



**Government of
South Australia**

**SUPPLEMENTARY SUBMISSION TO THE AUSTRALIAN LAW
REFORM COMMISSION ON THE DISCUSSION PAPER:**

'GREY AREAS – AGE BARRIERS TO WORK IN COMMONWEALTH LAWS'

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INTRODUCTION

This supplementary submission clarifies and expands on some of the matters raised by the South Australian Government in its original submission in response to the ALRC's Issues Paper as part of the inquiry into Commonwealth legal barriers to older persons participating in the workforce or other productive work.

In South Australia, the policy context for increasing the workforce participation of older workers is included in *South Australia's Strategic Plan* as Target 48: to increase the proportion of older South Australians who are engaged in the workforce by 10 percentage points by 2020.

Implementation activity under Target 48 includes a number of initiatives which underscore the importance of cultural shifts in overcoming negative stereotypes of older workers. Good, clear information is needed to demonstrate the business case in managed workforce planning that includes ways of retaining and re-engaging the expertise and experience of older workers. Industry and employers who are already doing this are critical champions for increasing the workforce participation of older South Australians.

To support this activity, it is vital that regulatory barriers to increasing workforce participation for both individuals and employers are identified and addressed, in particular at the national level.

CHAPTER 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.*

In its previous submission the South Australian Government made comments in relation to the instrumental role that the recruitment industry plays in supporting older workers in entering and re-entering the workforce. As such, education and awareness of issues relating to practices affecting mature age workers in the recruitment industry are essential in achieving cultural reforms. An increase in the capacity for enhanced sector compliance with a Code of Conduct and workplace practices for promoting mature age job seekers and workers can also be achieved.

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.*

As discussed in the South Australian Government's response to the Issues Paper, this Government supports the inclusion, within the Code of Conduct, of the principle of respect of the client diversity and other minimum standards of professional and ethical conduct that discourage age discrimination practices across the recruitment industry.

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.*

The pivotal role of recruitment agencies as barriers or facilitators of mature age workforce placement is noted, and the requirement to develop specifically targeted enablers, reflecting the intention and focus of broader government reforms.

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.*

As noted previously, promoting and recognising best practices can be enhanced through dedicated staff induction modules and other annual workplace activities such as staff training and organisational performance, monitoring and reporting.

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.*

As discussed in the South Australian Government’s response to the Issues Paper, lack of structural support for employees with caring responsibilities, such as the right to request flexible working arrangements, creates an additional barrier to men and women’s participation in the paid workforce. This is particularly noteworthy for older employees, who make up a large proportion of workers with caring responsibilities.

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.*

Broader sector consultations for draft guidelines will contribute to broader cultural change and awareness across the sector, a desirable outcome of shaping work environments more suited to mature age worker needs, while assisting to address systemic age discrimination.

However, as discussed in the South Australian Government’s response to the Issues Paper, flexibility arrangements available to mature age employees under section 202 of the *Fair Work Act 2009* (Cth) should not undermine the fundamental workplace relations principles of the national workplace relations system.

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?*

As discussed previously, the South Australian Government considers the inclusion of flexible working provisions into modern awards to be an appropriate avenue to encourage flexible working arrangements for mature age workers.

In line with the comments made by the South Australian Government in response to the Issues Paper, graduated retirement provisions as part of modern awards could offer a voluntary option for persons who have reached a certain age to access a number of flexible working arrangements to meet their individual needs. The provisions could provide a range of graduated retirement options that would be most suited to the needs of the industry, the employer and the worker. The graduated retirement provisions could specify an age at which a worker may access these provisions, reflecting the occupational requirements of modern awards for each industry or profession.

