



22nd October 2012

The Executive Director
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2001

Dear Sir/Madam

Grey Areas – Age Barriers to Work in Commonwealth Laws

On behalf of the Community Care Consortium, I would be grateful if the attached information could be taken into account when considering responses to your Inquiry into Commonwealth legal barriers to older persons participating in the workforce or other productive work.

The Community Care Consortium represents the vast majority of not-for-profit service providers in the NSW Home and Community Care Program who deliver services to the frail aged, people with disabilities and their carers. Volunteers and paid workers alike over the age of 66 years in New South Wales are not covered by Workers Compensation legislation. Many volunteers who work in our sector are over the age of 66 years and we believe there needs to be amendments to the NSW Workers Compensation legislation to ensure that these volunteers in full or part-time employment receive financial compensation or sustenance of income were they to be injured whilst volunteering. There is currently no avenue available for community volunteers to be covered by a workers compensation policy in New South Wales.

In this regard, I am attaching the recent submission made to the NSW Parliamentary Joint Select Committee on the NSW Workers Compensation Scheme as well as a letter received from the NSW Parliamentary Secretary for Treasury and Finance regarding the Consortium's concerns about workers compensation insurance coverage for older volunteers.

As our sector has a quite high preponderance of older workers, the current NSW Workers Compensation legislation we believe is discriminatory and poses a major blockage to the retention of vital skills and commitment by older workers, both voluntary and paid.

The Consortium understands that your Inquiry relates to legal barriers under Commonwealth law but feels this discriminatory legislation in NSW deserves to be brought to the attention of your Inquiry.

Yours sincerely

Stacey Sheppard-Smith
for the Community Care Consortium



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SUBMISSION TO THE NSW PARLIAMENTARY JOINT SELECT COMMITTEE
ON THE NSW WORKERS COMPENSATION SCHEME

The Community Care Consortium (CCC) represents the vast bulk of service providers in the NSW Home and Community Care program. That program delivers services to a wide range of older people in their homes and is designed to ensure that such people remain in their own homes as part of the community for as long as possible. The CCC agrees wholeheartedly with the recent decision to harmonise the NSW work health and safety laws with those of other States to create a seamless network of protections for workers and volunteers across Australia. The CCC notes that a number of States have not as yet finalised their agreement with this reform and look forward to their doing so in the not too distant future. The CCC believes that the extension of work health and safety protections to volunteers already available to NSW paid employees overcomes an anomalous situation and will ensure that employers in our sector have the same obligations to their volunteers to provide a safe workplace as they already have for paid employees.

However, the achievement of this long overdue reform has highlighted some related anomalies we believe are vital that the NSW Government address to ensure that volunteers, who selflessly contribute their time to the community, have the same range of rights as paid employees.

The first of these relates to the failure of workers compensation legislation in NSW to cover volunteers. As you would be aware, this legislation is complementary to the work health and safety legislation ensuring that, were a failure to comply with the work health and safety laws to apply, or where that compliance was insufficient to prevent an accident, the paid employee has their costs incurred in dealing with the consequences of that accident and the loss of income sustained as a result of it, re-imbursed to them. At a time when volunteering in our community is under strain as a result of increasing time pressures on those who might otherwise be interested, it is vital that we not impose any additional burdens on those who choose to volunteer. In addition, for the many not-for-profit services in the Home and Community Care sector, our attractiveness to younger volunteers is under strain. The fact that a volunteer in full or part-time employment receives no financial compensation or sustenance of income from their paid employment were they to be injured whilst volunteering will, when more widely known, be a major disincentive to engage in volunteering. There is of course also the issue of fairness of treatment to be addressed.



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*That fact has already been recognised in the legislation regarding Emergency Service and Bush Fire Brigade volunteers who are classified as “workers” for the purposes of workers compensation. Whilst it is certainly true that those people operate in inherently uncontrollable environments for the employer, this is also true for volunteers who are spending much of their volunteering time out in the community and in people’s homes.

The second anomaly seems to be a hang-over from the time when there was an official retirement age. Paid workers over 66 are not covered by Workers Compensation legislation. In a sector such as ours with a quite high preponderance of older workers, this is a major blockage to retention of vital skills and commitment. The CCC understands that the Workers Compensation legislation in Western Australia has been amended to eliminate that discriminatory provision.

