



One Company
Many Brands



Australian Law Reform Commission
Grey Areas – Age Barriers to Work in Commonwealth
Laws
Discussion Paper

Suncorp Response

22 November 2012

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About Suncorp

Suncorp Group Limited and its related bodies corporate and subsidiaries (collectively 'Suncorp') offer a range of financial products and services in banking (Suncorp Bank), life insurance and superannuation (Suncorp Life) and general insurance across Australia and New Zealand. Suncorp has more than 15,000 employees nationally and relationships with over nine million customers.

Nationally, Suncorp is the largest general insurance group in Australia and second largest in New Zealand. Suncorp Bank is Australia's leading regional bank with customer satisfaction levels greater than the big four.¹ Suncorp Life specialises in life insurance and is a leading superannuation and investment business.

This submission is made on behalf of Suncorp's:

- Commercial Insurance (CI) division, which offers statutory classes of insurance and a wide range of business insurance products to small and medium sized businesses as well as corporate customers through the AAMI, GIO, Vero and Suncorp brands; and
- Personal Insurance (PI) division, which offers a wide range of motor, home and other personal insurance products nationally, through the AAMI, Apia, Bingle, CIL, GIO, Insure My Ride, Just Car, Terri Scheer, Shannons, Suncorp and Vero brands;
- Life, which is a leading trans-Tasman life insurance specialist and superannuation business, offering products and services through Independent Financial Advisers (IFAs) and direct to customers through brands such as Suncorp, AAMI, Apia and GIO. Life insurance is also offered through the Asteron Life brand; and
- Human Resources Department, which strives to be the place to work in Australia and New Zealand.

¹ Suncorp Group – *What we do* - <http://www.suncorpgroup.com.au/about-us/what-we-do>

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Executive Summary

Suncorp welcomes the release of the Australian Law Reform Commission's (ALRC) *Grey Areas – Age Barriers to Work in Commonwealth Laws Discussion Paper* (the Discussion Paper) and supports the efforts of the Government in seeking to identify and remove barriers in Commonwealth laws to lift mature aged workforce participation rates and support self-funded retirement.

The 2010 Intergenerational Report² reveals there will be 2.7 people of working age for every person over 65 by 2050, compared to 5 working aged people per aged person today. This will see an increase from a quarter to half of all total Australian Government spending specifically directed to health, age-related pensions and aged care by 2049-50.

It is in this environment warnings were issued that Australia must improve its productivity if it is to cope with the ageing population. It is the productivity growth – producing more output with proportionately fewer workers – that will be the major challenge for Australia in the next 40 years. It has been reported that increasing workforce participation rates of workers aged 55 and over would see significant boost to the national gross domestic product³ and reduce reliance on the ever dwindling tax base funding the Age Pension.

Federally, there have been a number of ongoing initiatives to reform Australia's retirement income to support mature age workforce participation. These initiatives include reforms in taxation and retirement income through a means-tested Age Pension; compulsory saving through employer superannuation contributions (the 'Superannuation Guarantee'); and voluntary superannuation contributions.

The Discussion Paper raises a number of proposals and questions. Suncorp intends to focus on those proposals and questions that relate to employment, insurance, compensation and superannuation laws.

The key to mature age workforce participation is to recognise that the ideal retirement age varies for each individual. Therefore it is important to remove age barriers wherever appropriate and allow greater flexibility in the transition to retirement.

Suncorp supports this approach. As a general proposition, Suncorp supports the removal of age barriers across the board, supported by a 'no disadvantage test,' financial caps or capacity based assessments as required to ensure:

- policy produces intended outcomes equitably;
- personal injury statutory schemes remain financially sustainable; and
- an uptake of diversity including the mature aged worker in the workplace is encouraged.

A holistic policy approach is required to support mature aged workers to enter, re-enter and remain in the workforce for longer as they age. This will require attention to seamless interaction of relevant Commonwealth, State and Territory legislation and their practical application. Suncorp supports financially responsible measures to harmonise the laws wherever possible.

² Australia to 2050: Future Challenges report - Released on 1 February 2010:

<http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2010/012.htm&pageID=003&min=wms&Year=&DocType=>

³ Deloitte Access Economics, Increasing Participation Among Older Workers: The Grey Army Advances (2012), prepared for the Australian Human Rights Commission, i: http://www.humanrights.gov.au/age/publications/mature_age/index.html

Recruitment and Employment Law

Suncorp aspires to be the place to work in Australia and New Zealand. To support this vision, Suncorp has a comprehensive people strategy which promotes personal development and capabilities. Core to the people strategy is a strong sense of values for diversity within the business, which embraces differences in perspectives, experience, education and personality style, to provide our customers with the best possible solutions to meet their needs.

Suncorp supports the overall intent of the proposals in respect to recruitment and employment law. Specifically, Suncorp favours individual capacity based assessment rather than an imposition of compulsory retirement but acknowledges that industry and professional bodies are best placed to determine the appropriate assessments and safe guards to assess mature aged workers capacity for relevant positions.

The proposals in respect to recruitment and employment law are substantially consistent with the Suncorp's approach surrounding its people strategy. Accordingly, Suncorp will confine its comments to the specific areas below.

Proposal 2–5	The Australian Government should amend s65 of the <i>Fair Work Act 2009 (Cth)</i> to extend the right to request flexible working arrangements to all employees who have caring responsibilities.
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In respect to extending the right to seek flexible work arrangements, Suncorp notes the relevant recommendations arising from the review of the *Fair Work Act 2009 (Cth)*⁴ and the Senate Inquiry into *Equal Opportunity for Women in the Workplace Amendment Bill 2012*.⁵

The *Suncorp Group Enterprise Agreement 2011* and the Suncorp Group policy framework provide a progressive suite of flexible working entitlements for its employees including the ability to request flexible working arrangements to achieve a balance between work commitments and personal/family needs. Suncorp also supports an extension of rights to seek flexible work arrangements to 'a wider range of caring and other circumstances'.⁶

Question 2–1	In what ways, other than through changes to the <i>Fair Work Act 2009 (Cth)</i>, should the Australian Government develop or encourage flexible working arrangements for mature age workers?
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Formal recognition and education of best practices in providing flexible working arrangements for not only mature aged workers, but all workers trying to balance work commitments with personal/family needs is the better approach. Giving employers the ability to benchmark their own business practices against the best practice is likely to encourage change, particularly in circumstances of maintaining a strong and stable employee base.

⁴ Department of Education, Employment and Workplace Relations, *Towards more productive and equitable workplaces*, 15 June 2012, at 20 & 21 - http://www.deewr.gov.au/WorkplaceRelations/Policies/FairWorkActReview/Documents/Towards_more_productive_and_equitable_workplaces.pdf

⁵ The Senate – Education, Employment and Workplace Relations Legislation Committee - *Equal Opportunity for Women in the Workplace Amendment Bill 2012*, final report, May 2012 http://aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=eet_ctte/equal_opportunity/report/index.htm

⁶ Australian Financial Review, *When stay at home becomes a win-win*, 15 February 2012: http://afr.com/p/national/work_space/when_stay_at_home_becomes_win_win_lisdviPqHX1i8SkwTXKnTL

Proposal 2–8	Section 117(3)(b) of the <i>Fair Work Act 2009</i> (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.
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Suncorp questions the effectiveness of Proposal 2–8. This proposal would increase the period required to give notice to the aged worker to eight (8) weeks. This is likely to have a perverse effect of discouraging recruitment of mature aged workers, particularly in small businesses.

Accordingly, Suncorp does not support this proposal.

