



Australian Government

Joint Submission by the

Department of Education, Employment and Workplace Relations
Department of Human Services
Department of Families, Housing, Community Services and
Indigenous Affairs

**AUSTRALIAN LAW REFORM COMMISSION:
GREY AREAS – AGE BARRIERS TO WORK IN
COMMONWEALTH LAWS DISCUSSION PAPER (78)**

December 2012

ALRC Discussion Paper (78)

Grey Areas – Barriers to Work in Commonwealth Laws

INTRODUCTION

The Australian Law Reform Commission (ALRC) has invited submissions in response to its Discussion Paper, *Grey Areas – Age Barriers to Work in Commonwealth Laws* (Discussion Paper), released on 2 October 2012.

This is a joint submission between the Department of Education, Employment and Workplace Relations (DEEWR); the Department of Human Services (DHS) and the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA).

The Departments welcome the opportunity to take part in the second stage of the consultation processes of this Inquiry.

The Inquiry seeks responses to the specific proposals and questions in the Discussion Paper regarding whether Commonwealth legislation and related legal frameworks either directly, or indirectly impose limitations or barriers that could discourage older persons from participating, or continuing to participate, in the workforce or other productive work, including:

- Superannuation law;
- Family assistance, child support and social security law;
- Employment law;
- Insurance Law;
- Compensation laws; and
- Any other relevant Commonwealth legislation exempt under the *Age Discrimination Act 2004*.

The Terms of Reference defines ‘older workers’ as anyone over the age of 45 years, which is consistent with the definition of ‘mature age worker’ used by the Australian Bureau of Statistics. The Discussion Paper notes that stakeholders, including the Brotherhood of St Laurence have questioned the accuracy of characterising persons as ‘older’ from the age of 45 years.

We note that the definition of ‘mature age’ is dependent on the nature of Government programs and measures and the way in which they are targeted. For example, in the case of the Jobs Bonus Program, a mature age job seeker is considered eligible if they are 50+. Activity Test requirements do not differ for job seekers over 45 years of age, although different rules apply from the age of 50 (in terms of Work Experience obligations), and then from 55 (voluntary work options).

The Australian Government’s policies are aimed at encouraging more employers to appreciate the benefits of employing older workers, to help mature age job seekers find and retain work, and to help address negative attitudes and recruitment practices toward

mature age people (further information on Australian Government initiatives are available in [Appendix A](#)).

In making this joint submission, the Departments have co-ordinated and provided a holistic response. Consequently, we have responded to those questions and proposals which relate directly to DEEWR, DHS and FaHCSIA.

We recognise the importance of removing the barriers to mature age employment participation and the importance of encouraging mature age people to continue to share their skills in paid employment. Removing these barriers will:

- improve social inclusion and the welfare of mature age Australians;
- contribute to a stronger economy;
- help to minimise losses in tax revenue and
- reduce burden on the social security system.

We hope our submission may usefully inform the ALRC's response to the Government.

Information regarding the functions and priorities of the three Departments can be found below.

THE DEPARTMENT OF EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS

The Department of Education, Employment and Workplace Relations (DEEWR) is the lead government agency providing national leadership in education and workplace training, transition to work and conditions and values in the workplace.

DEEWR brings together people and services to support the Australian Government's agenda on education, employment and workplace relations. DEEWR makes a difference at many stages of an individual's life: early childhood care and development; quality education; a skilled workforce with greater participation; safe workplaces and an inclusive society.

DEEWR delivers the Australian Government's priorities and goals through the development and implementation of policies and programs. The goals are achieved in conjunction with the state and regional network, and through engagement with stakeholders to:

- **Provide a positive start in life**

Children have access to culturally appropriate support, care and education throughout early childhood that will equip them for life and learning.

- **Offer a brighter future through education**

All school students acquire the knowledge and skills to participate effectively in society and employment in a globalised economy and make successful transitions to further education, training and work.

- **Ensure a safe, fair, productive and successful workplace**

Employers and employees are supported to adopt flexible and modern arrangements that lead to mutually beneficial outcomes in Australian workplaces and for the economy.

- **Promote a participative and inclusive society**

People from all backgrounds have access to a range of services and financial support that help them overcome barriers, develop new skills and knowledge, gain employment and participate in society.

THE DEPARTMENT OF HUMAN SERVICES

The Department of Human Services (DHS) is responsible for the development of service delivery policy and provides access to social, health and other payments and services.

DHS delivers services through various customer access channels, including face-to-face services, call centre networks and online services providing social support through linkages with other assistance available in the states and territories and the wider community.

Service delivery is undertaken by DHS through:

- The **Centrelink** program which delivers a range of government payments and services to Australians - including retirees, families, carers, parents, people with disability, Indigenous people, and people from diverse cultural and linguistic backgrounds. The Centrelink program also provides services at times of major change and emergency.
- The **Medicare** program which supports the health of Australians through efficient services and payments, such as Medicare benefits, the Pharmaceutical Benefits Scheme, the Australian Childhood Immunisation Register and the Australian Organ Donor Register.
- The **Child Support** program which provides support to separated parents to provide the financial and emotional support necessary for their children's wellbeing.
- **CRS Australia** is a Disability Employment Services provider which helps people with a disability, injury or health condition to find and keep a job. It also provides injury prevention and management services assisting employers to keep their workplaces safe.

In addition to the responsibilities of DHS, the Minister for Human Services is responsible for Australian Hearing. Australian Hearing is a statutory authority that provides a full range of hearing services for children and young people up to the age of 21, eligible adults and Pension recipients, and most war veterans. This service includes assessing hearing, fitting

hearing devices and providing counselling and rehabilitative programs to enable eligible clients to manage their hearing impairment.

