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2. Recruitment and Employment Law

Proposal 2-1 The Fair Work Ombudsman should undertake a national recruitment industry campaign to educate and assess the compliance of recruitment agencies with workplace laws, specifically with respect to practices affecting mature age job seekers and workers.

AFDO's position on this would be to add to the campaign "specifically with respect to practices relating to mature age jobseekers with disability or diverse backgrounds

Proposal 2-2 In 2013, the Recruitment and Consulting Services Association of Australia and New Zealand is conducting a review of its Code of Conduct. The review should consider ways in which the Code can emphasise:

- (a) the importance of client diversity, including mature age job seekers;
- (b) constructive engagement with mature age job seekers; and
- (c) obligations under age-related anti-discrimination and industrial relations legislation.
- (d) should also include obligations and constructive engagement of mature aged people with disability

Proposal 2-3 In order to assist recruitment agencies and consultants to engage constructively with, and recruit, mature age job seekers, the Australian Human Resources Institute and the Recruitment and Consulting Services Association of Australia and New Zealand should:

- (a) develop and provide regular, consistent and targeted education and training for recruitment consultants; and
- (b) develop a range of guidance material.

AFDO's members often hear complaints that the DES providers do not have sufficient understanding of the issues related to disability. We supports this proposal and welcome the changes to the DES program announced in October and support any proposal for additional training for service providers in better understanding the needs for people with disability to enjoy access and independence.

Proposal 2-4 The Australian Human Resources Institute and the Recruitment and Consulting Services Association of Australia and New Zealand should promote and recognise best practice in the recruitment of mature age workers, for example through their annual workplace awards.

AFDO believes that employees with a disability face significant extra barriers to entering the workforce no matter what their age. In many cases as a person with disability moves into the "aged" bracket the need for "reasonable adjustments" can increase. Australia has several awards for best practice employers for people with disability and this proposal should be extended to incorporate annual workplace awards for best practice recruitment for mature aged workers with disability.

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

Agree

Proposal 2-6 The Fair Work Ombudsman should develop a guide to negotiating and implementing flexible working arrangements for mature age workers, in consultation with unions, employer organisations and seniors organisations.

Agree

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

AFDO has representation on the Disability Employment Services Performance Framework reference group. There is potential for improved procedures within the DES system that would ultimately improve the flexible working arrangements for both mature aged workers and those with disability. This could include review of the current benchmarking system

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

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

Agree

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

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.

Agree

Proposal 2–10 The Australian Government should initiate an inquiry to review the compulsory retirement ages of judicial and quasi-judicial appointments.

Proposal 2–11 The Australian Government should initiate an inquiry to review the compulsory retirement ages for military personnel.

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?

Governor General, Quentin Bryce states, ‘in certain circumstances quotas are a valid measure.’¹ Furthermore, ‘Senior Labor and Liberal figures backed her view. Shadow treasurer Joe Hockey said the failure of big business to appoint women directors had reached the point where Parliament should consider “punitive measures” to force change. Mr Hockey suggested a quota of 30 per cent would be reasonable. Where is the same enthusiasm for targets for employment of people with disability? AFDO supports the proposal of a reporting framework for the employment of mature aged persons but emphasises that the reporting must be based on average hours of work and wages earned.

Proposal 2–12 The Australian Human Rights Commission should coordinate a national education and awareness campaign in support of the workforce participation of mature age persons.

AFDO supports this proposal with the addition of mature aged persons with disability.

3. Work Health and Safety and Workers’ Compensation

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.

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

¹ Ibid.

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. Such material should contain information about:

- (a) legislative responsibilities and duties;
- (b) best practice work design and processes;
- (c) risk assessment; and
- (d) health and wellbeing

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.

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?

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)?

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.

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

4. Insurance

Proposal 4-1 In April 2011, the Australian Government established an Insurance Reform Advisory Group. The group should examine:

- (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.

AFDO is of the view that in light of the imminent launch of the National Disability Insurance Scheme in July 2013 there needs to be a clear and transparent interface with the NDIA policies and procedures and the DES performance framework specifically focusing on mature aged workers with disability

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.

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.

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?

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:

- (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'?

Question 4-3 Is the power of the Australian Human Rights Commission under s 54 of the *Age Discrimination Act 2004* (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? *Proposals and Questions* 11

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 *Age Discrimination Act 2004* (Cth) or consolidated anti-discrimination legislation.