Question 2–2	There is substantial overlap between the general protections provisions under the <i>Fair Work Act 2009</i> (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?
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Suncorp repeats its position made in response to the *Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper*.⁷ That is, as a national employer, Suncorp has not experienced an example of employee making both an anti-discrimination and Fair Work Act claim for the same matter, however, there is potential to do so.

This ability should be reduced to ensure that employees do not ‘double dip’. We recommend the Commonwealth anti-discrimination laws should cover the field in discrimination legislation. This would simplify the regime and reflect the increasing popularity of the ‘adverse action’ cause of action for applicants who allege workplace discrimination.

In order to reduce complicated and protracted claims, the applicants should be required to make an election between the anti-discrimination jurisdiction, the *Fair Work Act* and common law claims for negligence.

Proposal 2–9	A range of professional associations and industry representative groups are responsible for developing or regulating licensing or re-qualification requirements. The Australian Human Rights Commission should develop principles or guidelines to assist these bodies to review such requirements with a view to removing age-based restrictions in favour of capacity-based requirements
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Suncorp supports Proposal 2–9. As a matter of principle, Suncorp favours individual capacity based assessment rather than an imposition of compulsory retirement. Suncorp acknowledges that industry and professional bodies are best placed to determine the appropriate assessments and safe guards to assess matured workers capacity for the relevant position.

⁷ Suncorp Response - *Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper*, 1 February 2012 - [http://www.ag.gov.au/Humanrightsandantidiscrimination/Australiahumanrightsframework/Documents/Consolidation%20-%20Discussion%20Paper%20-%20195%20-%20Suncorp%20-%20202%20Feb%202012%20\(pdf\).PDF](http://www.ag.gov.au/Humanrightsandantidiscrimination/Australiahumanrightsframework/Documents/Consolidation%20-%20Discussion%20Paper%20-%20195%20-%20Suncorp%20-%20202%20Feb%202012%20(pdf).PDF)

Question 2–3	Should the Australian Government establish a body or reporting framework with respect to mature age workers similar to that of the Equal Opportunity for Women in the Workplace Agency or its reporting framework? If so, how should such a body or framework operate?
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Suncorp supports the collection of data with respect to mature aged workers similar to that of the Equal Opportunity for Women in the Workplace Agency or its reporting framework but has concerns over the regulatory burden and cost implications in establishing a separate body or reporting framework.

Whilst such data would be useful for benchmarking amongst employers to promote enhancements to business practices in respect to mature aged workers, Suncorp would not support any proposed targets or quotas associated with such reporting.

Any new workforce reporting requirements should be consolidated within existing reporting requirements to minimise compliance costs and prevent the duplication of reporting requirements across multiple agencies.

Work Health and Safety and Workers Compensation

As the largest personal injury insurer in Australia, Suncorp actively plays a positive role in reducing workplace injury, educating stakeholders and influencing positive and sustainable scheme design. The six key principles which we believe define an effective personal injury scheme across all statutory classes include social outcomes, sustainability, competition, defined and controlled benefits, national consistency and dispute resolution.⁸

Our comments to this submission are made in reference to these principles.

Proposal 3–1	Safe Work Australia and state and territory work health and safety regulators should consider health and safety issues that may affect mature age workers in implementing the Australian Work Health and Safety Strategy 2012–2022.
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Suncorp supports the Australian Work Health and Safety Strategy 2012–2022, and considers it appropriately pitches the strategies at a high level for the entire workforce in Australia. Focussing on specific health and safety issues that affect all workers including mature aged workers is part of the data collection, research, and development of guidance material, development and recognition of best practices capabilities of Safe Work Australia.⁹

⁸ Suncorp Submission - *Review of the Safety, Rehabilitation and Compensation Act 1988, Issues Paper*, 25 October 2012; http://submissions.deewr.gov.au/sites/submissions/SRCActReview/Documents/Suncorp_Submission.pdf; Suncorp Response - *Parliamentary Inquiry into the Operation of Queensland Workers' Compensation Scheme*, 3 September 2012 - <http://www.parliament.qld.gov.au/documents/committees/FAC/2012/OpQldWorkersComp/submissions/125-Suncorp.pdf>; GIO Response - *Parliamentary Inquiry into the NSW Workers Compensation Scheme*, 17 May 2012 - [http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/61804123b226eef7ca257a1400018c51/\\$FILE/0285_GIO.pdf](http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/61804123b226eef7ca257a1400018c51/$FILE/0285_GIO.pdf)

⁹ Suncorp Submission No 64 - *Australian Work Health and Safety Strategy 2012 – 2022: Healthy, Safe and Productive Working Lives*, 21 May 2012 - <http://www.safeworkaustralia.gov.au/sites/SWA/AboutSafeWorkAustralia/WhatWeDo/PublicConsultation/Documents/Public%20Submission%20S/AWHS064-Suncorp.PDF>

Proposal 3–2	Safe Work Australia should include work health and safety issues that may affect mature age workers in its research agenda.
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Suncorp supports separate research capabilities to further explore and understand work health and safety issues that may affect mature aged workers. Whilst there is emerging research and work, accessibility and dissemination of key findings remains a challenge. Simple actions such as enhancing internet search functions to readily identify research papers dedicated to mature aged workers would also be welcomed, as well as more consideration into the communication of research findings and addressing recommendations.

Suncorp would welcome any role Safe Work Australia can play in brokering industry benchmarks on work ability and ageing to guide national or industry directed strategies and interventions.

Proposal 3–3	<p>Safe Work Australia and state and territory work health and safety regulators should develop guidance material to assist persons conducting a business or enterprise, workers, and the representatives of each to respond to health and safety issues that may affect mature age workers. Such material should contain information about:</p> <ul style="list-style-type: none"> (a) legislative responsibilities and duties; (b) best practice work design and processes; (c) risk assessment; and (d) health and wellbeing.
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Suncorp supports Proposal 3–3. The development of guidance material is a critical role for Safe Work Australia; State and Territory work health and safety regulators, which should also include active dissemination of that guidance material. Effective education and communication mechanisms should also be in place to support available material to ensure the information reaches the intended audience.

Proposal 3–4	Safe Work Australia should recognise best practice approaches in work health and safety with respect to mature age workers in its Safe Work Australia Awards.
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Suncorp supports Proposal 3–4. The Safe Work Australia Awards already recognises best practice and initiatives that make a significant improvement to society and workplace safety. The mature aged workforce is already included in this. We support the recognition of best practice for mature aged issues, assuming that it will not preclude or limit innovations in the broader social environment.

Further, Safe Work Australia's work in harmonising work health and safety laws throughout Australia and developing national work health and safety policy already forms part of the broader dissemination of best practice.

Proposal 3–5	The Australian Government should amend the <i>Safety, Rehabilitation and Compensation Act 1988 (Cth)</i>, <i>Military Rehabilitation and Compensation Act 2004 (Cth)</i> and the <i>Seafarers Rehabilitation and Compensation Act 1992 (Cth)</i> to ensure that retirement provisions are tied to the qualifying age for the Age Pension.
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Suncorp supports the removal of age barriers to entitlements in workers compensation laws. Western Australia has already reformed that State's workers compensation laws to remove the age barriers to

entitlements in response to its continuing quest to encourage workers to supply that State's labour market. The Queensland scheme also has no retirement provisions.¹⁰

For workers compensation schemes to remain financially sustainable however, actuarial assessment needs to be considered, when removing age barriers. Structured benefits such as caps on income replacement entitlements, which are currently in operation in Queensland, Western Australia and more recently in New South Wales, should be considered to ensure the schemes remain financially viable.

