

Willing to Work
Australian Human Rights Commission
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By email: ageanddisabilityinquiry@humanrights.gov.au

20 November 2015

To whom it may concern

Willing to Work: National Inquiry into Employment Discrimination against Older Australians and Australians with Disability

The Employment Law Centre of Western Australia (Inc) (**ELC**) welcomes the opportunity to make a submission to the Australian Human Rights Commission (**AHRC**) in relation to Willing to Work: National Inquiry into Employment Discrimination against Older Australians and Australians with Disability (**Inquiry**).

ELC is a community legal centre which specialises in employment law. It is the only not for profit legal service in Western Australia offering free employment law advice, assistance and representation. ELC assists close to 4,000 callers each year through its telephone Advice Line service and provides further assistance to approximately 500 employees each year.

Please see our submission below.

Yours faithfully

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1. TERMS OF REFERENCE

The terms of reference of the Inquiry are the:

- practices, attitudes and Commonwealth laws that deny or diminish equal participation in employment of older Australians and Australians with a disability; and
- recommendations as to Commonwealth laws that should be made or amended, or action that should be taken, to address employment discrimination against older Australians and Australians with a disability.

2. SUBMISSION

2.1 Practices, attitudes and laws that deny or diminish equal participation in employment of older Australians or Australians with a disability

In ELC's experience, workplace discrimination is an ongoing practice that denies or diminishes equal participation in employment of older Australians, and of Australians with a disability.

The AHRC's 2015 report, *National prevalence survey of age discrimination in the workplace*, reports that 27% of Australians aged 50 years older and over believe that they experienced age discrimination in the workplace during 2013 and 2014.¹ In the 2014/2015 financial year, ELC advised 45 clients in relation to age discrimination.

In the 2013/2014 and 2014/2015 financial years, ELC assisted 274 and 272 clients (respectively) in relation to claims of disability discrimination. These figures show a significant increase in the number of ELC clients reporting disability discrimination, with ELC having advised 107 clients in relation to disability discrimination in the 2010/2011 financial year.

CASE STUDY 1

Client A was a teenager and suffered from dyslexia. He reported this to his retail employer, and afterwards was treated differently. He was called into a meeting to explain his dyslexia and was no longer given positive feedback on significant sales. He was dismissed on the basis that he had not met his sales targets, and later told that his position had actually been made redundant due to overstaffing. Client A believed he was dismissed due to his dyslexia. Client A brought an adverse action claim under the *Fair Work Act 2009* (Cth), and recovered compensation at conciliation.

CASE STUDY 2

Client B was in his late 40s and worked for a contracting company. His employer made a number of redundancies, but selected only the older employees for redundancy, retaining younger employees who had been employed for less than a year and who were considerably less experienced. Client B requested a review of the employer's decision and stated he was prepared to accept a role anywhere in Australia. The employer did not reverse its decision or find an alternative role for the client.

CASE STUDY 3

Client C was 55 years old. He was bullied at work by other employees who were in their 20s. Client C made a general protections claim, and was dismissed on the grounds of redundancy while the claim was in process. Client C believed he was selected for redundancy because of his age.

2.2 Commonwealth laws that should be made or amended, or action that should be taken, to address employment discrimination against older Australians and Australians with a disability

The continued presence of disability and age discrimination in Australian workplaces indicates scope for improvement in Commonwealth laws to address employment discrimination against older Australians and Australians with a disability.

2.2.1 Changes to discrimination legislation

In our view, the following aspects of the *Age Discrimination Act 2004* (Cth) (**AD Act**) and the *Disability Discrimination Act 1992* (Cth) (**DD Act**) require attention:

- the exemptions from protection for domestic workers in the AD Act and DD Act;
- the absence of a regulator to enforce the AD Act and DD Act;
- the narrow range of penalties that can be imposed on employers under the AD Act and DD Act;
- issues with the claims process;
- the cost risk to complainants.

Remove exemption in respect of domestic workers

AD Act

It is unlawful for an employer or a person acting or purporting to act on behalf of an employer to discriminate against a person on the ground of the other person's age in the context of deciding who to hire, the terms of a person's employment and who to dismiss (ss 18(1) and (2)).

However, it is not unlawful for a person to discriminate against another person, on the ground of the other person's age, in connection with employment to perform domestic duties on the premises on which the first-mentioned person resides (s 18(3)).

According to the explanatory memorandum to the *Age Discrimination Bill 2003*, "this exemption reflects the distinction between public life, where age discrimination is prohibited, and private life where a greater degree of individual choice is recognised".