THE DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS

The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) is a key source of strategic advice to the Australian Government on social policy and works in partnership with other government and non-government organisations to manage a diverse range of programs and services to improve the lives of Australians. FaHCSIA also has whole-of-government responsibilities in relation to Indigenous affairs and women.

FaHCSIA aims to increase social and economic participation, improve social cohesion, close the gap on Indigenous disadvantage, support basic living standards, and support individuals, families and communities to build their capacity. The department outcomes are focused on: families and children; people who need housing support; communities and people who are vulnerable; women; senior Australians; people with disability; and carers in our community.

FaHCSIA works to achieve its seven outcomes in four main ways:

- **Payments to individuals**—FaHCSIA makes direct payments to individuals through DHS and other agencies. Primary examples include the Age Pension, Disability Support Pension, Family Tax Benefit and Commonwealth Rent Assistance.
- **Working with the states and territories**—FaHCSIA works with the states and territories to achieve outcomes in their areas of responsibility, including housing, disability services, addressing Indigenous disadvantage, concessions and the welfare of children.
- **Payments for community services**—FaHCSIA funds community-based organisations to deliver a range of local services, including family relationship services, emergency relief and supported employment for people with disability.
- **Policy development, leadership, advice and coordination**—FaHCSIA supports its Ministers in their policy roles by providing advice on social policy, building the evidence base for decisions and action and coordinating whole-of-government policy for Indigenous affairs and for women.

RESPONSE TO SPECIFIC PROPOSALS AND QUESTIONS

Recruitment and Employment Law

Proposal 2–5 The Australian Government should amend s 65 of the *Fair Work Act 2009* (Cth) to extend the right to request flexible working arrangements to all employees who have caring responsibilities.

In late 2011, the Government commenced consultations with states and territories, employer and union representatives and key stakeholders on this proposal following the release of the National Carer Strategy.

As part of the Post-Implementation Review of the *Fair Work Act 2009* (Fair Work Act), the Review Panel made the following recommendation regarding the right to request flexible working arrangements:

Recommendation 5: The Panel recommends that s 65 be amended to extend the right to request flexible working arrangements to a wider range of caring and other circumstances, and to require that the employee and the employer hold a meeting to discuss the request, unless the employer has agreed to the request.

On 30 October 2012, the Fair Work Act Amendment Bill 2012 was introduced into Parliament which implements those recommendations of the Review Panel for which there is broad stakeholder support. The remaining recommendations, including the recommendation to extend right to request provisions in the National Employment Standards (NES), are still being considered by Government.

In considering the expansion of the right to request provisions, the Government will have regard to other relevant inquiries and reports which are reviewing the operation of the provisions, including this ALRC inquiry and the ALRC inquiry into family violence.

Question 2–1 In what ways, other than through changes to the *Fair Work Act 2009* (Cth), should the Australian Government develop or encourage flexible working arrangements for mature age workers?

Recently released research, *Creating jobs through NBN-enabled telework*¹, has found that people now expect to transition into retirement rather than cease work completely. A majority of mature workers surveyed for the research (60%) indicated they would take up telework position if they could, delaying their retirement by an average of 6.6 years.

A forum on telework held by the Department of Broadband, Communications and the Digital Economy (DBCDE) and the Australian Information Industry Association (AIIA) in 2011 identified that to increase the use of telework, Australia needed “a significant shift in the culture of organisations from attendance at a workplace and physical supervision to a focus

¹ *NBN enabled telework: The economic and social impact on labour force participation*, Colmar Brunton Research and Deloitte Access Economics for the Commonwealth of Australia, 2012

on the outcomes to be achieved and the new forms of leadership, management and communication that will ensure business results.”²

The Government has committed the Australian Public Service (APS) to achieving the goal of 12 per cent of APS employees regularly teleworking by 2020. The APS commitment is in line with the Government’s National Digital Economy Strategy goal for telework.

On 14 October 2012, the Government announced that, in collaboration with industry, a new Centre for Workplace Leadership will be established. The Centre for Workplace Leadership will help to achieve a cultural shift by improving the quality of leadership and management in Australian organisations. The Centre will lead the public debate on the importance of good leadership, workplace culture and people management and will also provide training to people to ensure that they have the practical skills to become better leaders in the workplace.

With regard to existing measures, the Fair Work Act provides for the inclusion of individual flexibility clauses in modern awards and agreements that enable individual employees and employers to negotiate working arrangements to suit individual circumstances. Using an Individual Flexibility Arrangement, an employer and employee can negotiate flexible hours of work to meet individual needs and, indeed, an estimated 71% of agreements already identify hours of work as one of the matters that can be negotiated in Individual Flexibility Arrangements. There are strong protections in place to ensure that such arrangements are genuinely made, not arrived at through coercion or force, and that the employee must be better off as a result.

The Government supports the inclusion of clauses on flexible working arrangements in agreements, noting it is a matter for discussion and negotiation between employees and employers at the workplace level. Examples of these flexible work options include flexible annual leave, 48/52 career break, home-based work, job sharing and part-time work. Part-time work, for example, is provided for in nearly 65% of agreements. The incidence of clauses for flexible working arrangements is significantly higher among agreements where more than 40% of employees are over 45 years old. For example, while 12% of all agreements provide for flexible annual leave, this rises to 30% for agreements where more than 40% of employees are older³. Provisions for make-up time appear in nearly 9% of agreements over all but in over 48% of the agreements with older employees.