The workers compensation scheme that has no age barriers supported by well defined and controlled benefits regimes is the superior model for all workers compensation schemes nationally. It also has the potential to reduce reliance on social security payments, as the mature age work force participation rates increase.

It has been argued that a scheme design with no age barriers supported by well defined and controlled benefits (as currently exist in Western Australia, Queensland and New South Wales) will result in significant cost shifting to social security benefits, particularly where a young worker suffers significant work injuries and exhausts the maximum benefits entitlements.

This can be ameliorated by permitting limited access to common law damages and/or capping benefit entitlements for less significant injuries, as currently occurs in New South Wales. With the development and implementation of the National Disability Insurance Scheme (NDIS)¹¹ and the National Injury Insurance Scheme (NIIS)¹² there is potential for further policy development for those who suffer significant work injuries that require ongoing care and support.

Suncorp acknowledges the difficulties of workers compensation schemes moving to a no age barrier position in the short term. A short term alternative is to link all workers compensation laws to the Age Pension eligibility age with a commitment to move to the better policy position over a period of time. Linking workers compensation laws with the Age Pension eligibility age will eliminate any gap in eligibility for government assistance should workers' compensation entitlements cease.

Proposal 3–6	The Australian Government should amend the <i>Seafarers Rehabilitation and Compensation Act 1992 (Cth)</i> 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.
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In the absence of implementing the preferred policy of removing all age based limitations to workers compensation entitlements, Suncorp supports the intent of Proposal 3–6, provided it is actuarially sound for the scheme. Suncorp does prefer a model that is substantially harmonised with all schemes nationally.¹³

¹⁰ Safe Work Australia - [Comparison of workers' compensation arrangements in Australia and New Zealand](#), April 2012 at 20

¹¹ Department of Families, Housing, Community Services and Indigenous Affairs – National Disability Insurance Scheme - <http://www.ndis.gov.au/about-an-ndis/>

¹² Minister for Financial Services and Superannuation, the Hon. Bill Shorten MP - *Government's Advisory Group supports next steps in development of a National Injury Insurance Scheme*, Press Release, 25 June 2012 -

<http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2012/037.htm&pageID=003&min=brs&Year=&DocType=0>

¹³ Safe Work Australia - [Comparison of workers' compensation arrangements in Australia and New Zealand](#), April 2012 at 20

Question 3–1	Should the Australian Government amend the <i>Safety, Rehabilitation and Compensation Act 1988 (Cth)</i>, <i>Military Rehabilitation and Compensation Act 2004 (Cth)</i> and the <i>Seafarers Rehabilitation and Compensation Act 1992 (Cth)</i> 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?
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Suncorp repeats the response to Proposal 3–6. If a worker is injured after two (2) years prior to the Age Pension eligibility age, consideration of extending entitlements to income support beyond 104 weeks will need to be informed by actuarial assessment as to the scheme’s financial ability to support such a change in the long term.

If entitlement to income support is linked to the Age Pension eligibility age, there is no preferred period of income support, where the entitlement arises after the pensionable age. Any changes to the period of income support should be informed by sound actuarial assessment.

The preferred position is to remove age restrictions completely and adopt structured benefits such as caps on income replacement entitlements to keep the scheme financially robust. Whatever model is adopted, Suncorp prefers a nationally consistent approach.

Question 3–2	Should the Australian Government introduce a supplementary payment for mature age workers similar to the one provided for under the <i>Workers’ Rehabilitation and Compensation Act 1988 (Tas)</i>?
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Suncorp repeats the response to Question 3-1. Suncorp suggests that actuarial assessment needs to inform the debate, as to whether such a move is financially responsible for the scheme.

If implementation of a supplementary payment requires savings in other areas of the scheme or an increase of premiums, there needs to be careful consideration as to whether the level of public benefit outweighs the increased financial burden for the premium paying members of the Comcare scheme. Increasing scheme costs for premium paying members of the Comcare scheme could have the adverse affect of placing downward pressure on employment opportunities, which is counter productive.

Proposal 3–7	Safe Work Australia’s Strategic Issues Group on Workers’ Compensation should consider the definition of ‘worker’ under Commonwealth, State and Territory workers’ compensation legislation to ensure consistency of coverage of volunteers
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Employment arrangements have been undergoing changes for some time and these arrangements are continuing to evolve, as technology changes the workplace.¹⁴ Suncorp prefers a nationally consistent approach to best practice terminology and coverage in response to the decline of employment under traditional arrangements. The term ‘worker’ better captures those changing employment relationships (including contractors and labour hire workers) and should be adopted.

The adoption of the term ‘worker’ would align with other workers’ compensation schemes in Australia.¹⁵ Refining the definition to achieve clarity is preferred. To this end examination of definitions used in other

¹⁴ Australian Financial Review, *When stay at home becomes a win- win*, 15 February 2012: http://afr.com/p/national/work_space/when_stay_at_home_becomes_win_win_lisdviPqHX1i8SkwTXKnTL; The 7.30 Report, 02/02/2010, *Virtual office becomes a reality*: <http://www.abc.net.au/7.30/content/2010/s2808312.htm>

¹⁵ Safe Work Australia - *Comparison of workers’ compensation arrangements in Australia and New Zealand*, April 2012 at 42

Australian workers' compensation scheme is suggested. Aligning the definition of worker with the test used by the Australian Taxation Office should also be considered as a means to further reduce regulatory burden for businesses. The approach taken in s7 of the *Work, Health and Safety Act 2011* (Cth) in defining a 'worker' (which includes a volunteer) should also be considered.¹⁶

Whilst Suncorp prefers broadening the definition for 'worker' in alignment with best practice in other Australian workers' compensation schemes, careful consideration should be given to the impact of any definitional changes upon the financial sustainability of each workers compensation scheme. In the case of 'volunteers', for example, a review of premium calculations would be required. To this end, policy changes which impact upon benefit eligibility should go through actuarial assessment.

Question 3–3	Does the treatment of superannuation payments in the calculation of incapacity payments under the <i>Safety, Rehabilitation and Compensation Act 1988</i> (Cth) create a barrier to workforce participation for mature age workers? If so what, if any, changes should be made?
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The Comcare scheme is the only workers' compensation scheme nationally that applies superannuation-offset provisions to prevent injured employees from receiving multiple employer-funded benefits.¹⁷ The intent behind these provisions is sound as without these provisions there is a disincentive to return to employment where an injured employee would otherwise receive both incapacity and superannuation benefits in excess of what the employee would have earned if he or she had continued employment.

The principles guiding entitlements to income replacement should always be based on supporting individuals in becoming self-sufficient both socially and economically whilst keeping the scheme financially sustainable.

Nationally, most workers compensation schemes have a benefits design that do not incorporate the superannuation guarantee into the calculation of incapacity payments.¹⁸ In those schemes, whilst an injured worker is not working, he/she is not receiving the superannuation guarantee, which is currently nine (9) percent of an employee's ordinary earnings.¹⁹

It might be useful to have a public debate on whether this is the best policy setting nationally, but such a debate may be outside the scope of this Inquiry. Arguably, excluding the superannuation guarantee in the calculation of incapacity payments may be seen as an inducement for rapid, safe and durable return to work for those who have capacity.