However, just like legislative change, cultural change is also vital to supporting compliance to implementation of flexible working arrangements for mature age workers. In 2011, research undertaken in South Australia could not clearly identify employer strategies to retain mature workers, and furthermore, suggested that strategies were difficult to universally implement across the range, size and function of organisations in private enterprise non-government and government sectors. Evidence base and consultation is important, and should be the focus prior to any government initiatives. Cultural change in organisations needs to be mindful that engaging employers is pivotal to flexible working arrangements insofar that the number of mature workers in the workplace warrant

investment in such arrangements, that incentives are in place in accordance with regulation, and finally, that employers are remunerated with bonuses for undertaking commitment in this regard.

Australian and state government programs that facilitate cultural shifts in the workplace and that have a focus on employer engagement and education can also have a major positive impact on the flexible working arrangements outcomes sought by older workers. Current South Australian initiatives that aim to enhance workforce participation opportunities of older people include:

- The Innovation in Workplace Practices Project partners the South Australian Government with South Australia's Strategic Plan alliance partner Don't Overlook Mature Expertise (DOME) to develop and pilot innovative employment approaches that retain older workers in work or re-engage those who have left and wish to return.
- The Employer Engagement and Education initiative, through which enterprises are connected to resources and training for retaining and re-engaging older workers, particularly in non-metropolitan areas of the state.
- As part of the cross-government South Australian Work-Life Balance Strategy, the Age Matters initiative is targeting resources and training to address underutilisation and discrimination that older workers experience in recruitment and employment. Age Matters works with employers and older workers and over 2012-13 will focus effort on older workers who may need to retrain and shift occupations.

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.*

See Question 2-1.

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.*

As noted previously, current age-based licensing/requalification practices can potentially perpetuate age-based workplace participation while impeding skills and capacity-based contributions of older workers.

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

In line with the South Australian Government's previous comments, this Government considers that it may be appropriate for compulsory retirement ages of judicial and quasi-judicial appointments to be reviewed to consider whether the set age limits remain appropriate to contemporary work practices. Additionally, such review should consider the discrepancies in age limitations that exist in judicial and quasi-judicial appointments across the nation to achieve national consistency.

As outlined in its previous submission, the South Australian Government submits that any such review must take into account the spirit and intention of the framing principle of 'choice', which must be maintained and underpinned by the concept of 'independence'.

Mature workers should have choices about how and when they relinquish employment, based on whether they have capacity to extend paid employment or involve themselves in 'service to the community' through volunteering. Working after reaching mature age may not be a viable option for some mature Australians, irrespective of the physical demands of various occupations.

Health status and choice should be given primary consideration, particularly where chronic health issues can impede ongoing workforce participation or optimal performance.

It is important that in encouraging participation, suggested reform changes do not impede quality of life or restricted access to appropriate pensions or superannuation choices, with a view to prioritising individuals' choices about how they spend their later years.

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

Building on the Proposal 2-10 response, mature military personnel in occupations associated with increased physical discomfort or physical demands may be further disadvantaged by increases to mandatory retirement ages. In particular, military personnel with health concerns may be precluded from extended paid employment or where they do not qualify for a disability pension under the proposed changes.

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.*

As discussed previously, education and awareness of the issues affecting mature age workers are key to influencing a cultural reform across Australian workplaces. Incorporating a number of education and awareness strategies collectively to increase the profile of the issues facing the ageing Australian workforce can help remove barriers to mature age participation, and help educate both the employer groups and the workers on the alternatives that are becoming available to the workers as they near the retirement age.

CHAPTER 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.*

As discussed in the South Australian Government's response to the Issues Paper, it is appropriate for the *Australian Work Health and Safety Strategy 2012-2022* to take into account work health and safety issues of particular relevance to mature age workers. It is appropriate that the themes of the strategy are developed with the diversity of Australia's workforce in mind, including mature age workers.

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

In line with its previous comments, the South Australian Government considers research in this area to be particularly relevant in the context of the projected demographical statistics for the ageing Australian population and predicted labour shortages.

