AGE DISCRIMINATION IN EMPLOYMENT IN AUSTRALIA
by S. Encel

Age discrimination in employment is alive and well in Australia, but its ramifications are only now being explored. Age stereotyping appears to affect older people, whose situation receives much less attention than the problem of youth unemployment. The general prevalence of “ageism” creates a climate in which age discrimination can flourish in spite of legal remedies. In this article, author Encel examines the issues and gives them a human face by using case studies.

Discrimination and the Law

Since the mid-1970s, there has been a succession of legal changes in two related fields:
- The banning of discrimination on the grounds of age; and
- Abolition of compulsory retirement.

The move to ban age discrimination is part of a wider context, in which the law has been used against discrimination on a variety of grounds, including sex, marital status, religion, ethnic origin, disability and (in some jurisdictions) sexual preference. These moves were strongly influenced by developments in the United States, including the civil rights movement and the women’s movement. Both equal employment opportunity (EEO) and affirmative action have been adopted as government policy in Australia, although their institutional form diverges considerably from North American and British practices.

EEO began its career in Australia in public employment, where it has been more solidly entrenched than the private sector. A long history of discrimination against women employees started to break down in 1966, when the Federal (Commonwealth) government abolished the “marriage bar” in Commonwealth employment. Previously, a woman employee lost her permanent status upon marriage. The state governments gradually followed suit over a number of years.

Anti-discrimination legislation began in 1975, when the state parliament of South Australia passed the Sex Dis-
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crimination Act, which covered public employment. Other states again followed. The most elaborate system operates in the state of New South Wales (NSW), where the first Anti-Discrimination Act was passed in 1977. The Act set up an Anti-Discrimination Board (ADB), an Equal Opportunity Tribunal, and a Directorate of Equal Employment Opportunity in Public Employment. In a later section of this article, the incidence of complaints to the ADB against age discrimination will be examined.

The original NSW government proposals included age as a ground for complaints against discrimination. However, this ran into trouble in the upper house of the state parliament, where the government did not have a majority. Members of the upper house were strongly lobbied by employers' organizations, which have consistently opposed anti-discrimination legislation, as well as the abolition of compulsory retirement. The Act was passed without the inclusion of age, although the ADB was given the task of assessing the impact of age discrimination. In 1980, the annual report of the ADB recommended that age should be included in the Act. The same report also opposed the abolition of compulsory retirement. Compulsory retirement was abolished in 1991, and age discrimination was banned in 1993 (Carney, 1997: 260–2).

The abolition of compulsory retirement was originally recommended in an official report in 1976. The economist Ronald Henderson, well known for his investigations into poverty, pointed out that poverty was disproportionately concentrated among older people, and that discrimination in employment was one of the causes (Commission of Inquiry into Poverty, Main Report, 1976). This proposal lay dormant for a number of years. The first state to move in this direction was New South Wales, in 1990, and similar legislation was enacted in the other states in the following six years. Apart from the small state of Tasmania, all states have now enacted complementary legislation on age discrimination and compulsory retirement.

The Australian (Commonwealth) government has not yet moved in this direction, although there have been several recommendations from official inquiries, and an attempt to legislate through a private member's bill in 1992.