¹⁶ *Work, Health and Safety Act 2011 – Section 7 Meaning of worker:*

(1) A person is a *worker* if the person carries out work in any capacity for a person conducting a business or undertaking, including work as:

- (a) an employee; or
- (b) a contractor or subcontractor; or
- (c) an employee of a contractor or subcontractor; or
- (d) an employee of a labour hire company who has been assigned to work in the person's business or undertaking; or
- (e) an outworker; or
- (f) an apprentice or trainee; or
- (g) a student gaining work experience; or
- (h) a volunteer; or
- (i) a person of a prescribed class.

¹⁷ Safe Work Australia - [Comparison of workers' compensation arrangements in Australia and New Zealand](#), April 2012 at 40

¹⁸ Ibid

¹⁹ *Superannuation Guarantee (Administration) Act 1992* (Cth) s 19(2).

Insurance

It is timely to consider the contribution of insurance, as part of the financial services sector, to the Australian economy. In 2010–2011, the financial and insurance services industry was the largest industrial sector contributing 9.7% share to Australia's gross domestic product (GDP).²⁰

A core activity of the privately underwritten insurance industry is underwriting risk. Underwriting risk is the tool of our trade and is an area of insurer expertise. Insurers use the underwriting process – statistical, actuarial and other relevant factors – to assess the frequency and severity of the insured peril and the expected average payout resulting from these perils as part of the pricing process for a policy.

Insurers are obliged to evaluate the likelihood that a loss will occur for a given risk. Any factor that causes a greater likelihood of loss is normally charged at a higher price. Not only is this basic principle essential for insurers to remain solvent, it also encourages positive behavioural changes of consumers who buy the insurance products to mitigate the risk, the importance of which is often grossly underestimated.

Thus selection against a potential group of customers, when pricing risk is a fundamental aspect of the underwriting process. Any regulations limiting this process are likely to see a decrease in product development and offerings in the market. This would not be in the public's best interests.

The data and analysis within the underwriting process is key intellectual property for insurers and is the process in which insurers can differentiate themselves and compete in the market. The underwriting process involves many factors, including age which is one of the protected attributes the anti-discrimination laws seek to address.

Suncorp supports the intent and processes of the anti-discrimination laws, which apply in respect to our day to day dealings with customers and claims management. However, it is fundamental to the underwriting process to have the ability to discriminate lawfully, to price risk appropriately and develop product offerings that are affordable as well as meeting the demands of the market and obligations to its shareholders and regulators.

Without this ability, there would be no privately underwritten insurance industry in Australia. Insurance product offerings based on the current underwriting process create higher premiums for high risk groups and reduce or remove cross subsidies imposed on low risk groups, where age may be one of the many factors differentiating these groups of risk.

For example with motor vehicle insurance products, young male customers represent a higher risk category as opposed to their mature-aged counter parts. Removing age from the underwriting process would see the low-risk group subsidising the high-risk group. Another disadvantage in limiting the underwriting process is that, as the link between price and risk becomes more distant, the monetary incentive to change behaviour within the high risk group is lowered.

Keeping risk 'price sensitive' is hugely beneficial to our society, in that it does encourage consumers to minimise risks to obtain a lower insurance premium. The underwriting process is the crucial component of market offerings of insurance products and it necessarily involves commercially sensitive material. Accordingly, the private underwriting process should be afforded appropriate commercial protection.

The current insurance exemptions enable the insurance industry to lawfully discriminate during the underwriting process. The value of a healthy and robust insurance industry to the national economy as well as

²⁰ Australian Bureau of Statistics – *Value of Goods and Services Produced by Australian Industry* - <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/1301.0~2012~Main%20Features~Value%20of%20goods%20and%20services%20produced%20by%20Australian%20Industry~240>

community safety is significant and should not be underestimated in protecting the health and financial prosperity of Australians. The insurance industry also offers significant employment opportunities nationally.

The general insurance industry operates on a fully funded profit basis and operates in a highly regulated environment, supervised by multiple regulators, governing the industry's prudential obligations, financial services licensing and general market compliance. This regulatory oversight proved invaluable as the Australian financial services sector survived the global financial crises of recent times in much better shape than its international counterparts.

Understanding the pivotal role the underwriting process has in preserving a robust insurance industry is crucial and it is against this background of information Suncorp comments on the proposal put forward in this section.

<p>Proposal 4–1</p>	<p>In April 2011, the Australian Government established an Insurance Reform Advisory Group. The group should examine:</p> <ul style="list-style-type: none"> (a) options for the development of a central information portal or source in order to provide mature age persons with clear and simple information about available insurance products; (b) the design and redesign of comprehensive and affordable insurance products tailored to the needs and circumstances of mature age persons; (c) mechanisms for reviewing age-based insurance pricing and underwriting across the industry; (d) mechanisms for ensuring that the insurance industry utilises relevant and appropriate actuarial and statistical data upon which to make decisions about insurance offerings, based on age; and (e) training of insurance distributors in order to facilitate the provision of clear and simple information about available insurance products.
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(a) options for the development of a central information portal or source in order to provide mature age persons with clear and simple information about available insurance products.

Suncorp generally supports reform or changes where the benefits outweigh the regulatory red tape and cost burden. The Insurance Council of Australia already maintains an insurer referral portal, with contact details of broker services if the user has difficulty finding the information required.²¹

Suncorp is aware that the portal may not currently address all stakeholder concerns and is committed to supporting the ongoing enhancement of the portal to meet these needs. Suncorp considers that enhanced search capabilities to meet the needs of consumers from diverse backgrounds will be an important function for inclusion in the portal going forward.

With the availability of this portal, Suncorp considers introducing another portal under the auspices of the Insurance Advisory Group may take up valuable resources that might be better used elsewhere.

In addition, regulatory obligations on the provision of financial advice²² limit the ability to target the information within the insurer referral portal to any select audience, including the mature age population. This is because the risk of straying from providing factual information to providing general or personal advice. Making any conclusion concerning the information provided about best products to suit certain types of customers would amount to a recommendation that potentially strays into either general or personal advice.

²¹ Insurance Council of Australia – Find an Insurer - <http://www.insurancecouncil.com.au/for-consumers/finding-an-insurer>

²² Corporations Act 2001 (Cth) – Chapter 7 - <http://www.comlaw.gov.au/Details/C2012C00696>

In providing factual information regarding a product to customers, an Australian Financial Services (AFS) licence is not required. Providing general or personal financial advice does require an AFS licence, and adherence to various obligations under the *Corporations Act 2001* (Cth) and the supporting Regulatory Guides (RG) from the Australian Securities and Investment Commission (ASIC). It needs to be understood that these requirements are complex and costly.

Often, the distinction between providing factual information and general or personal advice can, at times, be problematic for the insurance industry resulting in a generally conservative approach being taken in the provision of information. ASIC regulates the provision of financial advice to retail customers under the *Corporations Act* and has an armoury of coercive powers to ensure compliance.²³

(b) the design and redesign of comprehensive and affordable insurance products tailored to the needs and circumstances of mature age persons.

Suncorp considers that the design and redesign of insurance products to suit different customer groups is adequately addressed by competitive forces within the current market. Suncorp itself operates Apia, a brand specifically established to cater to the needs and circumstances of mature aged persons.

In consideration of the competitive insurance industry in Australia, Suncorp supports the market based approach in developing insurance product offerings that suit different demographics, including the mature aged person. Suncorp, as part of its business operations is always looking to enhance and develop their product offerings.

We were one of the first insurers to offer automatic flood cover in home and contents products through our personal insurance brands and those products have no age restrictions. We also offer a range of insurance products, including travel insurance which either have no age barriers or specifically target the seniors' market through our Apia, GIO and Suncorp brands.