DD Act

It is unlawful for an employer to discriminate against a person in determining who to hire, the terms of that person's employment or deciding to dismiss someone on the basis that they have a disability (s 15(1)).

It is not, however, unlawful to discriminate in the context of hiring or dismissing a person engaged in providing domestic services at the employer's private residence (s 15(3)).

RECOMMENDATION 1: That section 18(3) of the AD Act and section 15(3) of the DD Act be repealed.

Expand the powers and functions of the AHRC

Whilst the AHRC has an investigative and advisory role under the AD and DD Acts, its powers are limited to:

- inquiring into and attempting to conciliate complaints made to the AHRC;
- requiring parties to attend a compulsory conciliation;
- obtaining documents relevant to the complaint;
- terminating a complaint on various grounds; and
- granting and renewing exemptions from certain provisions of the AD and DD Acts.

Whereas the Fair Work Ombudsman can investigate and commence proceedings on behalf of employees subjected to unlawful discrimination under the *Fair Work Act 2009* (Cth) (**FW Act**), the AHRC cannot pursue an action against employers who breach or who are suspected of breaching the AD Act or DD Act.

If a complaint of age or disability discrimination cannot be resolved at the conciliation stage, the complainant must apply to have the matter heard by the Federal Circuit Court or Federal Court. If a settlement agreement is reached at conciliation, but the employer later refuses to comply with the agreement, then the employee may only enforce the agreement via a breach of contract claim. In either case, applications for relief are procedurally complex and difficult to pursue without legal assistance. These challenges are magnified by the risk that the claimant may have to pay the other party's costs if their discrimination claim is unsuccessful.

In light of these issues, we think that the AD Act and the DD Act should be amended to:

- allow the AHRC (or another independent regulatory body) to investigate complaints of discrimination and to commence proceedings on behalf of employees. The AHRC should have power to seek penalties for breaches of the AD Act and the DD Act (see below), compensation for the victim of the discrimination and punitive damages where appropriate;
- expand the AHRC's power to obtain information and documents to enable it to compel the production of all documents relating to any matter in question, and increase the obligation on the person producing documents to mirror court ordered discovery in other jurisdictions; and
- enable the AHRC to commence proceedings on its own initiative to enforce settlement agreements.

These amendments would:

- allow the AHRC to commence proceedings against employers who either repeatedly breach the AD Act or DD Act (but without intent to do so) or who have done so deliberately knowing that they are in breach of the AD Act or DD Act;
- assist to further deter employers from contravening the age or disability discrimination provisions of the AD Act or DD Act;
- increase public awareness of the unacceptability of age and disability discrimination issues through any publicity surrounding legal action taken by the AHRC.

RECOMMENDATION 2: That the AD Act and DD Act be amended to allow the AHRC (or another independent regulatory body) to investigate and conduct proceedings on behalf of employees.

RECOMMENDATION 3: That the AD Act and DD Act be amended to allow the AHRC to enforce settlement agreements.

RECOMMENDATION 4: Expand the AHRC's power to obtain information and documents to enable it to compel the production of all documents relating to any matter in question, and increase the obligation on the person producing documents to mirror court ordered discovery in other jurisdictions.

Introduce penalties for breaches of the AD Act and the DD Act

Limited remedies are available for a breach of the AD Act and the DD Act. Penalties and punitive damages are not available for a breach of the AD Act and the DD Act, in contrast to the position under similar legislation, such as the FW Act and occupational health and safety legislation.

Under the AD Act and the DD Act, it is a criminal offence to victimise a person on the basis of their age or disability, to incite another person to unlawfully discriminate against a person on the basis of their age or disability, and to publish or display a discriminatory advertisement. However, these are the only categories of offence. All other forms of discrimination do not constitute offences under the Acts.

Under the FW Act, corporate employers who have engaged in unlawful discrimination can incur a penalty of up to \$51,000.² In ELC's view, civil penalties should be imposed for breaches of the AD Act and the DD Act. Such penalties should be payable to the victim of discrimination. Guidance could be drawn from the penalties payable under the FW Act in determining the penalties applicable under the AD Act and DD Act.

Imposing penalties would act as a further deterrent to employers, and would encourage employers to be proactive in preventing discrimination in the workplace and to better respond to discrimination complaints.

RECOMMENDATION 5: That the AD Act and DD Act be amended to provide for civil penalties to be imposed for breaches of the Acts, and allow those penalties to be paid to the victim of discrimination.

