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

# Submission No 133

**Name** Max Duval **[redacted]**

**Submission made by**

[x]  Older Australian in work

# Submission regarding Older Australians / Australians with Disability / Both

### **Your experience**

**Have you (or the person you are submitting on behalf of) experienced employment discrimination?**

[x]  Yes

[ ]  No

[ ]  Not sure

**Did you take any action in relation to the employment discrimination you experienced?**

[x]  Yes

[ ]  No

**Please tell us more, for example, what action you took and how effective you felt it was; or why you chose not to take any action.**

The action I have taken is the lodging of this submission, which in essence relates to Tax Ruling 2009/2 where on the basis of age a small group (4-5 employees) out of 478 redundant employees have been discriminated against by the ATO, and denied access to the “Genuine Redundancy” tax free allowance of an initial $9780 plus $4891 for each year of service.

This ruling is discriminatory as a small minority of employees are being treated less favourably than the bulk of the employees because of their age.

**Did your experience of employment discrimination impact on your participation in the workforce? (For example, did you have to stop work, change jobs or take sick leave?)**

[ ] Yes

[x] No

**Please tell us more**

### **Barriers**

**Do you think older Australians/Australians with disability face barriers when they look for work or are in a job?**

[x] Yes

[ ] No

[ ] Not sure

**If yes, or not sure, what do you think these barriers might be?**

A substantial financial disincentive to work past the age of 65 years for mature age employees when they are made redundant.

**Does employment discrimination have an impact on gaining and keeping employment for older Australians/Australians with disability?**

[x] Yes

[ ] No

[ ] Not sure

**Are there any practices, attitudes or laws which discourage or prevent equal participation in employment of older Australians/Australians with disability?**

[x] Yes

[ ] No

[ ] Not sure

**Please tell us more**

This specifically relates to mature age persons when they are made redundant and the application of a tax ruling which essentially indicates that once you are over the age of 65 years of age and are made redundant you are denied the tax free status applicable to all your co-workers, and have substantial additional tax imposed on the redundancy as opposed to a co-worker whose is just under the age of 65.

The current example I give affects maybe only 4-6 persons in the workforce which is being made redundant on the **[redacted]** (redundancy date).

The company is **[redacted]** which is closing down its **[redacted]** and **[redacted]** station at **[redacted]** and most likely some or all of the **[redacted]** Office.

The closure of all operations involve up to 478 persons being made redundant. Some have a right to return to **[redacted]** Public sector and in the case of **[redacted]** this is 69 persons.

In the case of **[redacted]** it has had a very stable workforce with many employees having in excess of 30 years’ service. A small proportion (2-4 persons) have attained the age of 65 and have recently been informed that due to tax law they will not be treated as having a “genuine” redundancy having past the age of 65 years, and will lose their tax free component which is based on years of service.

As an example, a person with 35 years of service will lose a tax free amount of $180,965 and will pay tax at various rates on the total redundancy package.

Despite the rhetoric by both governments (Labour and Liberal) of actively encouraging mature age workers to remain in the workforce (and pay tax), due to a lack of replacement workers coming through and an ageing workforce, the tax law TR 2009/2 actively discriminates and financially penalises any person who is made redundant over the age of 65.

This tax ruling state that “an employee receiving a genuine redundancy must at the time of dismissal be aged less than 65 or less than a younger age of compulsory retirement for the particular position in question”.

This is in direct contrast to the incremental increasing of retirement ages for pensions over future years with the previous minimum preservation age of 55 now being 56 as from July 2015.

**What are the incentives and disincentives for older Australians/Australians with disability to work?**

**Incentives:**

I have not found any, except the need to save more money in an attempt to become self-funded retiree and not draw on the age pension.

**Disincentives:**

In addition to the tax treatment of redundancy for persons over 65 there are also a number of other disincentives namely:

1. Availability of transition retirement options.
2. Loss of workers compensation over 65.
3. Loss of disability and income protections.
4. Inability to salary sacrifice greater than $35,000 into super
5. Some defined benefit schemes have little economic benefit for a person to work beyond 60 years.
6. No access to any senior type cards etc.

### **Good practice**

**Are there examples of good practice and workplace policies in employing and retaining older Australians/ Australians with disability?**

[ ] Yes

[ ] No

[x] Not sure

**Please tell us of examples of good practice in employing and retaining older Australians/ Australians with disability in work that you are aware of.**

I have not come across any examples.

### **Solutions**

**What action should be taken to address employment discrimination against older Australians/Australians with disability?**

Actively promote in media any real life cases. Good quality investigative journalism of matters such as these, given the large number of redundancies that are occurring.

**What should be done to enhance workforce participation of older Australians/Australians with disability?**

Actively promote in media.

Compulsory training in bringing up employers and employee groups, particularly in the people and culture work areas to understand changing retirement ages and demographics of the current and future workforce.

A one-stop website for persons to access. Actively promote the resources available to the average Australian.

Review of the changing retirement laws and linkages to adjust older laws that do not reflect current government policy. This tax ruling in 2009 is such as case and no doubt there will be many more.

Review of all age based laws to see that they comply with current government and community expectations.

**What outcomes or recommendations would you like to see from this National Inquiry?**

A change in the tax ruling TR2009/2 to allow persons over the age of 65 who are entitled to a genuine redundancy have access to the tax free component based on length of service.