Indeed, the Apia travel product provides individual underwriting assessment to take into account the health and fitness of the consumer. With the availability of products to suit different demographics, the suggested Insurance Reform Advisory Group initiative may prove to be unnecessary.

Further, Suncorp refutes the suggestions there are a lack of insurance product offerings for the mature age market. Suncorp specifically relies on the information provided by the Insurance Council of Australia in respect to policies of insurance available to the mature age market, as demonstration of the insurance market at work.²⁴

However, Suncorp recognises greater public awareness of available insurance policies is required. In recognition of this contradiction, Suncorp suggests the Insurance Reform Advisory Group would be better served exploring the underlying causes of any misconceptions and working to resolve or remove these issues.

Suncorp believes consumer advocacy groups play a key role in resolving the misconceptions around the availability and/or suitability of insurance products for mature aged persons and we look forward to working collaboratively through the Insurance Reform Advisory Group and other similar forums to resolve any difficulties faced by mature aged persons.

²³ Australian Securities and Investment Commission – Financial Advice and Services - <http://www.asic.gov.au/asic/asic.nsf/byheadline/Future+of+financial+advice?openDocument>

²⁴ Insurance Council Snapshot of General Insurance & Senior Australians, 29 August 2012 - <http://www.insurancecouncil.com.au/assets/submission/2012/accessibility%20and%20availability%20of%20general%20insurance%20for%20seniors.pdf>

(c) mechanisms for reviewing age-based insurance pricing and underwriting across the industry.

Suncorp strongly disagrees with this proposal. As the underwriting process for insurance product offerings go to the core of the insurance business operations and is highly commercially sensitive, the process should be afforded all due commercial protection. As stated previously, it is in the public interests to preserve the competitive underwriting nature of the insurance industry in Australia.

General data on risk factors, including age are publically available through the Australian Bureau of Statistics (ABS) and the Australian Institute of Health and Welfare (AIHW). This data offers some useful information.

The underwriting process, however, involves analysis of many factors including age and the insurer's book experience. As stated previously, this data and the analysis of the data represent insurer's intellectual property.

Reference is made in the Discussion Paper to data released in the United Kingdom by the Association of British Insurers²⁵ in respect to age and gender factors. Aggregated data is published in table or chart form. The aggregated data may explain the case for differing treatment based on age or gender, however it is not possible to draw conclusions from the data about an individual policyholder's premium.²⁶

Similar aggregate data could be collected in Australia, however there should be consideration as to whether the costs of collecting this data would outweigh the public benefit, as ultimately the cost will need to be passed onto the consumer through increased premiums. Ultimately, we do not believe summary data will resolve any material concerns and therefore encourage use of the existing regulatory process.

(d) mechanisms for ensuring that the insurance industry utilises relevant and appropriate actuarial and statistical data upon which to make decisions about insurance offerings, based on age.

Consumers are free to shop for the insurance product they require at a price they are happy with. We encourage consumers to take advantage of this and to speak directly with insurers, insurance brokers or financial planners holding an AFS licence.

If consumers are unhappy with the product and pricing structure of a particular policy, they may take advantage of the current mechanisms to seek re-dress. Suncorp supports the current mechanisms of ensuring the insurance industry uses relevant and appropriate actuarial and statistical data upon which to make decisions on insurance product offerings.

The current mechanism includes:

- lodging a complaint through the insurer. The insurer is obliged to adhere to the dispute resolution process, which includes sending the unresolved dispute to the external dispute resolution process;²⁷ or
- lodging a complaint through the Human Rights Commission.²⁸

The insurers' dispute resolution process is highly regulated (ASIC - RG 165 and RG 139). These services are consumer friendly and offer support in resolving the dispute. They are also free of charge for the consumer and the consumer is kept informed about once a complaint has been received.

²⁵ Association of British Insurers, British Insurance Brokers' Association and HM Government – *Data by Age and Gender* - http://www.abi.org.uk/Facts_and_Figures/Data_by_Age_and_Gender.aspx

²⁶ Association of British Insurers, British Insurance Brokers' Association – *Private Motor Insurance and Travel Insurance by Age*, June 2012, at 6 - http://www.abi.org.uk/Facts_and_Figures/Data_by_Age_and_Gender.aspx

²⁷ Australian Securities and Investment Commission – *Regulatory Guide 165; Licensing: Internal and external dispute resolution*, April - 2011 - [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rq165-published-20-4-2011.pdf/\\$file/rq165-published-20-4-2011.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rq165-published-20-4-2011.pdf/$file/rq165-published-20-4-2011.pdf); Insurance Council of Australia – Disputes - <http://www.insurancecouncil.com.au/for-consumers/disputes>

²⁸ Australian Human Rights Commission – complaints information - http://humanrights.gov.au/complaints_information/index.html

Any finding by FOS is binding on the financial services provider. Consumers are encouraged to use these services if they are unsatisfied with insurance underwriting or pricing.

(e) training of insurance distributors in order to facilitate the provision of clear and simple information about available insurance products.

The Insurance Council insurer referral service is available to access information about insurance products. Product disclosure statements are readily available for each insurance product offering. The responsibility of ensuring a product meets the needs of the consumer, must rest with the consumer.

If a potential consumer requires assistance in determining which insurance product is best for them, the services of an insurer, insurance broker or financial planner holding an AFS licence is also readily available through the Insurance Council's insurer referral service or directly through an insurer. The *Insurance Contract Act 1984* (Cth) and the Future of Financial Advice reforms²⁹ apply additional requirements on distributors.

Proposal 4–2	The Insurance Reform Advisory Group should keep a watching brief on developments in the insurance industry in relation to age, both in Australia and overseas, with a view to reviewing Australian insurance practices as the need arises
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Suncorp supports the current work of the Insurance Reform Advisory Group which looks at insurance issues generally.

In respect to recent international developments in making gender an unlawful risk factor in the underwriting process³⁰ from 21 December 2012, it remains to be seen what impact these developments will have on the insurance industry in Europe and specifically the United Kingdom. Of particular interest is whether these developments will impact upon insurance product offerings and affordability.

Theoretically, removing the ability to use gender as a factor in pricing risk reduces the sensitivity of price in encouraging the mitigation of risk in high risk groups. Low risk groups will, most likely, end up subsidising high risk groups. This raises the question as to whether this is good public policy. This argument is equally applicable to the use of age as a risk factor.

Proposal 4–3	From 2012, the General Insurance Code of Practice is being reviewed by an independent reviewer. In the course of the review, the ways in which the Code could be amended to encourage insurers to consider the needs and circumstances of mature age persons should be examined.
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Suncorp does not support this proposal.

The General Insurance Code of Practice (the Code) is a statement of principles designed to guarantee exceptional customer service standards and to protect the rights of policyholders and is supported by the objectives of the Code.³¹ Suncorp is of the view it is not appropriate, in any way, to limit these standards to a specific target group but considers it should apply to all consumers, without exception within the community.

²⁹ Australian Government, The Treasury – *Future of Financial Advice*

<http://futureofadvice.treasury.gov.au/content/Content.aspx?doc=home.htm>

³⁰ *Association belge des Consommateurs Test-Achats ASBL v Conseil des ministres (Test Achats)* (Unreported, ECJ, 1 March 2011)

³¹ General Insurance Code of Practice, 1 May 2010, Clause 1.17 - <http://www.codeofpractice.com.au/Portals/0/2010%20Code.pdf>

Compliance with the Code of Practice is monitored by the Financial Ombudsman Service (FOS).³² FOS also provides tips and resources for seniors.