The CCC believes there needs to be amendments to the Workers Compensation legislation to mirror the changes to the work health and safety legislation and remove the discrimination against older workers and volunteers.

Les MacDonald
Chief Executive Officer
NSW Meals on Wheels Association

Stacey Sheppard-Smith
Executive Officer
NSW HMMS State Council Inc

David Atkins
Executive Officer
Community Transport Organisation

Vivian
Executive Officer
NSW Community Options Inc

Helen Ivory
Chairperson
NSW Neighbour Aid & Social Support Ass

L050-12





The Hon **Matthew Mason-Cox** MLC
Parliamentary Secretary for Treasury and Finance

Ref: WC 00709/12

Ms Stacey Sheppard-Smith
Secretariat
Community Care Consortium
exec.officer@nswhmms.org

Dear Ms Sheppard-Smith

I refer to your correspondence to the Hon Greg Pearce MLC, Minister for Finance and Services, regarding workers compensation insurance coverage for volunteers and entitlements for workers who have passed retiring age. The Minister has asked that I respond on his behalf.

I appreciate your concerns regarding workers compensation insurance coverage for volunteer workers. The New South Wales Government is mindful of and appreciates the valuable work undertaken by dedicated volunteers every day to assist members of the community in need.

As you are aware, employers are required to take out a workers compensation insurance policy to cover their workers. However, there is no avenue available for community volunteers to be covered by a workers compensation policy, as they are not "workers" under workers compensation legislation. A "worker" is any person who has entered into, or works under, a contract of service or apprenticeship with an employer, or a deemed worker as described in the legislation.

In general, an organisation takes out personal accident insurance for its volunteers. However, in the case of rural fire service volunteers and emergency and rescue service volunteers, legislation has been enacted to ensure they are covered by workers compensation, while undertaking their volunteer duties. By offering rural fire service volunteers and emergency and rescue service volunteers this coverage, the Government acknowledges that the duties undertaken carry a higher risk of injury or death than most other volunteering activities. Their duties contribute significantly to the protection of life and property in communities across the State.

Rural fire service volunteers and emergency and rescue service volunteers receive rigorous induction and training to limit the risks they may face in the course of their volunteer work. However, considering the high level of risks, the Government believes it is appropriate to provide support for them and their families in the unfortunate event they suffer an injury or worse while carrying out their duties.

Around 1.7 million people are involved in formal volunteering in New South Wales and at least another million people are involved in informal volunteering, assisting relatives, friends, neighbours and other members of the community.

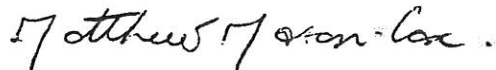
The WorkCover Scheme currently provides coverage for around three million workers. In light of the current financial position of the Scheme, it would be not be financially viable for employers to meet the significant cost involved if the Scheme were almost doubled in size by extending coverage to around three million volunteers. Most organisations that utilise volunteers would not easily afford the associated workers compensation premiums. To introduce this as a requirement would strongly discourage the use of volunteers and in turn have a negative impact on the New South Wales economy.

In relation to your concerns about the entitlements for paid workers past retirement age, the New South Wales workers compensation system provides payment of medical, rehabilitation and legal costs, lump sums for permanent impairment and weekly incapacity payments in lieu of lost income. These payments and services are available regardless of a person's age, with the exception of weekly incapacity payments, which are limited to the commonwealth retiring age. A worker injured on or after reaching retirement age is entitled to receive weekly benefits for 12 months following the first period of incapacity resulting from the injury. The 12 month limit on paying weekly benefits strikes a balance between the amount of compensation available and the cost of providing these benefits, which must be met by employers.

Retiring age under workers compensation legislation in New South Wales is defined as the age at which the person would, subject to satisfying any other qualifying requirements, be eligible to receive an age pension under the Commonwealth *Social Security Act 1991*. As the Federal Government increases the pension age, retiring age as defined under section 52 of the *Workers Compensation Act 1987* will also increase to provide full workers compensation benefits up to that age.

I hope this information is of assistance.

Yours sincerely



Matthew Mason-Cox MLC
Parliamentary Secretary for Treasury and Finance

18/7/12