Extending working life for older workers: age discrimination law, policy and practice

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Virtually all advanced economies are undergoing population and workforce ageing due to historically declining birth rates and higher life expectancies. This is accelerating as the 1960s ‘baby boom’ generation reaches middle and retirement ages. Rising dependency ratios have encouraged governments to delay state pension ages and legislate against compulsory retirement and other forms of age discrimination in employment. This also responds to campaigns made on equity grounds. Employers for their part often seek to recruit and retain older workers in the face of labour shortages. The decline of heavy physical work means that these workers are more active than ever before, and more people are looking to remain in work for social and intrinsic reasons as well as financial necessity or reward. Yet age bias remains pervasive. Older workers are commonly viewed, for example, as less able or willing to learn, which disadvantages them in an era of rapid change.

The United States has had federal legislation prohibiting discrimination against older workers (defined as over 40) since the 1967 Age Discrimination in Employment Act, but in most other western countries, legislation is much more recent, as well as broader in scope. The European Union (EU) issued a directive prohibiting discrimination on the basis of age, as well as on the grounds of religion or belief, disability, or sexual orientation in 2000 (Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation). This provision was implemented in the UK in 2006 through the Employment Equality (Age) Regulations. In Australia, the Age Discrimination Act 2004 likewise looks to protect all workers from age discrimination. In New Zealand, age discrimination is one of a number of grounds explicitly made illegal under the Human Rights Act, 1993 and Employment Relations Act 2000.

This book, which is based on extensive doctoral research, focuses on the UK experience of age discrimination law. It finds that the law largely fails to deal with a deep-seated attitudinal problem and therefore discriminatory practices against older workers. Blackham approaches her subject with a legal scholar’s rigour and eye for detail, but a key strength of the book is its mixed methods approach which enables big-picture analysis and policy recommendations too. This methodology, which is based on systems theory and a ‘reflexive’ view of the law as best stimulating self-regulation, is explained in chapter 2. Empirical methods include doctrinal analysis of relevant legal texts; expert interviews in the UK and Finland; analysis of the 2011 Workplace Employment Relations Survey (WERS) and other datasets; case studies of organisational ‘best practice’; and a Delphi study involving various experts and stakeholders in search of policy consensus.

The book proceeds with an analysis of the existing UK legal framework, including case law, in chapter 3. Blackman identifies a number of ambiguities and limitations that allow age discrimination to be either exempt or widely justified under the law. Enforcement is also weak as it relies primarily on individual litigation. The following chapter discusses interviews with 17 UK experts drawn from government, employer groups, trade unions, NGOs, the judiciary and academia. These largely support the conclusion that age discrimination laws are unclear and lack certainty. Participants tend to agree, furthermore, that employers generally adopt a compliance approach rather than embracing age diversity and developing proactive measures such as flexible working. This is partly because the most immediate issue for many
employers in the aftermath of the introduction of UK law was dealing with the abolition of the default retirement age, but it is also seen to reflect deep-seated negative stereotypes concerning older workers. As one respondent put it, 'you can't legislate for attitudinal change'.

Chapter 5 further supports the minimalist view of employer practice by using WERS data to show that while employers might be formally adopting more age-aware policies, there is a lack of innovation in terms of specific initiatives including in recruitment and promotion practices as well as retention at previous retirement norms. Interestingly, structural factors such as size, sector, occupational groupings and trade union presence are not clearly related to 'best' practice. This suggests that other factors such as 'market context, management style, organisational culture, and social relations within the firm' are more important, and these are explored further in chapter 7.

Attention first turns to Finland in chapter 6 since this is widely seen as a 'good practice' case in the EU. Blackham again deploys a legal doctrinal analysis, expert interviews (13 in this instance) and statistical analysis to conclude that while Finnish laws may be 'more proactive, collective and employer-focused' than in the UK, employers there are similarly reticent. Where Finland has success is in its active labour market policies, which are based on a high tax-and-spend approach to education and welfare, and a more inclusive social partnership model of employment relations, both of which are anathema in neoliberal market economy regimes.