Question 4–1	In addition to the General Insurance Code of Practice, are there other industry standards or codes that should be reviewed in order to encourage insurers to consider the needs and circumstances of mature age persons? For example, the Financial Services Council Code of Ethics and Code of Conduct?
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General insurance is one of the most regulated industries in Australia. The government agency that oversees the industry as the prudential regulator is the Australian Prudential Regulation Authority (APRA).

The industry self regulates itself under the General Insurance Code of Practice, which is regularly reviewed and updated. Currently, the Code is under review. The Code is monitored by FOS.

ASIC is the regulator that oversees the operation of the *Insurance Contracts Act* (which is highly regarded internationally³³) and monitors the conduct of AFS licensees. Insurers and insurance brokers must subscribe and be bound by FOS. The Australian Competition and Consumer Commission (ACCC) regulates competition issues within the insurance industry.

The Human Rights Commission and the common law are further avenues to seek consumer redress. Suncorp considers the level of regulatory oversight and the common law more than adequately affords protection for consumers.

It is against this framework, that a cost analysis should be performed before pursuing reviews of other industry codes for the purposes of encouraging insurers to consider the needs and circumstances of matured aged persons.

Question 4–2	In the course of the consolidation of federal anti-discrimination legislation, the Australian Government is considering the operation of the insurance exemption under the Age Discrimination Act 2004 (Cth). If the specific exemption is retained, what changes, if any, should be made? For example, should: <ul style="list-style-type: none"> (a) the application of the exemption be limited in some way; (b) there be provision for an individual to request and receive the actuarial or statistical data on which the action or decision was based; or (c) clarification be provided as to what are ‘other relevant factors’?
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On 20 November 2012, the Australian Government released the *Exposure Draft Human Rights and Anti-Discrimination Bill 2012* (the Bill).³⁴ The Senate Legal and Constitutional Affairs Committee has been asked to conduct an inquiry into the Bill.

Suncorp is on record supporting the insurance industry view that any consolidation of the anti-discrimination legislation should continue to provide a specific insurance exemption clause rather than the proposed general

³² Financial Ombudsman Service - http://fos.org.au/centric/home_page.jsp

³³ Law Reform Commission of Ireland – Consultation Paper on Insurance Contracts, published 11 January 2012 - http://www.lawreform.ie/fileupload/consultation%20papers/cp65InsuranceContracts.pdf?bcsi_scan_643ae59bb06de82b=0&bcsi_scan_filename=cp65InsuranceContracts.pdf

³⁴ Australian Government – Attorney General’s Department - Consolidation of Commonwealth anti-discrimination laws - <http://www.ag.gov.au/Humanrightsandantidiscrimination/Australiahumanrightsframework/Pages/ConsolidationofCommonwealthantidiscriminationlaws.aspx>

limitations clause.³⁵ Suncorp will repeat its submission made in response to the *Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper* to the Parliamentary Inquiry.

As stated previously, it is critical for the insurance industry be able to lawfully discriminate during the underwriting process. However, Suncorp supports the intent and processes of the anti discrimination laws in every other aspect of its business operations. Suncorp believes that the current exemptions are appropriate and reflect industry practice.

The current exemptions permit selection against a potential group of customers, when pricing risk. The rationale for the differential treatment of potential groups of customers goes to the heart of pricing risk and offering products that are affordable.

Suncorp supports the current insurance exemption clause as it creates legal certainty and assists in developing product offerings from which the community may benefit. Suncorp does not support a general exemption clause, based on the fact that the lack of guiding rules as to when the insurance industry may lawfully discriminate is most likely to lead to increased litigation to settle the rules.

The number of complaints about discrimination lodged through internal dispute resolution process is low (three complaints in eight (8) years) suggesting the current statutory insurance exemption accurately reflects insurer practice and assists insurers to explain the underwriting process to consumers, aiding early resolution of complaints.

Any increase in litigation would ultimately be borne by the consumer, putting upward pressure on premiums. Hence Suncorp strongly supports maintaining a specific insurance exemption clause.

However there is an opportunity to harmonise the insurance exemption clause across all Commonwealth anti-discrimination laws and nationally. An example of an effective insurance exemption clause is Section 47 of the *Equal Opportunity Act 2010* (Vic) which states inter alia:

An insurer may discriminate against another person by refusing to provide an insurance policy to the other person, or in the terms on which an insurance policy is provided, if –

- *the discrimination is permitted under the:*
 - Sex Discrimination Act 1984 (Cth); or
 - Disability Discrimination Act 1992 (Cth); or
 - Age Discrimination Act 2004 (Cth); or
- *the discrimination:*
 - *is based on actuarial or statistical data on which it is reasonable for the insurer to rely; and*
 - *is reasonable having regard to that data and any other relevant factors; or*
- *in a case where no such actuarial or statistical data is available and cannot reasonably be obtained, the discrimination is reasonable having regard to any other relevant factors.*

For the purposes of the above insurance exemption clause, the following definitions are provided:

- *‘insurance policy’ includes a annuity, a life insurance policy, an accident insurance policy and an illness insurance policy; and*
- *‘insurer’ means a person who is the business of providing insurance policies.*

³⁵ Suncorp Response - *Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper*, 1 February 2012 - [http://www.ag.gov.au/Humanrightsandantidiscrimination/Australiahumanrightsframework/Documents/Consolidation%20-%20Discussion%20Paper%20-%2019%20-%20Suncorp%20-%202%20Feb%202012%20\(pdf\).PDF](http://www.ag.gov.au/Humanrightsandantidiscrimination/Australiahumanrightsframework/Documents/Consolidation%20-%20Discussion%20Paper%20-%2019%20-%20Suncorp%20-%202%20Feb%202012%20(pdf).PDF)

Question 4–3	Is the power of the Australian Human Rights Commission under s 54 of the <i>Age Discrimination Act 2004</i> (Cth) sufficient, or should there be some other mechanism for requesting or requiring the actuarial or statistical information relied upon by insurers seeking to invoke the insurance exemption?
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Suncorp considers the current powers of the Australian Human Rights Commission are adequate.

Proposal 4–4	The Australian Human Rights Commission, in consultation with the Insurance Council of Australia and the Financial Services Council, should develop guidance material about the application of any insurance exemption under the <i>Age Discrimination Act 2004</i> (Cth) or consolidated anti-discrimination legislation.
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It is acknowledged that the Australian Human Rights Commission has developed *Guidelines for Providers of Insurance and Superannuation* with respect to the insurance and superannuation exemptions under the *Disability Discrimination Act*, which were last revised in 2005.³⁶ The guidelines are not binding but provide the Australian Human Rights Commission's view on the interpretation of the exemption under the Act and relevant case law. Suncorp considers it would be valuable to extend these guidelines to all Commonwealth anti-discrimination laws.

Superannuation

Australia's superannuation has undergone continued reform since the introduction of the industrial award-based superannuation in the late 1980s and the compulsory Superannuation Guarantee (SG) contribution in 1992. The purpose of the reforms is to encourage national private savings for retirement in response to the ageing population and the projected fall in total workforce participation from 65 per cent at present to less than 61 per cent by 2050³⁷. The reforms include government funded tax incentives to boost superannuation balances.

The Australian compulsory superannuation system is still relatively immature with many individuals only having superannuation coverage since the late 1980s (for industrial award-based superannuation) and 1992 (for the SG). As a result of incremental increases in the SG up to nine percent by 2002, the majority of adult Australians still have relatively modest levels of superannuation funds and it will be another 30 years before most individuals will have the full benefit of a mature SG system.