Improve the claims process in the AHRC

During the period 2013 to 2014, 43% of older Australians believed they had been victims of age discrimination did not take any action regarding that discrimination.³

Based on ELC's experience, there are a number of reasons why claimants in Western Australia may decide against making a discrimination complaint under the AD Act or DD Act, connected with the claims process in the AHRC. These include:

- the lack of an AHRC office in Perth;
- the fact that no assistance is provided if the matter proceeds to the Federal Circuit Court or Federal Court;
- the length of time that it takes the AHRC to deal with complaints; and
- the fact that the complainant bears the onus of proof.

Establish an AHRC presence in Western Australia

Based on ELC's experience, where a Western Australian employee makes a complaint under the AD Act or the DD Act, the AHRC's usual practice is to fly over a conciliator from interstate who deals with a number of different complaints on the same visit, or to conduct the conciliation by telephone.

Because of this, a Western Australian complainant may have a different experience in the conciliation of their claim to another claimant whose conciliation is conducted in person. In ELC's experience, in-person appearances are often of benefit to complainants who are more vulnerable (e.g. who do not speak English) and who are not represented. Similarly, in ELC's experience, a valuable part of a dispute resolution process can be the opportunity for the parties to appear together before the conciliator (or other facilitator or decision maker), to discuss the matter at hand and to seek to resolve it.

Given this, ELC recommends that the AHRC establishes an office or other physical presence in Western Australia and that additional funding be allocated to the AHRC for this purpose.

RECOMMENDATION 6: That the AHRC establish an office or other physical presence in Western Australia.

AHRC to provide assistance if the matter goes to the Federal Circuit Court or Federal Court

Where the Equal Opportunity Commission (**EOC**) refers a discrimination complaint to the State Administrative Tribunal (**SAT**), the EOC is obliged to provide assistance to the complainant in presenting his or her case to the SAT.⁴ This means that where a complainant has a meritorious case that cannot be resolved at conciliation, it is likely that he or she will receive assistance throughout the complaint process. In this sense, the EOC is a more user-friendly jurisdiction for vulnerable complainants.

If a complainant is unable to resolve a complaint under the AD or DD Act in the AHRC, the complainant will not receive any assistance from or through the AHRC in presenting his or her case in the Federal Circuit Court or Federal Court.

ELC recommends that the AD Act and DD Act be amended so that:

- the AHRC can refer a complaint to the Federal Circuit Court or Federal Court; and
- where the AHRC does so, it is obliged to provide assistance to the complainant in presenting his or her case to the AHRC.

RECOMMENDATION 7: That the AD Act and DD Act be amended to allow the AHRC to refer a complaint to the Federal Circuit Court or Federal Court and, where it does so, to require the AHRC to assist the complainant in presenting his or her case.

On average it takes five months to finalise a matter in the AHRC.⁵ On average it takes four and half months to finalise a matter in the EOC.⁶ In the Fair Work Commission (**FWC**) in 2011-12, 90% of general protections claims involving dismissal and unlawful termination claims were finalised in the FWC within 97 days (i.e. approximately 3 months and one week).⁷

From our review of the statistics, it appears that matters are finalised less quickly in the AHRC than in other tribunals. This is consistent with ELC's experience and may be connected to the absence of an AHRC office in Western Australia.

In our experience, employees are eager to resolve complaints as quickly as possible, particularly where they wish to continue their employment. The slower timeframes in the AHRC may deter complainants from using this jurisdiction.

RECOMMENDATION 8: That the AHRC review its procedures in dealing with complaints with a view to reducing complaint resolution timeframes.

Reverse the onus of proving discrimination

Claimants under the AD Act, EO Act⁸DD Act bear the onus of proving discrimination. This is different to the FW Act⁹, where there is a reverse onus of proof in respect of discrimination matters, so the respondent must prove that they did not engage in discrimination.

The absence of a reverse onus of proof under the AD Act, EO Act and the DD Act puts complainants at a significant disadvantage. The complainant may not have access to evidence of discrimination (without requesting documents and evidence via the AHRC), while the respondent should have most information relevant to whether discrimination occurred.¹⁰

Of the 43% of Australians aged 50 years or older who experienced age discrimination in 2013 and/or 2014 and took no action in response, 23% indicated that their reason for not taking action was that their complaints would not be believed, they had no proof of the discrimination and believed nothing could be done.¹¹

As noted in commentary on the subject, "proving the reason for an action or decision that exists in another person's mind, where all the evidence is controlled by the other person and they are not required to give any reason, is very difficult."¹²

Victoria Legal Aid notes that in its experience, clients who suffer discrimination often decide not to pursue a complaint due to the difficulty in proving the conduct.¹³ The effectiveness of anti-discrimination laws is greatly reduced where complainants are required to prove the discrimination.