5. Social Security

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

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

AFDO supports the concept of allowing people to retain the HCC/PCC once working – for a period. Currently people who return to work and lose eligibility for the Disability Support Pension should have access to the Pensioner Concession Card. The aim would be to address the disincentive effects of losing access to assistance with medical costs, eg. concessional pharmaceuticals.

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

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

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

From 1 July 2012 a DSP rule change allows all DSP recipients to work up to 30 hour limit a week without their DSP being suspended or cancelled. This will provide a greater incentive to work and work for longer periods. Those subject to the '15 hour rule' found it difficult to find work limited to only 15 hours a week. Many want to work more, but are worried about losing eligibility for the DSP.

A recent report has found that Australians living with a disability have the worst quality of life in the developed world and ranked Australia 21st out of 27 countries in the employment of people with disabilities. The report "*Disability Expectations – Investing In A Better Life, A Stronger Australia*" found that almost half of Australians with a disability live in or close to poverty and had an employment rate of 39.8% compared with 79.4% for people without a disability. There is a role for both business and for the Federal Government to play. The rate of employment of people with disabilities in the public service is down to 3 %, a fall of 0.1 % in the last year, down from 5.4 per cent in 1997. The Public Service Commissioner has launched a new disability employment strategy, called *As One*, aimed at reversing this decline.

The Government has indicated a greater focus on the employment of people with disabilities in the public service. AFDO believes that a major age workforce barrier will be removed if the Federal Government adopted employment targets in this area and lead by example.

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

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

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

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

AFDO considers that the eligibility for Carer Payment imposed by the strict 25 hour limits is unfair and unreasonable. These rules cause problems and create barriers to workforce participation. In 2010-11 there were 2,398 rejections of Carer Payment due to the carer working, volunteering, or studying or training for more than 25 hours a week. In the same period there were 1,822 cancellations of Carer Payment because the carer worked, volunteered, studied or trained for more than 25 hours a week. AFDO supports the proposal to change the Social Security Law.

Data on Carer Payment recipients with earnings is not readily available by age. However, at June 2011 there were just 19,671 Carer Payment recipients who reported earnings.

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

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

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

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

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

8. Superannuation

Proposal 8-1 Regulation 7.04(1) of the *Superannuation Industry (Supervision) Regulations 1994* (Cth) restricts superannuation funds from accepting voluntary contributions for members of superannuation funds:

- (a) aged 75 years and over; and
- (b) aged 65 years until 75 years, unless they meet a work test, that is, where they are gainfully employed on at least a part-time basis during the financial year. *Proposals and Questions 13*

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.

Question 8–1 Regulations 7.04(1) and 7.01(3) of the *Superannuation Industry (Supervision) Regulations 1994* (Cth) 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?

Proposal 8–2 Section 290-80 of the *Income Tax Assessment Act 1997* (Cth) provides that voluntary superannuation contributions made by employers for employees aged under 75 years are tax deductible. The Australian Government should amend s 290-80 to enable employers to claim deductions for voluntary contributions made for employees aged 75 years and over.

Proposal 8–3 Section 290-165(2) of the *Income Tax Assessment Act 1997* (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 s 290-165(2) to enable these workers to claim deductions for contributions made at age 75 years and over.

Proposal 8–4 Regulation 7.04(1) of the *Superannuation Industry (Supervision) Regulations 1994* (Cth) restricts superannuation funds from accepting spouse contributions when the spouse is:

- (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.

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.

Proposal 8–5 Regulation 6.44(2) of the *Superannuation Industry (Supervision) Regulations 1994* (Cth) 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 reg 6.44(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.

Proposal 8–6 Section 6(1)(e) of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (Cth) provides that government co-contributions are payable only for persons aged under 71 years. The Australian Government should repeal this restriction. 14 *Grey Areas—Age Barriers to Work in Commonwealth Laws*

Proposal 8-7 The ‘Transition to Retirement’ rules were introduced into the *Superannuation Industry (Supervision) Regulations 1994* (Cth) 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:

- (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.

Question 8-2 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.

Should the preservation age be increased beyond 60 years? For example, to:

- (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?

Plans to lift the age pension age to 67 will significantly impact on the Disability Support Pension. Every effort should be made to ensure that people with disability have clear, accessible information available to them at times of income support transition. Centrelink should review its information for people transferring from one payment to another to ensure it is accessible and appropriate for people with disability.

Additionally, Centrelink staff should be trained to identify people with disability who may be transitioning from one payment to another and offer them appropriate information and support.

Question 8-3 The age for tax-free access to superannuation benefits is set at 60 years. Should this age setting be increased:

- (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:
 - (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?