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.*

As suggested previously by this Government, certain industries employing older workers with particular hazards in place may benefit from guidance material specific to those industry sectors. This may be addressed by way of guidance material such as information sheets, hazard alerts or bulletins, and by integrating these issues into general training of Health and Safety Representatives and Committees.

That said, it is not the intention of the WHS legislation to place mature age workers into a separate category of employees with separate WHS risks or issues different to all other employees. Employing mature age workers does not create additional WHS burdens on the employer. Each risk must be assessed regardless of the age of the worker.

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.*

See response to Question 3 -2

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.*

See response to Question 3-2

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?*

See response to Question 3-2

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)?*

In its submission in response to the Issues Paper, the South Australian Government referred to the *Workers Rehabilitation and Compensation (Retirement Age) Amendment Bill 2012* (SA) introduced by Greens Party member, Ms Tammy Franks, Member of the South Australian Legislative Council. This amendment bill aimed to align the retirement age within the *Workers Rehabilitation and Compensation Act 1986* (SA) to reflect future changes to the federal Age Pension age. There has been no further progress on this amendment bill since it was introduced in April 2012.

The Discussion Paper noted that it was important for any amendment to not be to the disadvantage of workers (page 87). In particular, since the Age Pension age for women is currently 64.5 years and not due to increase to 65 years until 1 July 2013, any amendment made to simply align the retirement age to the Age Pension age would wind back the current level of entitlements for women. The amendment bill tabled by Ms Franks included the following clause to address this issue:

35(8)(da) if a worker's pension age for the purposes of the Social Security Act 1991 of the Commonwealth is less than the age of 65 years, he or she will be taken for the purposes of paragraph (d)(ii) to reach pension age when he or she reaches the age of 65 years.

Amendments were made earlier this year to the Northern Territory scheme's *Workers Rehabilitation and Compensation Act* (NT), which included alignment of the retirement age to the Commonwealth Age Pension age. This will ensure that the age limit for workers compensation eligibility under that Act will increase in line with the Age Pension age.

The Safe Work Australia Temporary Advisory Group (SWA TAG), which is currently considering retirement age provisions across Australia, will be finalising its recommendations soon. It may be best for any other jurisdictions considering amendments to the interaction between workers compensation and retirement age to await the outcome of this work.

Notwithstanding this, it is important for all jurisdictions to consider alignment to the Age Pension age in the near future. WorkCoverSA officers consider it important that workers in South Australia are not left without access to income in the intervening period between an

entitlement to weekly income maintenance payments ceasing and an entitlement to the Age Pension commencing. Though an increase in income maintenance entitlements will have costly effects for each scheme's claims liability, until such an amendment is made, premiums cannot be collected against these claim costs, despite some current claimants being young enough to reach retirement age after 2017.

Questions 3-1 and 3-2 consider whether there should be any extended entitlement to income support after retirement age is reached. In South Australia, workers who are within 2 years (104 weeks) of, or above, retirement age who are injured and become incapacitated for work while still in employment are entitled to income maintenance for a period of incapacity falling within two years after the commencement of incapacity, that is, a maximum of two years.

Ideally, to be equitable to workers there should be consistent provisions across all jurisdictions. This would be best facilitated by consideration of the outcomes from the work of the SWA TAG. Again, any increase in these entitlements could have a significant cost impact on workers compensation schemes.

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.*

Further to the information the South Australian Government of previously provided in its submission in response to the Issues Paper, Marine Rescue and State Emergency Service (SES) volunteers are now covered under the South Australian scheme.

On 14 June 2012 the *Workers Rehabilitation and Compensation Variation Regulations 2012* (SA) were published in the South Australian Government Gazette 42. They amended regulation 17 of the *Workers Rehabilitation and Compensation Regulations 2010* (SA) to prescribe Marine Rescue and State Emergency Service (SES) as volunteers under section 103A(1) of the *Workers Rehabilitation and Compensation Act 1986* (SA).