Figures from the ABS Survey of Income reveal the average superannuation account balance in 2009-10 was \$71,645 for men and \$40,475 for women. For those retiring in 2009-10, the average superannuation payouts were approximately \$198,000 for men and \$112,600 for women with an estimate of average retirement payments in June 2011 likely to reach \$250,000 for men and \$145,000 for women.

To retire with a comfortable lifestyle, it is suggested that a single person requires a balance of around \$430,000 and a couple around \$510,000. This is based on receipt of a part Age Pension.³⁸ Clearly, those seeking to retire today are unlikely to have sufficient funds to last their retirement.

³⁶ Human Rights Commission - Guidelines for Providers of Insurance and Superannuation, Revised 2005 - http://www.humanrights.gov.au/disability_rights/standards/Insurance/insurance_adv.html#4

³⁷ Advisory Panel on the Economic Potential of Senior Australians *Realising the economic potential of senior Australians: enabling opportunity*, 2 November 2011 at 24 - http://archive.treasury.gov.au/EPISA/content/publications/enabling_opp/downloads/epsa_enabling.pdf

³⁸ Association of Superannuation Funds of Australia - Average super balances boosted despite volatile economy, Media Release, 19 September 2011 - <http://www.superannuation.asn.au/media-release-19-september-2011>

Despite the eligibility for the Age Pension increasing incrementally to 67 years by 2023 (a measure to encourage work force participation by the mature aged), the current median age for retirement is 61 years.³⁹ If community members continue to retire early, they will need to draw down on their superannuation and other savings until they reach the Age Pension eligibility age. This will reduce their savings available to fund the later years - when the Age Pension will form a significant part of their income.

Suncorp supports the lifting of age barriers in superannuation. Before lifting age barriers of any policy settings within the superannuation arrangements, it is recommended a 'no disadvantage test' be applied, to guard against unintended consequences.

From a policy perspective, to increase the current level of private retirement savings and work force participation rates, the continued use of the government funded tax incentives plays a key role. Current incentives include tax breaks and caps on concessional contributions, caps on non concessional contributions and the 'Transition to Retirement' (TTR) arrangements.

Currently the government funded tax incentives revolve around contribution caps and age. It has been argued that high income earners use these arrangements as a tax minimisation vehicle, an unintended consequence of the arrangements. Linking tax incentives to superannuation balances only may be a better policy approach (as currently is the case for government funded incentives for concessional contributions by way of salary sacrifice up to a balance ceiling of \$500,000) and could be explored.

A superannuation balance ceiling may be nominated and based upon actuarial assessment of the funds required to avoid reliance on the Age Pension in retirement. Once the pre-determined account balance is reached (say \$500,000), government funded tax incentives should cease to be available.

There is evidence that the community finds the Australian superannuation complex and difficult to understand.⁴⁰ It is also clear that certain groups are disadvantaged by the current superannuation arrangements, such as those who have been out of the workforce for a period of time due to illness, work injury, caring and parenting responsibilities. Anecdotal evidence suggests that these groups of people will never be able to make up for the lost opportunity of making contributions to their superannuation balances.⁴¹

Ongoing changes to caps and tax rates on contributions increase the level of complexity and confusion for the consumer. Linking tax concessions to account balances may have the capacity to alleviate some of this complexity and should be explored. This approach may better target tax incentives to boosting superannuation balances, which in turn is likely to increase workforce participation rates, on the basis that most Australians currently have insufficient superannuation balances for retirement.

Removing tax incentives once a pre-determined superannuation balance is reached is likely to exclude current superannuation arrangements as a tax minimisation vehicle. Rules in respect to accessing retirement income should be set at levels that would ensure adequacy of funds for retirement.

Suncorp acknowledges, however, that the constant tinkering and speculation on superannuation policy settings is likely to undermine confidence in the system, especially from the sector that is close to retirement.⁴² Future reform should take this into account and strategies implemented to ensure confidence in Australia's superannuation is not undermined.

³⁹ Rice Warner Actuaries - Retirement Savings Gap at June 2011. Prepared for the Financial Services Council, March 2012 at 13 - http://www.fsc.org.au/downloads/file/ResearchReportsFile/FINAL_FSCSuperannuationSavingsGapReport2011.pdf

⁴⁰ Suncorp – ASFA Super Attitudes Survey 2012, at pages 7 & 8, - <http://www.suncorpbank.com.au/sites/default/files/suncorp/personal/superannuation/pdf/Suncorp-ASFA%20Super%20Attitudes%20Survey%202012.pdf>

⁴¹ Suncorp – ASFA Super Attitudes Survey 2012, at page 4 - <http://www.suncorpbank.com.au/sites/default/files/suncorp/personal/superannuation/pdf/Suncorp-ASFA%20Super%20Attitudes%20Survey%202012.pdf>

⁴² Association of Superannuation Funds of Australia - *Further superannuation changes will be a disaster*, Media Release 20 April 2012 - <http://www.superannuation.asn.au/Media-Release-20-April-2012>

Proposal 8–1	<p>Regulation 7.04(1) of the <i>Superannuation Industry (Supervision) Regulations 1994 (Cth)</i> restricts superannuation funds from accepting voluntary contributions for members of superannuation funds:</p> <p style="padding-left: 40px;">(a) aged 75 years and over; and (b) aged 65 years until 75 years</p> <p>unless they meet a work test, that is, where they are gainfully employed on at least a part-time basis during the financial year.</p> <p>The Australian Government should amend reg 7.04(1) to remove the restriction on voluntary contributions for members aged 75 years and over, and to extend the work test to these members.</p>
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Suncorp supports Proposal 8–1. Any reforms that encourage gainful employment past the traditional working age are welcomed, as it promotes a more vital and healthy Australia and recognises that many Australians still want to make a contribution past retirement. It also allows Australians to self-fund their retirement (and potentially assist in estate planning for dependant loved ones requiring ongoing care and support) and reduces reliance on government funding.

In recommending reforms, Suncorp requests alignment with all related provisions. For example, where voluntary contributions may be accepted by those aged 75 and over, as provided in Regulation 7.04(4). This regulation specifies that contributions deemed ineligible under 7.04(4) for age 75 and over can be allowed if these are made into a superannuation fund with a risk insurance interest.⁴³ Suncorp also requests that all recommendations are aligned with and have seamless interaction with reforms currently being implemented, such as StrongerSuper.

Question 8–1	<p>Regulations 7.04(1) and 7.01(3) of the <i>Superannuation Industry (Supervision) Regulations 1994 (Cth)</i> stipulate a work test for members of superannuation funds aged 65 years and over who wish to make voluntary superannuation contributions. Members must be gainfully employed on at least a part-time basis during the financial year, that is, for a minimum of 40 hours over a consecutive 30 day period. What changes, if any, should be made to the work test? For example, should the minimum hours of work be increased and, if so, over what period?</p>
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Suncorp considers every effort should be made to reduce complexity of Australia's superannuation arrangements, whilst protecting policy outcomes. Accordingly, it is suggested that Regulations 7.04(1) and 7.01(3) should be linked to the Age Pension eligibility age. That is the work test should not apply until a person has reached pensionable age.

Suncorp has no particular view as to whether the work test itself should be tightened.

⁴³ *Superannuation Industry (Supervision) Regulations 1994 - Reg 7.04(4)* - http://www.austlii.edu.au/au/legis/cth/consol_reg/sir1994582/s7.04.html

Proposal 8–2	Section 290-80 of the <i>Income Tax Assessment Act 1997</i> (Cth) provides that voluntary superannuation contributions made by employers for employees aged under 75 years are tax deductible. The Australian Government should amend s290-80 to enable employers to claim deductions for voluntary contributions made for employees aged 75 years and over.
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Suncorp supports Proposal 8–2 as part of the general initiative to remove age discrimination and to reduce complexity within Australia’s superannuation arrangements. The aim is to maintain equitable arrangements and the ‘no disadvantage’ test could be considered.

