I worked for the BP Refinery in Brisbane, which ceased production in May.  I have just turned 66.  Because of my age I am told that ATO ‘rules’ dictate that my redundancy package is to be taxed as ordinary income. (Incidentally this took a bit of research, and there were many wrong opinions given, even by the ATO, before I got to the truth of the matter.)  Having worked at the refinery for 37 full years this represents a very severe tax penalty:  I believe almost $90,000 in ***additional*** tax as punishment for having turned 65!

A simple test shows that this is pure age discrimination. Twins, born 10 minutes apart, who were made redundant on the same day, could feasibly find that one was penalised in this way, the other not.

I am fit, healthy, interested and respected; I had plenty of on-going projects that I was determined to see through for some years to come – and I would have been initiating more such projects all the time:  I could easily see myself still working at 70.  But the refinery is now closed and set for demolition.  Surely there can be no firmer standard by which redundancy can be determined than a decision, which was completely out of my hands (and indeed shocked and saddened me), to shut down, with intent to demolish, the whole object and purpose of my employment?

What really strikes me as bizarre is that the government is trying to encourage people to work for longer, and already referring to 67 and 70 as the prospective retirement age.

I do realise that this is an area which may have plenty of scope for ‘imaginative dealing’ by people who are not in fact genuinely redundant. But to make a ruling that simply catches all who have turned 65, and at such a huge personal cost to them, is surely discrimination at its worst.  Of all entities the government should do better than that!  Those who have the ability to engage in such ‘imaginative dealing’ would be well able to make such arrangements at the age of 64 years and 364 days, so what good does it do anyway?

I am informed that this tax treatment is based on a tax ruling made in 2009.  This ruling clearly contravenes the Age Discrimination Act (2004):

    Section 13 says the Act binds the Crown;

    Sections 14 a & b define ‘discrimination’ as treating an aggrieved person less favourably than a person of a different age;

     Section 17 (in the simplified section) forbids discrimination in administration of Commonwealth laws and programs – which surely captures Taxation law – and sub-section 31 elaborates on this without changing it;

     Section 37 makes reasonable age provisions around superannuation, life insurance, annuities etc, but makes no mention of redundancy;

     Sections 38 to 40 protect *persons who are acting in compliance* with an act etc – but this in no way diminishes my case;

     Schedules 1 and 2 list acts and regulations which are exempted or subject to exemption: the tax act is not listed.

I submit that this is a matter that should be taken up by the Enquiry with a view to overturning this ruling and requiring the ATO to re-fund tax collected as a result of it.

Roger Griffiths, FIEAust, CPEng, RPEQ