The AD Act, EO Act and DD Act should be amended to provide for a reverse onus of proof in discrimination complaints, in line with the equivalent provisions in the FW Act.¹⁴

A reverse onus of proof under the AD Act, EO Act and DD Act would be in line with the FW Act, the FW Act's predecessor¹⁵ and the approach of the European Union and the United Kingdom.¹⁶ It would see a consistent approach in discrimination complaints and would assist claimants who bring claims, which would assist to address the issue of discrimination in the workplace.

RECOMMENDATION 9: That the AD Act, EO Act and DD Act be amended to provide for a reverse onus of proof in discrimination complaints, in line with the equivalent provisions in the FW Act.

Reduce scope for costs orders against complainants

Where a discrimination complaint cannot be resolved through conciliation at the AHRC, the next step for the complainant is to commence proceedings in the Federal Circuit Court or Federal Court.

While the AHRC is a no costs jurisdiction, once the matter proceeds to the Federal Circuit Court or Federal Court, costs awards can be made.¹⁷ If the complainant is unsuccessful in establishing a discrimination complaint, the complainant may be liable for the respondent's costs.

By contrast, under both the *Equal Opportunity Act 1984* (WA) (**EO Act**) and the FW Act, if a discrimination complaint proceeds beyond conciliation, the standard position is that the parties bear their own costs.¹⁸ In these jurisdictions, costs are rarely awarded. Where the complaint is frivolous or vexatious or the complainant has engaged in some other unreasonable behaviour which has caused the respondent to incur costs unnecessarily, the complainant may be liable for costs.¹⁹

The fact that complaints under the AD Act and DD Act proceed to a costs jurisdiction is a potential deterrent for employees seeking to address disability or age discrimination. This is particularly so where the complainant is a low-income earner who may not be prepared to risk a costs order, whatever the strength of their claim. ELC often advises clients against pursuing discrimination complaints under the federal discrimination legislation because of this risk.

ELC recommends that the AD Act and the DD Act be amended so that:

- the parties to an age or disability discrimination complaint before the Federal Circuit Court or Federal Court generally bear their own costs; and
- costs can only be awarded in limited circumstances – for instance, where a claim is frivolous, vexatious or has no reasonable prospect of success.

RECOMMENDATION 10: That the AD Act and DD Act be amended so that parties to an age or disability discrimination complaint before the Federal Circuit Court or Federal Court bear their own costs unless the complaint is frivolous, vexatious or has no reasonable prospect of success.

2.2.2 Changes to the FW Act

Introduce mandatory conciliation conferences for all general protections claims

ELC's experience is that conciliation conferences are effective in assisting vulnerable, self-represented litigants to successfully resolve claims. This category of litigant would likely include those at risk of age and disability discrimination.

Currently, conciliation conferences in relation to general protections claims under the FW Act are only compulsory where the claim relates to a dismissal from employment.²⁰

ELC proposes that section 374 of the FW Act be amended to make conciliation conferences mandatory for all general protections claims. This will require employers to conciliate in relation to general protections claims which may involve, for example, a matter where the alleged adverse action is a decision not to promote an employee because of their age.

RECOMMENDATION 11: That s 374 of the FW Act be amended so that conciliation conferences become mandatory for all general protections claims.

Increase limitation period for dismissal based claims

Currently, an unfair dismissal application and a general protections claim where the adverse action is dismissal must be lodged within 21 days of the dismissal.²¹ While applications may be made out-of-time, late applications are accepted only in exceptional circumstances.²² ELC's experience is that the limitation period is strictly applied by the Fair Work Commission and that out-of-time applications are not often successful.

The short limitation period for these dismissal related claims presents difficulties for vulnerable, low-income workers, including older people and people with disability, who may be unaware of legal remedies available to them in relation to dismissal and may not have access to timely legal advice.

ELC proposes an increase to the limitation period for unfair dismissal claims, and general protections claims involving dismissal. In ELC's submission, the limitation period for dismissal related claims should be 90 days from the date of dismissal.

