



Ms Sabina Wynn
Executive Director
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2001

Dear Ms Wynn

**Submission to Australian Law Reform Commission's Discussion paper on
Grey Areas – Age barriers to work in Commonwealth Laws**

I am writing in response to the Australian Law Reform Commission's (ALRC) discussion paper on Age Barriers to work in Commonwealth Laws. In our earlier submission to the ALRC's issues paper I indicated the range of projects Safe Work Australia is undertaking to address barriers to work for older people. The ALRC's discussion paper asks questions and makes several proposals relevant to the activities being undertaken by Safe Work Australia in relation to older workers. I would like to provide additional information on these activities and the ALRC's proposals.

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.

The *Australian Work Health and Safety Strategy 2012–22* (Australian Strategy) was launched by the Minister for Employment and Workplace Relations, the Hon Bill Shorten on 31 October 2012 to provide a framework for improving work health and safety across Australia over the next decade. The Australian Strategy encourages the engagement of a wide range of stakeholders to develop initiatives and undertake activities across seven action areas to meet the improvement targets set. Considering the particular needs of the wide range of workers, including aged workers will be important in achieving this.

Safe Work Australia Members are currently planning how elements of the Australian Strategy will be implemented. Safe Work Australia will take proposal 3–1 to its Members as part of their planning so that work health and safety issues that may affect mature age workers are considered when implementing the Australian Strategy.

Safe Work Australia will report annually on the Australian Strategy and undertake a review in 2017 to ensure it continues to generate sustained improvements in work health and safety.

Proposal 3–2 Safe Work Australia should include work health and safety issues that may affect mature age workers in its research agenda.

Safe Work Australia continues to include age as an analysis variable in its research to inform the development or evaluation of national policy relating to work health and safety and workers' compensation.

In 2011 Safe Work Australia commissioned a survey of Australian workers that assessed their work ability or their ongoing capacity to perform their work. The purpose of this research was to determine how worker age and other employment and demographic factors were associated with the work ability of workers and how this was related to worker health, work-

related injury and illness and employment outcomes. Data collection has been finalised and data are being analysed. Safe Work Australia anticipates it will publish a report on its website in 2013.

In 2011 Safe Work Australia began a collaboration with the Centre for Research on Ageing, Health and Wellbeing at the Australian National University on the Longitudinal Personality and Total Health Through Life Project. It is a community survey from the ACT and Queanbeyan region which at the start of the study included three cohorts or age groups: 20-24 years; 40-44 years; and, 60-64 years. Each cohort will be interviewed every four years for 20 years at which point the age groups will overlap thus capturing the total adult life span. Safe Work Australia has included work related questions to allow a broader examination of issues specific to the workplace. The project enables study of the inter-relationship between work and health across the life course. It has a particular focus on work and physical and mental health including mental disorders, cognitive ability, physical functioning and chronic health conditions across the adult life span. The data collected is a resource to inform policy decisions in relation to productivity and workforce participation.

Safe Work Australia will continue to look for opportunities to include the work health and safety issues that may affect mature age workers as part of its research and evaluation strategy and work plans.

Proposal 3–3 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.

As noted in the ALRC report the legislative requirements under the model Work Health and Safety (WHS) laws are sufficiently broad to protect the health and safety of all workers, regardless of age or any other distinction.

The model WHS Act requires a person with a duty under the Act to ensure health and safety by eliminating risks to health and safety so far as is reasonably practicable. If it is not reasonably practicable to eliminate the risk then they must minimise those risks so far as is reasonably practicable. This requires a duty holder to manage risks to the health and safety of all workers, including mature age workers. Age-related factors which might affect an individual's ability to work safely should therefore always be considered where relevant in managing health and safety risks at a workplace. For example a person conducting a business or undertaking should consider a person's fitness for work as part of their risk assessment. This applies in relation to all workers, not mature age workers alone.

Mature age workers like all other workers also have a duty under the WHS Act to take reasonable care for their own safety at work and that of others at the workplace.

Safe Work Australia has produced guidance material including model Codes of Practice and fact sheets on a wide range of issues. Some of this guidance is aimed at all work and workplaces (for example the Code of Practice on How to Manage Work Health and Safety Risks) while others relate to specific risks (for example the Code of Practice on Managing Noise and Preventing Hearing Loss at Work). Such guidance applies to all workers including mature age workers. If issues which are specific to the needs of mature age workers are identified and are not adequately covered in the general material applying to all workers, further guidance could be developed for mature age workers.

Safe Work Australia is continuing to provide guidance to volunteers and volunteer organisations. In addition to the volunteer resource kit there is a dedicated volunteer phone number, email address and website. Since the volunteer resource kit was released on 31 July 2012 the number of enquiries received by Safe Work Australia has reduced significantly.

