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