The Fair Work Ombudsman has a number of guides to assist employers in implementing best practice initiatives to support the operation of the Fair Work Act. The guides highlight key aspects of the federal workplace relations system including individual flexibility arrangements and provide information on best practice and strategies for implementation.

The Fair Work Ombudsman actively seeks to educate employers and mature aged workers through the promotion of its flexible work best practice guides. These guides are available on their website at www.fairwork.gov.au/resources/best-practice-guides⁴.

² *Bringing home the benefits of telework using the NBN*, 3 August 2011
http://www.nbn.gov.au/files/2012/02/Telework_Forum_report_final.pdf

³ Data from DEEWR’s Workplace Agreements Database based on a sample of agreements approved in 2011 and 2012

⁴ Data from DEEWR’s Workplace Agreements Database, workplace agreements current as at 30 September 2012

Proposal 2-7 From 2014, Fair Work Australia will conduct the first four-yearly review of modern awards. In the course of the review, the inclusion or modification of terms in the awards to encourage workforce participation of mature age workers should be considered.

In the four yearly review of modern awards, Fair Work Australia (FWA) is required to review all 122 modern awards. As part of the four yearly reviews, parties to modern awards may seek to include terms in a modern award which encourage the workforce participation of mature age workers. Parties to a modern award can also seek to vary the terms of a modern award by application to FWA outside of the four yearly reviews. On receiving an application, FWA would consider whether the variation is necessary to achieve the modern awards objective.

However, only 15.2% of the Australian workforce has their pay and conditions set by awards, while approximately 80% derive their pay and conditions from collective and individual agreements⁵. Encouraging mature worker participation might be more effectively pursued through other initiatives such as those identified at Question 2-1 and particularly those in [Appendix A](#).

Proposal 2-8 Section 117(3)(b) of the *Fair Work Act 2009* (Cth) provides that if an employee is over 45 years of age and has completed at least two years of continuous service with the employer, then the minimum period of notice for termination is increased by one week. The Australian Government should consider amending this section to increase this period from one week to four weeks.

The Panel that conducted the Review of the Fair Work Act determined that the notice of termination provisions of the National Employment Standards (NES) appeared to be operating as intended and did not recommend changes.

The NES are the minimum entitlements for employees in the national system and, during enterprise bargaining, employers and employees are able to negotiate improved conditions such as longer notice periods to suit their circumstances. As already noted, parties are also able to apply to vary a modern award to which they are a party.

It should also be noted that s 153 of the *Fair Work Act (Cth)* states that a modern award must not discriminate against an employee because of, or for a range of reasons that include age.

Question 2-2 There is substantial overlap between the general protections provisions under the *Fair Work Act 2009* (Cth) and Commonwealth anti-discrimination legislation. In what ways, if any, could this legislation be amended to improve or clarify their interaction in circumstances of age discrimination?

The general protections now consolidate a range of protections in the Fair Work Act such as provisions covering freedom of association, discrimination, and unlawful termination. Among the reasons the Government included anti-discrimination provisions in the Act's

⁵ ABS Employee Earnings and Hours (Cat No 6306.0) May 2010

general protections was to address situations where breaches of both workplace relations laws and anti-discrimination obligations occurred. This allows most employment-related matters to be dealt with simultaneously, rather than the affected parties participating in multiple claims in multiple jurisdictions.

The Government has also committed to consolidate anti-discrimination legislation into one single comprehensive law, to make the law more user-friendly for individuals, organisations and business. Exposure draft legislation for the consolidated anti-discrimination law was released for public consultation on 20 November 2012. The Government has also asked the Senate Legal and Constitutional Affairs Committee to conduct an inquiry into the Bill, allowing community feedback prior to legislation being introduced into the Parliament.

The outcomes of the anti-discrimination consolidation project could inform the consideration of Question 2-2.

Work Health and Safety and Workers' Compensation

Proposal 3–5 The Australian Government should amend the *Safety, Rehabilitation and Compensation Act 1988* (Cth), *Military Rehabilitation and Compensation Act 2004* (Cth) and the *Seafarers Rehabilitation and Compensation Act 1992* (Cth) to ensure that retirement provisions are tied to the qualifying age for the Age Pension.

Question 3–1 Should the Australian Government amend the *Safety, Rehabilitation and Compensation Act 1988* (Cth), *Military Rehabilitation and Compensation Act 2004* (Cth) and the *Seafarers Rehabilitation and Compensation Act 1992* (Cth) to provide that in circumstances where a worker is injured after two years prior to Age Pension age, he or she should receive incapacity payments for a period longer than 104 weeks?

Question 3–3 Does the treatment of superannuation payments in the calculation of incapacity payments under the *Safety, Rehabilitation and Compensation Act 1988* (Cth) create a barrier to workforce participation for mature age workers? If so what, if any, changes should be made? 10 *Grey Areas—Age Barriers to Work in Commonwealth Laws*

The Minister for Employment and Workplace Relations, the Hon Bill Shorten MP announced a review of the *Safety, Rehabilitation and Compensation Act 1988* (SRC) Act on 24 July 2012.

The Terms of Reference for that review included, at point 1.5, “ensuring the application of workers’ compensation legislation does not disadvantage workers over the age of 65 and there is no gap between the workers’ compensation age limit and the foreshadowed increase to the age pension eligibility age to 67 by 2023.” The review is due to report on 1 February 2013 and the Government will then consider its response to the outcomes of the review.