This regulation was developed and submitted to Cabinet by the Department of the Premier and Cabinet, as the Crown is the presumptive employer of all prescribed volunteers. The new regulations commenced on 14 October 2012 and coverage of Marine Rescue and SES volunteers is now managed by the Crown in line with the arrangements already in place for Country Fire Service 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?*

It appears the *Safety, Rehabilitation and Compensation Act 1988* (Cth) requires that any payments being made to an injured worker from their superannuation fund are deducted from their incapacity entitlement.

In South Australia, determination of an injured worker's average weekly earnings takes into account the amount the worker was earning from their employer(s) prior to their injury. Any additional income received, such as from their superannuation fund, is not considered.

There are other concerns around superannuation payments in the South Australian scheme, as injured workers do not have superannuation contributions made by their employer while receiving income maintenance payments instead of wages. This issue has been raised as a concern for workers, as their ability to plan and save for retirement is diminished when receiving workers compensation.

While some (not most) employers either elect or agree under an Enterprise Bargaining Agreement to pay superannuation contributions while injured workers are in receipt of income maintenance, they are not required to do so under Commonwealth legislation. The legislation states that superannuation contributions are only payable for a person's 'ordinary time earnings' which is defined as earnings for time actually worked. Further to this, section 4(14)(a) of the *Workers Rehabilitation and Compensation Act 1986* excludes superannuation contributions from the setting of a worker's average weekly earnings.

Salary sacrificed superannuation however, is included in an injured worker's average weekly earnings, as salary sacrificed payments are different from employers' compulsory superannuation contributions in that they are contributed by the worker.

In 2010, Victoria amended its legislation so that workers who are receiving weekly payments 52 weeks after their injury are entitled to superannuation contributions being made by the compensating authority. The amount is set at a prescribed percentage of the worker's gross weekly payments (currently 9%).

CHAPTER 4: INSURANCE

No Comment

CHAPTER 5: SOCIAL SECURITY

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?*

Officers of the South Australian Department for Health and Ageing note that the Discussion Paper discusses evidence cited from other constituents suggesting that current income support levels, through Newstart Allowance, are inadequate for mature job seekers insofar that income provisions do not support costs associated with active job seeking activities.

CHAPTER 6: FAMILY ASSISTANCE AND CHILD SUPPORT

No comment

CHAPTER 7: INCOME TAX

The South Australian Government’s response to the Issues Paper highlighted, among other things, some taxation disincentives influencing older workers’ participation in the workforce. These include the fact that income tax deductions for superannuation guarantee contributions for persons aged 75 and over do not apply to self-employed individuals.

Further recommendations to address barriers in Commonwealth laws are being presented in supplementary submissions prepared by the South Australia’s Strategic Plan Alliance Partners. One proposal is the introduction of accelerated tax deductibility for wages and superannuation contributions for older workers. This would provide financial incentives for employers in conjunction with the emphasis on employer engagement and education.

CHAPTER 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.*

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.

As discussed in its response to the Issues Paper, the South Australian Government supports the removal of age-based barriers to determinations regarding superannuation contributions. These barriers potentially perpetuate age discrimination practices and preclude contributions from fund members who have capacity and willingness to make continued contributions, which in the longer term, build self-wealth and superannuation capacity, benefiting the government financially. See Question 8-1.

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?*

As discussed in the previous submission made by the South Australian Government, both of these barriers should be removed. Research indicates access to various forms of flexible working arrangements, including flexible work hours, make staying in the workforce more attractive. A minimum hour work test precludes contributions of mature workers who for a variety of reasons are unable to or chose not to fulfil minimum work test requirements. A work test effectively imposes penalties rather than incentives for older workers to remain in the workforce.

The ability to make voluntary contributions should be independent of work patterns, and potential age discrimination practices that impede work entitlements and voluntary superannuation incentives available to workers of other ages should be carefully considered and reviewed within the remit of current regulations.