Proposal 8–3	Section 290-165(2) of the <i>Income Tax Assessment Act 1997</i> (Cth) provides that superannuation contributions made by self-employed, and substantially self-employed, workers aged under 75 years are tax deductible. The Australian Government should amend s290-165(2) to enable these workers to claim deductions for contributions made at age 75 years and over.
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Suncorp supports Proposal 8–3 and repeats the previous response.

Proposal 8–4	<p>Regulation 7.04(1) of the <i>Superannuation Industry (Supervision) Regulations 1994</i> (Cth) restricts superannuation funds from accepting spouse contributions when the spouse is:</p> <ul style="list-style-type: none"> (a) aged 70 years or over; and (b) aged from 65 years until 70 years, unless he or she meets a work test, that is, being gainfully employed on at least a part-time basis during the financial year. <p>The Australian Government should amend reg 7.04(1) to enable a member of a superannuation fund to make contributions for a spouse aged 70 years or over, when the spouse meets the work test.</p>
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Suncorp supports Proposal 8-4 in principle but prefers consistency in approach in reducing complexity within Australia’s superannuation arrangements. Preferably, Regulation 7.04(1) should be amended to enable a member of a superannuation fund to make contributions for a spouse aged 75 years or over (and not 70 years and over as suggested), when the spouse meets the work test.

From a policy perspective, raising the age for spouse contributions to 75 years is consistent with aligning the pensionable age, irrespective of gender. It also takes into account gender differences in life expectancies.⁴⁴

⁴⁴ Australian Bureau of Statistics - *Life Tables, States, Territories and Australia, 2009-2011* - <http://www.abs.gov.au/ausstats/abs@.nsf/mf/3302.0.55.001?OpenDocument>

Proposal 8–5	Regulation 6.44(2) of the <i>Superannuation Industry (Supervision) Regulations 1994 (Cth)</i> provides that an application for spouse contribution splitting is invalid if the member’s spouse is aged 65 years or over, or has reached superannuation preservation age and retired. The Australian Government should amend r6.44(2) to remove the age restriction from age 65 years when the spouse meets a work test that is, being gainfully employed on at least a part-time basis during the financial year.
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Suncorp supports Proposal 8-5 in principle but prefers consistency in approach to reduce complexity within Australia’s superannuation arrangements. Preferably, Regulation 6.44(2) should be amended to remove the age restriction from age 65 years to 75 years when the spouse meets a work test that is, being gainfully employed on at least a part-time basis during the financial year.

Proposal 8–6	Section 6(1)(e) of the <i>Superannuation (Government Co-contribution for Low Income Earners) Act 2003 (Cth)</i> provides that government co-contributions are payable only for persons aged under 71 years. The Australian Government should repeal this restriction.
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Suncorp supports Proposal 8–6 in principle but prefers consistency in approach to reduce complexity within Australia’s superannuation arrangements. The age caps should replicate arrangements in respect of voluntary contributions for members aged 75 years and over.

Proposal 8–7	The ‘Transition to Retirement’ rules were introduced into the <i>Superannuation Industry (Supervision) Regulations 1994 (Cth)</i> to encourage continued mature age workforce participation. Research has suggested that the rules may not meet this policy objective in practice. The Australian Government should initiate a review of the Transition to Retirement rules to determine what changes, if any, are required to ensure that the rules meet their policy objective. The review should consider matters including: <ul style="list-style-type: none"> (a) the use of the rules in practice; (b) whether there is sufficient and widespread access to the scheme; (c) the relationship to the setting of the concessional superannuation contributions cap; (d) eligibility criteria; and (e) comparable international schemes.
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Arguably the “Transition to Retirement” (TTR) rules not only supports a tax effective way of saving more for retirement during the crucial years of pre-retirement but also encourages the mature aged worker to remain in the work force longer. Suncorp supports government funded tax incentives to boost retirement savings in those crucial pre-retirement years to a level where there would be less reliance on the Age Pension during retirement.

As stated previously, linking tax incentives to superannuation balances may be a policy approach that could be explored. The ‘no disadvantage test’ would need to be applied to guard against unintended consequences.

Question 8–2	<p>The Australian Government has legislated two key changes to the retirement income system: the superannuation preservation age will increase from 55 to 60 years between 2015 and 2025; and the Age Pension age will increase from 65 to 67 years between 2017 and 2023.</p> <p>Should the preservation age be increased beyond 60 years? For example, to:</p> <ul style="list-style-type: none"> (a) 62 years—maintaining the five-year gap between the Age Pension age and the preservation age; or (b) 67 years—aligning the preservation age with the Age Pension age?
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The Henry Review⁴⁵ recommended increasing the preservation age to 67 years (the pensionable age). The Financial Services Council (FSC) supports the increase of the compulsory preservation age to follow increases in the Aged Pension age. Recently the FSC advocated a rise in the preservation age to 62 years to preserve the current five year gap between the current preservation age (60) and the current age pension age (65).⁴⁶

Suncorp supports increasing the preservation age to 62 years initially, with incremental increases linking into the Age Pension eligibility age. This change is consistent with increases in healthy life expectancy in Australia and assists in preventing private retirement income cover from being exhausted during retirement.

Suncorp suggests that it is the preservation age that will play a significant role in deciding when to retire from the workforce. Accordingly, the preservation age should be set at a level that provides individual flexibility when considering retirement but also ensuring superannuation balances are not exhausted during retirement.

Question 8–3	<p>The age for tax-free access to superannuation benefits is set at 60 years. Should this age setting be increased:</p> <ul style="list-style-type: none"> (a) to align with any further increase to superannuation preservation age (that is, beyond 60 years); or (b) instead of any further increase to preservation age—for example, to: <ul style="list-style-type: none"> (i) 62 years—maintaining the five-year gap between the Age Pension age and the tax-free superannuation access age; (ii) 65 years—aligning the tax-free superannuation access age with the unrestricted superannuation access age; or (iii) 67 years—aligning the tax-free superannuation access age with the Age Pension age?
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Suncorp supports the increasing the age for tax free access to superannuation benefits in alignment with increases to the preservation age. The rationale behind this is to reduce complexity in the arrangements and to encourage work force participation for longer.

Conclusion

As the preferred policy position, Suncorp supports the removal of age barriers in recruitment, employment laws and practices, work, health and safety and compensation arrangements; insurance and superannuation arrangements. However, in removing age barriers caution should be exercised to:

⁴⁵ Australia's Future Tax System – *Final Report*, 2 may 2010 -

http://www.taxreview.treasury.gov.au/content/Content.aspx?doc=html/pubs_reports.htm

⁴⁶ Financial Services Council - *Australians living longer – increase workforce participation for older workers*, 2 August 2012 -

http://www.fsc.org.au/downloads/file/MediaReleaseFile/2012_MR_Speech_JB_Longevity.docxFinal.pdf

- ensure recruitment of persons with diverse backgrounds, including the mature aged worker is based upon capacity assessments and avoid mandating provisions that would discourage recruitment of mature aged workers;
- protect the financial sustainability of statutory personal injury schemes by considering well defined and controlled benefits regime;
- protect market based offerings of insurance products and affordability, through the current private underwriting process; and
- promote equitable boosting of retirement savings and matured aged workplace participation rates.

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