Similarly, on 16 October 2012, Minister Shorten announced a review of the Seacare scheme. While the terms of reference for that review do not specifically mention issues related to retirement age provisions, they do include a requirement that the review consider “the

scope and necessity for amending and updating any legislative inconsistencies in the Seacare Scheme". A discussion paper on the Seacare review was released on 22 November 2012 and submissions closed on 19 December 2012. The review is due to report on 22 February 2013 and the Government will consider its response to the outcomes of the Review.

The Department of Veterans' Affairs (DVA) administers the *Military Rehabilitation and Compensation Act 2004* (MRC Act). The DVA has met separately with the Australian Law Reform Commission to discuss the MRC Act. The DVA also made a submission to the Issues Paper which addressed the interaction with DVA payments and the MRC Act.

The submission is available at:

<http://www.alrc.gov.au/sites/default/files/subs/52.veteranaffairs.pdf>

In their submission to the Issues Paper, the DVA highlighted that they will continue to monitor and ascertain potential flow-on effects for the MRC Act, we note this is especially important given the Seacare review is underway and due to report on 22 February 2013.

Proposal 3–6 The Australian Government should amend the *Seafarers Rehabilitation and Compensation Act 1992* (Cth) to provide that workers who are injured at any age after two years prior to Age Pension age may receive incapacity payments for up to 104 weeks.

As per Proposal 3-5, while the terms of reference for that review do not specifically mention issues related to retirement age provisions, they do include a requirement that the review consider "the scope and necessity for amending and updating any legislative inconsistencies in the Seacare Scheme". The review is due to report on 22 February 2013 and the Government will consider its response to the outcomes of the Review upon receipt of the report. Minister Shorten has made a commitment that the review will not result in a diminution of any existing workers' compensation entitlements.

Social Security

Proposal 5–1 The Department of Human Services should evaluate the effectiveness of its methods for communicating information to mature age persons about social security. In its evaluation, it should consider the communication of information about:

- (a) eligibility for income support payments;
- (b) participation obligations for activity-tested payments, including information about the circumstances in which exemptions from the activity test may be available;
- (c) how to calculate the effect of taking up paid work on income support payments, for example through online rate calculators; and
- (d) incentives to take up paid work, for example through Working Credit, Work Bonus, the employment income nil rate period and retention of concession cards.

The Government is continually seeking to ensure that communication channels are effective in reaching intended audiences, including those for mature aged jobseekers.

It would be feasible for DHS to undertake targeted evaluation of its methods for communicating information to mature age persons about social security, contingent on funding and resources.

Existing evaluation and research

In 2011 DHS conducted Portfolio Audience Communication research, investigating an extensive range of customer audiences' communication preferences and sentiment. These audiences included older customers who were looking for work; and older Australians in general.

The Portfolio research highlighted different stages of a customer journey: initial awareness of how DHS might assist them; checking eligibility for payment; applying for a payment and maintaining a payment. The research indicated that different communication channels could effectively target customers at different stages of this journey.

Specific information on job seeker communication preferences indicated that job seekers are most concerned with applying for and maintaining their payments. Many sought and found most of the information they needed on the website, although older job seekers also indicated they liked direct contact with staff members as part of ongoing support. In the payment maintenance phase, SMS, emails and mechanisms for updating information online were all seen as appropriate communication channels.

Older Australians were concerned with knowing about, applying for and maintaining their payments. Self-funded retirees were more comfortable with online channels while to some extent, most aged pensioners preferred printed and face-to-face communication. Older Australians were interested in being provided with relevant materials when they reached retirement. In general, they like information through newsletters, print, online and through third party organisations.

The findings of the Portfolio Audience Communication research are being implemented as an overarching communication framework. This has been integrated into DHS' current approach to customer communication – in this case with job seekers. For example:

- Express Plus mobile apps: mobile apps enable customers to do most of their interaction with DHS online once they are on payment. For example, on the mobile app, customers can update their details, report their income and do fortnightly reporting via the mobile app for job seekers. A mobile app for older Australians is in development. The mobile apps have been widely promoted across a range of channels to job seekers and take up is very positive.
- Online communities as a support mechanism; the Next Step online community provides an interactive space for customers who are moving from Parenting Payment to Newstart. From 1 January 2013, many additional customers will transfer across these payments. The online community provides information on looking for work, budgeting and child care as well as providing an environment where customers experiencing the same lifestyle change can interact.

Mature age job seekers

On application for income support, DHS advises mature aged job seekers about the income support payments for which they are eligible.

Advice is also given at this point about participation requirements, and generally, the job seeker will be referred to an employment services provider. Under Social Security law, job seekers may be required to enter into an Employment Pathway Plan (EPP). A job seeker must comply with the requirements of any EPP in effect in order to remain qualified for the payment. The EPP records activities negotiated between the job seeker and their employment services provider/DHS. It sets out the things job seekers need to do, such as looking for work or participating in training or work experience activities, in order to improve their employment prospects. When negotiating an EPP a job seeker's individual circumstances, including their participation requirements, work capacity and any vocational and non-vocational barriers to employment which the job seeker may have disclosed, need to be taken into account.

While targeted information can be made available on the DHS website to inform mature aged people about their income support entitlements and incentives to work, it is difficult to target information about income support to mature aged people who have become unemployed but have not claimed income support. Similarly, it would be difficult to evaluate the effectiveness of communication about income support to this cohort.

General Information

Information about social security is provided to mature age persons across a number of channels including:

- online through the DHS website; and at www.seniors.gov.au, the government website for Australians over 50;
- through social media channels, online communities;
- through customised information products; and
- Financial Information Service (FIS) which is a free education and financial information service provided by DHS. FIS helps people to make informed decisions about investment and financial issues by assisting them to understand their own financial affairs and what options are available to them.