Five organisational case studies are explored in chapter 7. These are each identified as 'best practice' organisations with three coming from the UK (a city council, large utility and a small engineering firm) and two from Finland (a city council and a food manufacturer). It is not always made clear how many interviews were conducted, but the discussion is well organised, located within a useful review of best practice literature and offers sufficient depth to complement the preceding chapters. The findings are insightful if not entirely unexpected. For these organisations, the law is much less a consideration than 'business factors' (labour market and retention needs; employer branding), 'organisational leadership' (especially in the more political public sector context) and 'workplace culture' (which linked to size and firm ownership as well as sector). Interestingly, trade unions were not so much drivers of age equality initiatives, at least according to employer respondents. Some union interviewees also acknowledged that issues other than equality had a higher priority and admitted a tendency to focus on the recruitment and engagement of younger workers.

Chapter 8 sets out the results of an online Delphi roundtable to consider policy implications from the research that might be most useful at the organisational level. Most of the experts and stakeholders lack confidence that much more could be done by the government, and the law, other than advocacy and persuasion. Blackham concludes that this is unlikely to achieve significant progress towards tackling age discrimination, especially in the then context of austerity – an unfavourable economic context since exacerbated by the Brexit debacle.

Overall, this is an ambitious book that succeeds in locating an analysis of the limitations of age discrimination law within a wider context of policy and organisational practices that favour compliance rather than the pursuit of best practice. The primary focus is to assess how UK age discrimination laws operate in practice and to make suggestions as to how they might be improved. Employment scholars might find the book a little limited as a result (and the lawyer's use of footnotes rather than the social science convention of bibliographic references, or an author index, might also irritate). For example, it would have been useful to have a chapter devoted specifically to the theories and practice of age discrimination, of which there is a large literature across the psychology, sociology and management disciplines. The question of why is it, exactly, that institutional as well as individual discrimination
is so pervasive when the business as well as ethical case against it seems to be so strong is touched upon but not in a systematic way. Equally, other relevant employment concerns are not addressed, such as the implications, positive and negative, of managing an increasingly multi-generational workforce. Nor is the policy perspective sufficiently informed by what governments around the world are doing beyond prohibiting age discrimination (the subject of a number of studies by, for example, the ILO and OECD).

Of course, a single book cannot address everything, but there is a tendency to sometimes over-elaborate on methods at the cost of further developing context. This no doubt relates to its origins as a doctorate in law and the breadth of methods employed in its pursuit. That said, the author demonstrates a high level of competency with mixed methods and establishes a good case for the utility of socio-legal research. The book deserves to be read not just by legal scholars and students of jurisprudence, for whom the political economy and mixed methods approaches will be insightful, but anyone with an interest in age discrimination in employment, i.e., frankly, us all.

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Blue Collar Frayed (Rayner, 2018) provides an overview of the employment landscape and positioning of men contributing to, and increasingly excluded from, the blue-collar manual labour industries in Australia. Clearly influenced by her family members engaged in blue-collar work, Rayner’s impetus is clear: to highlight the trials and tribulations facing thousands of men in Australia, young and old, present and future, suffering from radical transformation of the labour market and fragmentation of career pathways and security. This book is topical and relevant to most employees and sectors today as jobs have ceased to be reliable and associated with collective identity, rather shifting towards a late-modern era where workers are tasked with reflexively monitoring conditions of increasing individualism and instability (Houghton 2019; Tomlinson 2013). Within the context of considering the future of work, Rayner offers practical value in this book as she presents informed ideas and pragmatic political suggestions about how to improve the situation for blue-collar workers.

The book starts by problematising the current situation of increasing precarity and Rayner educates the reader by highlighting figures representing changes to the Australian labour market over time (particularly the last 10 years). The voices of blue-collar workers affected then come to the fore in case studies which humanise the experiences of men in some more affected areas and industries. Rayner empathises with her informants and embeds their voices into her analysis, placing weight on personal circumstances and attachments. As a reader, the sense of loss and injustice is felt. The final chapters consider solutions, and here Rayner provides informed suggestions which are realistic and grounded in a sense of