Further, ELC proposes that the requirement of exceptional circumstances in the consideration of out-of-time unfair dismissal applications as set out in section 394(3) of the FW Act and for dismissal related general protections claims under section 366(2) of the FW Act be removed in recognition of the difficulty that the short limitation period provides for vulnerable, low-income earners who may be unaware of their rights and unable to readily access prompt legal advice.

RECOMMENDATION 12: That the limitation periods for dismissal related claims under the FW Act be increased to 90 days from the date of dismissal and the requirement of exceptional circumstances for an extension of time for dismissal related claims be removed.

Expand mandatory considerations relevant to unfair dismissal claims to include age and disability

ELC proposes that the age and disability of an employee at the time of dismissal be included in section 387 of the FW Act as a mandatory relevant consideration in assessing whether the employee's dismissal has been harsh, unjust or unreasonable. This reflects that age and disability are likely to be relevant to whether the dismissal of an employee is harsh, unjust or unreasonable. This would also mandate consideration of the likely difficulty that an older employee or an employee with a disability may have in finding alternative employment.

RECOMMENDATION 13: That s 387 of the FW Act be amended to include the age and any disability of an employee as a mandatory relevant consideration in assessing whether the employee's dismissal has been harsh, unjust or unreasonable.

Increasing compensation that may be awarded

Currently, compensation under the EO Act, the FW Act (in respect of unfair dismissal claims) and the *Industrial Relations Act 1979* (WA) (**IR Act**) is capped. For example, compensation for a discrimination claim to the EOC or SAT under the EO Act is capped at \$40,000.00.²³ For an unfair dismissal claim under the FW Act, compensation is limited to 6 months' remuneration of the employee, or half the high-income threshold (i.e. \$66,500 from 1 July 2014), whichever is lower.²⁴ Compensation is only payable on an unfair dismissal claim under the IR Act if reinstatement and re-employment are impracticable, and is capped at 6 months' remuneration of the employee.²⁵

These compensation provisions discriminate against older workers and workers with disabilities. Capping compensation reduces a decision maker's discretion to consider the effects of discrimination and dismissal which are heightened in this demographic, such as the negative effect on self-esteem, mental health, family and finances and the likely possibility of unemployment.²⁶ Although we note that there may be alternative claims where damages are uncapped, such claims may not be appropriate in all circumstances of age and disability discrimination.

ELC proposes increasing the compensation that may be awarded under the EO Act, FW Act and IR Act to allow for adequate compensation of persons unfairly dismissed or discriminated against following a significant period of service.

RECOMMENDATION 14: That the caps on compensation available under the EO Act, the FW Act and the IR Act be removed.

Notice period

Currently, a worker over 45 years of age is entitled to an additional week's notice upon termination of their employment by their employer, provided that they have completed the necessary minimum period of employment with the employer.²⁷ ELC proposes that this minimum additional entitlement to notice for older employees be increased to four weeks' additional notice, to reflect the greater difficulty that an older worker may encounter in finding alternative employment. ELC also proposes removing the requirement that a worker over the age of 45 years complete a minimum period of service prior to qualifying for this additional notice entitlement.

RECOMMENDATIONS

ELC recommends that:

1. section 18(3) of the AD Act and section 15(3) of the DD Act be repealed, to remove the exception in respect of domestic workers;
2. the AD Act and DD Act be amended to allow the AHRC (or another independent regulatory body) to investigate and conduct proceedings on behalf of employees;
3. the AD Act and DD Act be amended to allow the AHRC to enforce settlement agreements;
4. the AHRC's power to obtain information and documents be expanded to enable it to compel the production of all documents relating to any matter in question, and that the obligation on the person producing documents be increased to mirror court ordered discovery obligations in other jurisdictions;
5. the AD Act and DD Act be amended to provide for civil penalties to be imposed for breaches of the Acts, and to allow those penalties to be paid to the victim of discrimination;
6. the AHRC establish an office or other physical presence in Western Australia;
7. the AD Act and DD Act be amended to allow the AHRC to refer a complaint to the Federal Circuit Court or Federal Court and, where it does so, to require the AHRC to assist the complainant in presenting his or her case;
8. the AHRC review its procedures in dealing with complaints with a view to reducing complaint resolution timeframes;
9. the AD Act, EO Act and DD Act be amended to provide for a reverse onus of proof in discrimination complaints, in line with the equivalent provisions in the FW Act;
10. the AD Act and DD Act be amended so that parties to an age or disability discrimination complaint before the Federal Circuit Court or Federal Court bear their own costs unless the complaint is frivolous, vexatious or has no reasonable prospect of success;
11. section 374 of the FW Act be amended so that conciliation conferences become mandatory for all general protections claims;
12. the limitation periods for dismissal related claims under the FW Act be increased to 90 days from the date of dismissal and the requirement of exceptional circumstances for an extension of time for dismissal related claims be removed;
13. section 387 of the FW Act be amended to include the age and any disability of an employee as a mandatory relevant consideration in assessing whether the employee's dismissal has been harsh, unjust or unreasonable; and
14. the caps on compensation available under the EO Act, the FW Act and the IR Act be removed.