A number of DHS initiatives are currently in place to assist and inform mature age persons about social security payments and the impact of paid work including:

- Online rate calculators, which prove useful in providing an estimate of various income support payments based on information the customer provides. The calculator for older Australians is able to demonstrate the impact of the work bonus.
- Articles discussing the Work Bonus published in the DHS *News for Seniors* magazine.
- Work Bonus postcards that have been distributed at forums such as Seniors' expos.

DHS also provides specific information for workers who have been made redundant:

- humanservices.gov.au has been updated to provide information to customers who have recently become redundant or retrenched. Information under the 'Job Seeker' theme provides an overview of payments and/or support that someone who has been made redundant might be eligible for, and information about relevant waiting periods:
<http://www.humanservices.gov.au/customer/subjects/retrenched-or-made-redundant>
- DHS is currently working to update current factsheet material, potentially by combining the factsheets to produce a more targeted and consistent approach.

DHS is committed to making it easier for the Australian public to access and understand information about departmental payments and services. DHS endeavours to display information to the public in a simple, logical manner and recently became the first government department to achieve a gold level certification for the use of plain language on the Human Services website from the Plain English Foundation.

Proposal 5–2 To enhance the capacity of Job Services Australia, Disability Employment Services and Indigenous Employment Program staff to respond to the needs and circumstances of mature age job seekers, the Department of Education, Employment and Workplace Relations should ensure they are provided with information about:

- (a) age discrimination, including what constitutes ageist behaviour;
- (b) the effect that illness, disability and caring responsibilities may have on mature age persons' capacity to work;
- (c) the ways in which barriers to work for mature age persons may be affected by gender, cultural and linguistic diversity, Aboriginal and Torres Strait Islander status, and sexual orientation; and
- (d) Australian government programs targeted at increasing mature age workforce participation.

Overview

Job Services Australia provides support to all job seekers, including mature age job seekers, to secure sustainable employment by providing them with the right skills, training and support based on their individual needs and the job opportunities in their local area.

The level of assistance Job Services Australia delivers and the funding the Government provides to assist a job seeker is dependent on the assessed level of disadvantage of the job seeker. Job seekers, including mature age job seekers, are placed in one of four streams of service based on their assessed level of disadvantage in the labour market. The assessment of labour market disadvantage is conducted through the Job Seeker Classification Instrument (JSCI) and, where required, an Employment Services Assessment (ESAt). The age, gender, country of birth, language spoken as a child and Indigenous status of the job seeker are among the 18 JSCI factors that help capture the relative labour market disadvantage mature age job seekers may face.

Employment Services Code of Practice and Service Guarantee

All providers are required to meet the minimum standards of service set out in the relevant Service Guarantee and the Employment Services Code of Practice. The Service Guarantee defines the nature and frequency of services to be provided to job seekers by their provider to ensure that they receive quality, personalised assistance. The Employment Services Code of Practice sets out a series of principles and commitments to high quality service delivery designed to protect the interests of both job seekers and employers, and to ensure that both are provided with quality service.

The Service Guarantees requires providers to take account of a job seeker's parenting, caring and cultural responsibilities, or other recognised limits on the job seekers ability to find work. The Service Guarantees also state that providers will ensure that their staff are trained to deliver services in a culturally sensitive way to Aboriginal and Torres Strait Islander job seekers and that job seekers will receive access to an interpreter if they require one. The Employment Services Code of Practice commits providers to ensure their staff have the skills and expertise to provide quality and culturally sensitive services to job seekers employers and the local community.

The Employment Services Code of Practice also requires providers to:

- tailor assistance to job seekers' personal circumstances, skills, abilities and aspirations;
- use available Government funding appropriately to support job seekers;
- treat every job seeker fairly and with respect; and
- provide a fair accessible feedback process.

These documents are available on the Department's website on the Resources page at <http://deewr.gov.au/job-services-australia-isa>

Legislation

Under the Employment Services Deed 2012-2015 (the Deed), Job Services Australia providers must comply with their obligations under all relevant statutes, regulations, by-laws and requirement of any Government policies as notified by DEEWR, including, but is not limited to, compliance with:

- the *Age Discrimination Act 2004*;
- the *Disability Discrimination Act 1992*;
- the *Racial Discrimination Act 1975*;
- the *Sex Discrimination Act 1984*;
- the *Fair Work Act 2009*; and
- State and territory anti-discrimination legislation.

The Fair Work Ombudsman was created by the *Fair Work Act 2009* to ensure compliance with Commonwealth workplace laws. A significant part of the Fair Work Ombudsman's role is to educate people about fair work practices, rights and obligations, which it does through education programs, an advice hotline and fact sheets. Job seekers are encouraged to contact their provider if they have any concern at all about their employment conditions. Providers would be expected to refer a job seeker to the Fair Work Ombudsman for advice

on their rights and obligations should the job seeker raise concerns. Job seekers may also call the department's Job Seeker Hotline (13 62 68) or the Customer Service Line (1800 805 260) directly and confidentially if desired.

As highlighted above, protections against age discrimination are also contained in the *Age Discrimination Act 2004*, which Job Services Australia Providers must comply with. Under this Act, job seekers can seek assistance from the Australian Human Rights Commission and lodge a complaint if they feel they have suffered from discrimination by a Jobs Services Australia Provider or employer due to their age. Job seekers can make a complaint to the Australian Human Rights Commission by following the links on the webpage at: www.hreoc.gov.au/complaints_information/lodging.html or call the Complaint Infoline on 1300 656 419.