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.

The annual Safe Work Australia Award finalists are the winners of each of the relevant categories in the respective jurisdictional awards. There is no separate process to determine finalists for the national awards. Any decision for a national recognition process for 'best practice approaches in work health and safety to mature age workers' would require close consultation with jurisdictions and union and industry representatives.

Safe Work Australia is currently reviewing the national awards to determine whether they are the best approach to achieving Strategy 1.1 of the Safe Work Australia Strategic Plan—*Work with stakeholders through a range of mechanisms to deliver a consistent national message on the importance of work health and safety*.

A review report is expected to be discussed by Safe Work Australia Members at their first meeting in 2013.

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.

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.

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?

As indicated in our earlier submission to the ALRC's issues paper Safe Work Australia is currently developing an options paper aimed at achieving consistency of retirement age provisions in Australia and specifically to:

- address the increase in the Age Pension age from age 65 to age 67 between 2017 and 2023, and
- consider recommendation 42 of the *Older People and the Law Report* regarding the application of workers' compensation legislation to ensure that older workers are not disadvantaged.

At the 8 November 2012 meeting of the Strategic Issues Group for Workers' Compensation (SIG-Workers' Compensation) members considered a draft options paper on Retirement Age in workers' compensation. The draft options paper recommends that all jurisdictions which currently include retirement age provision in their workers' compensation legislation amend their legislation to tie current retirement age provisions to the age pension qualifying age under the *Social Security Act 1991* (Cth).

In relation to older workers' disadvantage, the draft options paper examined the possibility of removing retirement age provisions from workers' compensation by either:

- removing retirement age provisions and introducing time or payment limits to weekly incapacity payments irrespective of age, or
- removing retirement age provisions without introducing time and/or payment limits to weekly incapacity payments.

The draft options paper does not recommend either of these approaches.

The introduction of time and/or payment limits to weekly incapacity payments irrespective of age would disadvantage younger workers with significant work-related injuries who may be reliant on incapacity payments for long periods and whose entitlements may be exhausted before they have recovered. This approach also has the potential to cause cost shifting to Commonwealth welfare programs.

On the other hand the removal of all retirement age provisions without introducing time and/or payment limits would result in a significant increase to scheme costs and could result in situations where workers remain on weekly incapacity payments well past the age where they would have retired had they not been injured at work. This approach has the potential to result in cost-shifting from the Commonwealth (Age Pension) to workers' compensation and employers via premiums.

At the SIG- Workers' Compensation meeting members agreed to conduct actuarial assessments on two options to address older workers' disadvantage under workers' compensation schemes. Both options involve the retention of retirement age provisions with a period of weekly incapacity payments (either 104 weeks or 130 weeks) for workers injured close to or after retirement age.

The main advantage of this approach is that it balances scheme costs with the needs of older workers. Incapacity payment periods are designed to allow time for older workers to recover and return to work or if this is not possible, transition to the age pension or superannuation payments.

A revised options paper including actuarial assessments of the two options above will be considered by SIG-Workers' Compensation members in early 2013.

Question 3–2 Should the Australian Government introduce a supplementary payment for mature age workers similar to the one provided for under the Workers' Rehabilitation and Compensation Act 1988 (Tas)?

At its meeting on 8 November 2012 SIG-Workers' Compensation members considered whether the options paper should include an option similar to a provision in Tasmanian legislation. The Tasmanian provision allows the extension of the period of incapacity payments in some cases following a determination that the worker would have continued in employment had they not been injured. It was noted at the meeting that there was the potential for disputation based on this provision and members agreed to exclude this option from the Retirement Age options paper.

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.

At its meeting on 20 April 2012 SIG-Workers' Compensation members reviewed the number of definitions it was investigating and agreed to focus its work on retirement age and deemed diseases projects. At the meeting members deferred work on other definitions projects—including a project to investigate the definition of 'worker'.

At its meeting on 8 November 2012 SIG-Workers' Compensation members considered ALRC proposal 3-7 and whether a project should be added to its work program to investigate the definition of 'worker' to ensure the consistency of coverage of volunteers. At the meeting members agreed to defer a decision on whether to commence work on the definition of 'worker' until after the ALRC has presented its final report in March 2013.

I hope the above information is useful in developing your inquiry's final report to address age barriers to work in Commonwealth laws. If you require any additional information or would like to discuss the Agency's response to the discussion paper further, please contact Julie Hill, Director, Policy Section, Policy and Services Branch at julie.hill@safeworkaustralia.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R. J. Hoy'.

Rex Hoy
Chief Executive Officer
Safe Work Australia

11 November 2012