References

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- ¹ Australian Human Rights Commission, *National prevalence survey of age discrimination in the workplace* (2015), 9.
- ² *Fair Work Act 2009* (Cth) s 539.
- ³ Australian Human Rights Commission, *National prevalence survey of age discrimination in the workplace* (2015), 67.
- ⁴ *Equal Opportunity Act 1984* (WA) s 93(2).
- ⁵ Australian Human Rights Commission, *Annual Report 2011-2012* (2012), 67, <https://www.humanrights.gov.au/sites/default/files/content/pdf/about/publications/annual_reports/2011_2012/AHRC_AnnualReport11-12_Final.pdf>.
- ⁶ Equal Opportunity Commission (WA), *Annual Report 2011-2012* (2012), 46, <http://www.eoc.wa.gov.au/Libraries/Annual_reports/2011-12_AR_web_pdf.sflb.ashx>.
- ⁷ Fair Work Commission, *Annual Report 2011-2012* (2012), 26, <http://www.fwc.gov.au/documents/annual_reports/ar2012/FWA_Annual_Report_2011-12.pdf>. This document did not provide information about the average amount of time taken to finalise general protections claims in the FWC, nor did it provide information about how much time it took to finalise general protections claims not involving dismissal.
- ⁸ Equal Opportunity Commission website, <http://www.eoc.wa.gov.au/complaints-inquiries/making-a-complaint>, accessed on 19 November 2015.
- ⁹ *Fair Work Act 2009* (Cth) ss 361 and 783.
- ¹⁰ Laurence, Lustgarten, 'Problems of Proof in Employment Discrimination Cases' (1977) 6 *Industrial Law Journal* 212, 213.
- ¹¹ Australian Human Rights Commission, *National prevalence survey of age discrimination in the workplace* (2015), p 70.
- ¹² Gaze, Beth, 'Has the Racial Discrimination Act contributed to eliminating racial discrimination? Analysing the litigation track record 2000-2004' (2005) 11(1) *Australian Journal of Human Rights* 171, [50].
- ¹³ Victoria Legal Aid, Submission to The Australian Human Rights Commission, *On Age Barriers To Work In Commonwealth Laws*, 23 November 2012, 1.
- ¹⁴ *Fair Work Act 2009* (Cth) ss 361 and 783.
- ¹⁵ *Workplace Relations Act 1996* (Cth) s 170CQ.
- ¹⁶ *Sex Discrimination Act 1975* (UK) c 65, ss 63A, 66A, The Council of the European Union Directive 97/80/EC and Sex Discrimination (Northern Ireland) Order 1976. NI 15, arts 63A, 66A.
- ¹⁷ *Federal Circuit Court of Australia Act 1999* (Cth) s 79; *Federal Court of Australia Act 1976* (Cth) s 43; *Hughes v Western Australian Cricket Association (Inc)* (1986) ATPR 40-748, 48-136.
- ¹⁸ *State Administrative Tribunal Act 2004* (Cth) s 87(1); *Fair Work Act 2009* (Cth) s 611(1).
- ¹⁹ *State Administrative Tribunal Act 2004* (Cth) ss 87(3), (4); *Fair Work Act 2009* (Cth) s 611(2).
- ²⁰ *Fair Work Act 2009* (Cth) ss 365, 374.
- ²¹ *Fair Work Act 2009* (Cth) ss 366 and 394.
- ²² *Fair Work Act 2009* (Cth) s 336 and 394.
- ²³ *Equal Opportunity Act 1984* (WA) s 127.
- ²⁴ *Fair Work Act 2009* (Cth) s 392.
- ²⁵ *Industrial Relations Act 1979* (WA) s 23A.
- ²⁶ See generally Australian Human Rights Commission, *National prevalence survey of age discrimination in the workplace* (2015).
- ²⁷ *Fair Work Act 2009* (Cth) s 117(3)(b), currently 2 years' continuous service.