Voluntary contributions should also be available to workers from age 75. To deny workers this right not only acts as a disincentive and goes against government policy to support people to stay in work longer and be self-funded in retirement, it also constitutes discrimination on the basis of age.

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.

As discussed previously, tax deductible employer superannuation contributions for workers 75 years and over will act as a vital incentive to support and align with the emerging reality that more older people will remain in the workforce for longer. This proposal recognises the importance of employers and their continued role in supporting workforce reform, both culturally and regulatory, and the retention of older people in the workplace.

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.*

In its initial submission, the South Australian Government suggested that removing age barriers to superannuation is a much needed incentive for mature workers, particularly those who are self-employed, in making continued workforce participation more attractive. Australian research indicates that mature workers claim financial reasons as the main reason necessitating ongoing workforce participation. It is therefore essential that financial incentives for supporting mature workers' decision to prolong relinquishing paid employment consider regulations whereby superannuation contributions are enabled without age-based limitations.

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.

In line with previous comments made by the South Australian Government, in regards to acknowledging the existing gender disparities and capacity for wealth and superannuation accumulation, it is important that restrictions to superannuation based on either spousal co-contributions or work tests should be removed.

A variety of reasons may preclude women (and men) from fulfilling work test requirements. However this should not be the basis of impeding superannuation contributions and potentially ongoing workplace participation in any circumstances. It is important to note that work hour restrictions would inadvertently act to impede rather than encourage workforce participation and superannuation contributions.

Aside from acting as a disincentive for mature age participation in the workforce, restricting contributions which can be made for a spouse of any age could have an adversely discriminatory effect on women. These barriers, and potentially sexually discriminatory measures, should be removed.

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.*

As discussed in its response to the Issues Paper, the South Australian Government considers that a person who is working and able to make superannuation contributions should not be restricted in splitting or making contributions for their spouse based on the age of their spouse.

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.*

As discussed in its initial submission, age-based restrictions to government co-contributions for low income earners should be removed on the basis of potentially supporting age discrimination.

Australian Government policy is to encourage people to remain in work as long as possible. Research indicates that flexible workplace hours and transition to retirement programs, such as decreasing full-time to part-time employment, are ways to support the retention of more mature workers. If a person is still working at and past the age of 71 years, they should not receive less benefit from superannuation schemes than other low income earners. In theory, this age restriction does act as a barrier to mature age work participation, and it should be removed.

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.*

The officers of the South Australian Department for Health and Ageing support this review and welcome opportunities for comment in future consultations in this matter.

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?*

As identified in its previous submission, the South Australian Government recommends current preservation ages be maintained. This Government is unaware of evidence for legislated changes to increasing the superannuation preservation age that constitutes a guaranteed incentive for mature workers considering relinquishing paid employment. It is important that legislated restrictions carefully consider the consequences of such restrictions in light of older people's independence and choice, particularly restrictions wilfully used to prolong workforce participation.

Poor health of workers (or that of family members) is identified as the main reason that people relinquish paid employment. While evidence supports that general life expectancy has increased over time, little evidence suggests these additional years are ones of good health. Rather, evidence supports the contrary position that approximately 80% of mature aged workers retire through injury or ill health, suggesting individuals have little choice other than to retire in cases where continuation of workforce participation places unacceptable demands on workers' physical and/or mental health. SafeWork SA consultations with the construction industry indicate that employees in that industry are considered 'mature aged' at the age of 40 years due to the physical demands of the job. To continually raise the preservation age in effect removes individual choice about whether they continue to work or not.

To support the Australian Government's policy of encouraging mature workers to stay in employment as long as possible, further incentives through the Transition to Retirement (TTR) rules could be considered. Better incentives under TTR rules for individuals who are in good health, and wish to continue to participate in work, would facilitate choice while still supporting government policy. The South Australian Government is strongly opposed to the removal of individual choice about work participation which would effectively be imposed by systematic increases to the superannuation preservation age.

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*

See response to Question 8-2.