Departmental resources

DEEWR provides advice to employment services providers on a range of policies and programs, including those impacting mature age job seekers, through a variety of means, including:

- The Provider Portal is an internal internet site containing a range of reference material for providers and contract managers including detailed guidelines, job aids, fact sheets and Frequently Asked Questions. News Items are also published regularly to communicate with providers.
- Contract and Account Managers communication with their respective providers such as provider teleconferences which present the opportunity for providers to discuss current challenges and solutions.
- Webinars – these interactive web based presentation give providers access to policy areas and other providers. It is a forum that is both aural and visual which aids in targeted learning. The webinars can be accessed as required and are a valuable learning tool.
- Learning Centre Training modules – which assist provider staff to learn and understand the Job Services Australia and Disability Employment Services servicing model and requirements. For example, the Department recently developed an online cultural awareness training package for Job Services Australia and Disability Employment Services providers' staff, to further strengthen the performance for Indigenous job seekers. Providers are asked to encourage staff to complete the training as a matter of priority.
- The Provider CEO letter and newsletters which provide information about current considerations, policies and programs.

The Australian Government recognises the importance of developing a workplace culture that values the skills and experience of mature age people and has announced a number of initiatives to support them and their employers. This includes a \$55 million suite of programs under the Experience+ banner including:

- Corporate Champions; Jobs Bonus; Mature Age Participation – Job Seeker Assistance; and Career Advice (for detailed information on each program please refer to [Appendix A](#)).

- Employment Service providers are informed of these programs through a number of methods including those outlined above. A range of information is also available through the experience+ website (www.deewr.gov.au/experienceplus).

Question 5–1 In what other ways, if any, could the Australian Government’s employment services system be improved to provide better assistance to mature age job seekers?

The performance of employment service providers is continually monitored by DEEWR to ensure the highest level of contractual compliance, quality and equity of service delivery.

The current Job Services Australia contract which expires on 30 June 2015 is structured so that job seekers are assisted according to their level of disadvantage. A range of factors, including age, are used to assess a job seeker’s level of disadvantage and this determines which of four streams a job seeker is placed in.

Job Services Australia is designed to provide job seekers with more personalised help, better targeted services and greater access to training opportunities and work experience in areas of skill need.

The expiry of the current contract in 2015 provides an opportunity to determine if services for all job seekers, including the mature aged, are optimal. The Hon Kate Ellis MP, Minister for Employment Participation recently announced the *Employment Services: building on success* Issues Paper, which marks the start of the formal consultation process as Government looks to build an even stronger Disability Employment Service – Disability Management Service and Job Services Australia system from 2015. The Paper seeks the community’s views on what is working, and what barriers need to be overcome to ensure the system is providing the best outcomes for all Australian job seekers. A major theme of the paper is ‘meeting the needs of jobseekers’, which is specifically defined to include different cohorts of job seekers, including those who are mature aged. Consultation is open until 15 March 2013, and the Issues Paper is available at: <http://deewr.gov.au/news/minister-ellis-releases-issues-paper-employment-services-past-2015>.

Question 5–2 The ‘withdrawal’ or ‘taper’ rate for an income support payment operates to reduce gradually the rate at which a payment is made as income or assets increase. What effect, if any, would changing the income test withdrawal rate for Newstart Allowance recipients aged 55 years and over have on their incentives for workforce participation?

There is limited research evidence available regarding how changes to the taper rate might have effects on participation for this segment. Research indicates that the mature age workers fall into two categories, for whom differences in the effect of incentives on the 50-60 age group would be different to the 60-65 age group. These reflect a range of factors applicable to these age categories including labour market acceptability, labour market relevant experience, health, the amount of available financial assets including access to superannuation, family circumstances and education levels. In addition, mature age workers can be categorised into the long-term unemployed and/or those who have a partial capacity to work. The second category includes those who are recently unemployed. It is this category who may be incentivised by such measures such as a more generous taper

rate. However, it is noted that previous studies indicate there was little improvement in participation rates in the 50-54 category under Welfare to Work incentives as a result of changes to more generous income tests.

Pensioners over age pension age who work may benefit from the Work Bonus and the pension income free area, which combined, allow a single pensioner with no other income to earn up to around \$10,450 each year without it affecting their pension.

The available evidence indicates that direct attempts to provide incentives to mature age workers to undertake more paid work have countervailing income and substitution effects – some respond to the possibility of improving incomes but others retire on perceived adequate levels of income and savings. In summary, the substitution and income effects appear to cancel each other out.

Question 5-3 In what ways, if any, does the review process for qualification for the Disability Support Pension create barriers to mature age participation in the workforce or other productive work? For example, does the lack of information about how Disability Support Pensioners are selected for review act as a disincentive to work?

There is no evidence that the processes for reviewing ongoing eligibility for Disability Support Pension (DSP) create barriers to mature age participation in the workforce. Recipients are encouraged to take up work where they have some capacity and can continue to receive DSP, subject to the income test, while working up to 30 hours per week without losing DSP qualification. There is no risk to people with disability on DSP, given they can take up work without fear of losing their qualification and they benefit from higher overall income.

DSP reviews (service updates) are not targeted at any specific age groups. Rather, service update reviews are directed at those DSP recipients whose circumstances such as medical condition or income and assets are likely to have changed, no matter what their age.

There is no evidence suggesting that there is a lack of publicly available detailed information about the Department of Human Services service update predictors that could create disincentives to work. The *Guide to Social Security Law* contains sufficient explanation and examples of service updates and what factors are reassessed at review, including medical circumstances, income, assets, partnership, rent and other factors.

There are programs and incentives that are not aged-based that encourage DSP recipients with some capacity to work to participate in the labour force. Firstly, the effects of the income test free area and taper rates mean that pensioners are always better off in net terms receiving income. Secondly, DSP recipients can accrue working credits which allow them to keep more of their pension while working. The income test is only applied to earnings once the working credit is depleted.

A further incentive to return to work was introduced on 1 July 2012. Under (new) section 96 of the *Social Security Act 1991*, DSP recipients granted on or after 11 May 2005 can work

for up to 30 hours a week without losing their DSP qualification (previously 15 hours a week). They may receive a part-pension while they work, subject to the income test. This measure was widely publicised before its implementation, including articles in “Pulse” (a newsletter for DSP recipients) and “The Journey” (a newsletter that is emailed to more than 1000 community organisations) and via other media. Information about the measure is also available on the Department of Human Services website.

In addition, people who work for more than 30 hours a week can have their payment suspended for up to two years – this means that if they cannot cope with the job or reduce their hours, they can return to DSP without having to go through a full claim process again. They can also keep their Pensioner Concession Card for the first 12 months of the suspension period. This provides a safety net for people who try to increase their workforce participation.

The evidence shows that there are a range of benefits for people who participate in the labour force. In addition to income and the acquisition of valuable skills and experience, participation in the labour force increases an individual’s ability to build and maintain important resources and social networks, promoting social inclusion (Australian Social Inclusion Board (2012)).

Proposal 5–3 The *Guide to Social Security Law* should provide that a temporary cessation of constant care due to participation in employment, voluntary work, education or training that exceeds 25 hours per week:

- (a) does not result in automatic cancellation of Carer Payment; and
- (b) may, in some circumstances, be compatible with the constant care requirement for qualification for Carer Payment.

Proposal 5–4 The *Guide to Social Security Law* should provide examples of situations where participation in employment, voluntary work, education or training that exceeds 25 hours per week may be compatible with the constant care requirement for Carer Payment. These examples should include:

- (a) employment, voluntary work, education or training undertaken at home, for example online, provided it is consistent with the care receiver’s need for frequent personal care or constant supervision; and
- (b) short term increases in excess of 25 hours per week of employment, voluntary work, education or training undertaken outside the home.

Carer Payment provides support to carers who, due to the demands of their caring role, are unable to support themselves through substantial paid employment. Carer Payment recipients must personally provide constant care to the care receiver to be eligible to receive payment. Carer Payment recipients also receive a pensioner concession card, an annual \$600 carer supplement and may receive other forms of assistance such as Rent Assistance.

The legislation allows Carer Payment recipients to cease caring for up to 25 hours per week to undertake education, training or voluntary or paid employment without affecting their Carer Payment qualification.

This provision is reasonably generous in allowing carers to do the equivalent of around three days full-time work, study and training each week. This is a reasonable amount of time to work, study or train and still meets the constant care requirement.

This provision also supports carers who may wish to re-join or enter the workforce, or take up study or training, when their caring role ceases.

When a carer exceeds the 25 hours per week limit, they cease to qualify for Carer Payment and payment is cancelled. If carers no longer qualify for Carer Payment because of this '25 hour rule', they can be re-granted Carer Payment immediately they cease to exceed the weekly 25 hour limit.

A carer may access temporary cessation of care provisions, up to 63 days in a calendar year, and remain qualified if the hours they work increase in an ad-hoc way. Access to temporary cessation of care days will also depend on how many days the carer payee is participating in the activity which exceeds 25 hours per week.

A person receiving a carer payment that has a working credit balance and takes up paid work for more than 25 hours a week that causes them to fail the constant care criterion, is treated as qualified for the period it takes to run down their working credit balance. This allows the recipient to benefit from their working credit balance – assisting recipients in their transition to work.

Proposal 5–5 The objective of Work Bonus is to provide incentives for recipients of Age Pension and Veterans' Age Service Pension to continue in employment. To ensure that Work Bonus continues to achieve its objective, the following amounts should be indexed to the Pensioner and Beneficiary Living Cost Index:

- (a) the income concession amount under s 1073AA of the *Social Security Act 1991* (Cth) and s 46AA of the *Veterans' Entitlements Act 1986* (Cth); and
- (b) the maximum unused concession balance under s 1073AB of the *Social Security Act 1991* (Cth) and s 46AC of the *Veterans' Entitlements Act 1986* (Cth).

The new Work Bonus has been in place since 1 July 2011 and its impacts are being monitored. Early indicators suggest the new Work Bonus is having a positive impact. Since the new Work Bonus was introduced, the number of pensioners of age pension age with employment income in the previous 12 months grew by around 15.25 per cent from 118,000 (July 2011) to over 136,000 (July 2012). During that same period the average gross employment income of pensioners with employment income grew by more than 5 per cent from \$16,694 to \$17,498.

Proposal 5–6 Pensioner Education Supplement is a payment to assist in meeting the costs of study in eligible secondary or tertiary courses. Section 1061PJ of the *Social Security Act 1991* (Cth) should be amended to provide that Age Pension and Veterans’ Age Service Pension are payments attracting Pensioner Education Supplement.

Recipients of Pensioner Education Supplement are generally of workforce age. The payment is designed to improve an individual’s chance of finding a job through study by helping with the ongoing costs of full-time or part-time study. Pensioner Education Supplement is available to students in an approved secondary or tertiary course who receive a qualifying pension or payment. Qualifying payments are primarily payments to people with disability, carers and single parents, as well as widows receiving closed payments.

Mature Age Initiatives

The Australian Government recognises the importance of developing a workplace culture that values the skills and experience of mature age people and has announced a number of initiatives to support them and their employers.

Consultative Forum on Mature Age Participation

In February 2010, the Australian Government established the Consultative Forum on Mature Age Participation (the Forum) to provide advice on ways to overcome the barriers to employment participation confronting many mature age people. The Department provided support to the Forum.

The Forum produced the *Barriers to Mature Age Employment: Final Report of the Consultative Forum on Mature Age Participation* and the *Barriers to Mature Age Labour Force Engagement in Australia: Report on the 2011-12 National Survey on the Barriers to Employment for Mature Age People*.

Both the final report and findings of the survey were launched by Minister Ellis on 25 September 2012, at the Corporate Champions Seminar held in Queensland and are now available on the <http://deewr.gov.au/experience>.

One of the key outcomes of the Forum's work has been the identification of 14 key barriers faced by mature age Australians in the workplace or looking for a job, and the development of 23 recommendations and proposed actions to address these barriers.

The Forum's final report found that many older people already want to work longer but encounter barriers to doing so. Some of these barriers include: age discrimination; superannuation; workplace flexibility; care-giving responsibilities; illness, injury and disability and leisure-time trade off.

The Forum's work ended on 30 June 2012. The Department is now working with the new Advisory Panel on Positive Ageing that commenced in July 2012. The Panel has been established to build on existing Government policies

A number of the Forum's recommendations were addressed in the 2012–13 Budget that delivered more than \$55 million over four years. These include: the Australian Law Reform Commission Inquiry, more help for job seekers including those on income support (through the Jobs Bonus and the Mature Age Participation—Job Search Assistance Program), and an ongoing Corporate Champions program including employer seminars to promote the business benefits of employing mature age people.

DEEWR manages a suite of programs under the Experience+ banner including:

Corporate Champions

Funding of \$15.6 million (over four years) has been committed to an ongoing Corporate Champions program, which includes, education seminars for employers, one to one assistance and communication activities to disseminate and support better practice in recruiting and retaining mature age people.

The Corporate Champions program is an Australian first, which started as a pilot program in 2011. Due to the program's success, the new funding will allow 250 employers to join and benefit from the program. As at 30 October 2012, there are 26 Corporate Champions.

Through this program, an employer who becomes a Corporate Champion can receive a package of tailored assistance from an industry expert of up to the equivalent of \$10 000 worth of consultancy services to help them manage their ageing workforce and recruit and retain mature age people.

Some early results suggest that employers:

- Gained a stronger understanding of the benefits of providing flexible work options, including increasing access to part-time working arrangements.
- Became better equipped to attract older workers for specific client service preferences.
- Were able to make arrangements to have mature age employees transfer their experience, skills and knowledge to other staff.
- In addition, mature age employees played a key role through mentoring other staff and transferring their knowledge and skills.

Jobs Bonus

Funding of \$10 million (over four years) has been committed under the Experience+ Jobs Bonus program for employers who offer a genuine, ongoing employment opportunity for mature age job seekers aged 50 and over.

2500 Jobs Bonuses of \$1000 (GST exclusive) are available each financial year until 2016. The Jobs Bonus will require that job seekers must be at least 50 years of age at the commencement of employment. The employment must commence after 1 July 2012. The job seeker must be unemployed and registered with a Job Services Australia (JSA) provider. The Jobs Bonus will be paid to the employer after the job seeker has been employed for at least 13 weeks.

The Jobs Bonus will be delivered within a broader context of education and support for employers. Corporate Champions will receive priority access to the Jobs Bonus.

Experience+ Career Advice

The Experience+ Career Advice service commenced on 1 July 2010 and provides professional career counselling to mature age Australians aged 45 years and over. The Experience+ Career Advice has been extended beyond its original end date of 30 June 2014 to 30 June 2016.

The Experience+ Career Advice is a specialised telephone and email-based career advice service for anyone aged 45 and over. The service also provides a resume appraisal service to help mature age people market themselves as effectively as possible to prospective employers.

Career Advice has been very well received. As at 31 August 2012 Experience+ Career Advice has delivered 7060 Career Planning sessions and 1877 Résumé Appraisal sessions and feedback on the program has been very positive.

The Mature Age Participation – Job Seeker Assistance

From 2013, the Mature Age Participation – Job Seeker Assistance Program will be available to support eligible mature age job seekers who are looking for work. Funding of \$25.8 million (over four years) has been committed under the Experience+ Mature Age Participation – Job Seeker Assistance Program.

The program will provide eligible mature age job seekers with targeted and intensive job preparation assistance in a peer-based environment. This may include development of their IT skills (including the use of social media to support job search), undertaking job-specific training and participation in paid work placements.

The program will be delivered by a panel of expert providers in areas where the Government considers it will best meet job seeker, employer and community needs. These expert providers will be selected through a competitive Request for Tender process. These expert providers panel members will be expected to proactively build relationships with local employers to support employment opportunities for participants and assist employers to meet their workforce needs.

The Government is also assisting employers to engage and retain mature age workers by providing assistance for training their older workforce.

- From 1 July 2012, Investing in Experience (Skills Recognition and Training), provided through the Department of Industry, Innovation, Science, Research and Tertiary Education (DIISRTE), will allow employers to access \$4400 for a skills assessment and training for all mature age workers (aged 50 years and over).
- From 1 January 2013, \$35 million the National Workforce Development Fund will support up-skilling and re-skilling for people over 50. Also provided through DIISRTE.