



Australian Government

Australian Law Reform Commission

Access All Ages—Older Workers and Commonwealth Laws

SUMMARY REPORT

This Summary Report reflects the law as at 21 March 2013.

The Australian Law Reform Commission was established on 1 January 1975 by the Law Reform Commission Act 1973 (Cth) and reconstituted by the Australian Law Reform Commission Act 1996 (Cth).

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Terms of Reference

Review into Commonwealth legal barriers to older persons participating in the workforce or other productive work

Having regard to:

- obstacles faced by older persons in actively participating in the workforce
- the desirability of reviewing Commonwealth laws to remove limitations on, or disincentives to, participation in the workforce by older persons, and
- the definition of ‘older persons’ as anyone over the age of 45 years, consistent with the definition of ‘mature age worker’ used by the Australian Bureau of Statistics.

I refer to the Australian Law Reform Commission (ALRC) for inquiry and report, pursuant to s 20(1) of the *Australian Law Reform Commission Act 1996* (Cth):

- the identification of Commonwealth legislation and legal frameworks that contain or create barriers to older persons participating, or continuing to actively participate, in the workforce or in other productive work (paid or unpaid), and
- the question of what, if any, changes could be made to relevant Commonwealth legislation and legal frameworks to remove such barriers.

Scope of the reference

In undertaking this reference, the ALRC should consider all relevant Commonwealth legislation and related legal frameworks that either directly, or indirectly, impose limitations or barriers that could discourage older persons from participating, or continuing to participate, in the workforce or other productive work, including:

- (a) superannuation law
- (b) family assistance, child support, social security law and relevant government programs
- (c) employment law
- (d) insurance law
- (e) compensation laws, and
- (f) any other relevant Commonwealth legislation exempt under the *Age Discrimination Act 2004*.

In conducting this inquiry, the ALRC should also have regard to:

- the work undertaken by the Advisory Panel on the Economic Potential of Senior Australians including its initial, second and final reports
- the work being undertaken by the Consultative Forum on Mature Age Participation and any recommendations made in the Forum's interim report and final reports
- the work to be undertaken during 2012 by Safe Work Australia to investigate options to address age discrimination in workers' compensation legislation, and
- the work being undertaken by the Attorney-General's Department to consolidate Commonwealth anti-discrimination laws into a single Act.

Consultation

In undertaking this reference, the ALRC should identify and consult with relevant stakeholders including relevant Government departments and agencies, the Australian Human Rights Commission, the Consultative Forum on Mature Age Participation, and key non-government stakeholders and peak employer and employee bodies.

Timeframe for reporting

The ALRC will commence this reference no later than 31 March 2012, and will report no later than 31 March 2013.

Nicola Roxon

Attorney-General

Summary Report

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Overview

This Summary Report provides an accessible overview of the policy framework and recommendations in the final Report in the Inquiry into Commonwealth legal barriers to older persons participating in the workforce or other productive work by the Australian Law Reform Commission (ALRC). The full Report sets out in detail the issues raised by the Terms of Reference, and the research and evidence base upon which the ALRC's recommendations were formulated.

The Summary Report begins with a brief account of the background for the Inquiry, the law reform brief and the development of the law reform response—including the principles underpinning the recommendations in the Report. This is followed by a description of the recommendations and their net effect in enabling workforce participation by older Australians.

Why this Inquiry?

This Inquiry by the Australian Law Reform Commission (ALRC) arose out of concerns about the implications of an ageing population and the recognition that expanding the workforce participation of older Australians may go some way to

meeting such concerns. Much energy and activity—nationally and internationally—has been directed towards encouraging mature age people to remain in, or re-enter, paid work. The Treasury published intergenerational reports in 2002, 2007, and 2010;¹ and the Productivity Commission produced *Economic Implications of an Ageing Society* (2005).² There is also the work of the Advisory Panel on the Economic Potential of Senior Australians (Advisory Panel)³ and the Consultative Forum on Mature Age Participation.⁴ This Inquiry also contributes to finding answers.

Breaking down the barriers

How do you break down the barriers to workforce participation faced by mature age people? What are the barriers that stand in the way? What can law and legal frameworks do about it? These were the key challenges for the ALRC in this Inquiry.

Law reform can remove barriers to mature age workforce participation by removing specific age limits, and by making discrimination on the basis of age unlawful. But law can only go so far. Achieving cultural change was singled out by stakeholders in the Inquiry as crucial for reform. It is ‘the real game changer’.⁵ Law reform has its part in contributing to cultural change and can lead it in some respects.

What the ALRC contributes in this Inquiry is a range of 36 targeted recommendations that capture some of the momentum for reform, complementing other work in the broader area of policy development affecting mature age people. The ALRC also gives voice to wider concerns where those have been highlighted throughout the Inquiry.

Developing the law reform response

Defining the brief

The ALRC’s work is defined by Terms of Reference from the Commonwealth Attorney-General. They provide the constraint within which any law reform project undertaken by the ALRC must operate, in addition to the direction given under the ALRC’s constituting legislation, the *Australian Law Reform Commission Act 1996* (Cth). In this Inquiry the focus was on ‘limitations or barriers’ to participation in ‘the workforce or other productive work’. The ALRC was asked to identify ‘what, if any, changes could be made to relevant Commonwealth legislation and legal frameworks to remove such barriers’. A number of issues arose in defining the brief.

1 The Treasury, *Intergenerational Report 2002–03* (2002); The Treasury, *Intergenerational Report 2007* (2007); The Treasury, *Intergenerational Report 2010—Australia to 2050: Future Challenges* (2010).

2 Productivity Commission, *Economic Implications of an Ageing Australia* (2005).

3 Advisory Panel on the Economic Potential of Senior Australians, *Realising the Economic Potential of Senior Australians—Changing Face of Society* (2011); Advisory Panel on the Economic Potential of Senior Australians, *Realising the Economic Potential of Senior Australians—Enabling Opportunity* (2011); Advisory Panel on the Economic Potential of Senior Australians, *Realising the Economic Potential of Senior Australians—Turning Grey into Gold* (2011).

4 National Seniors Productive Ageing Centre, *Ageing and the Barriers to Labour Force Participation in Australia* (2011), prepared for the Consultative Forum on Mature Age Participation; National Seniors Productive Ageing Centre, *Barriers to Mature Age Employment: Final Report of the Consultative Forum on Mature Age Participation* (2012), prepared for the Consultative Forum on Mature Age Participation.

5 National Welfare Rights Network (NWRN), *Submission 99*.

First, the ALRC took a wide approach to the idea of ‘limitations or barriers’. And in responding to the question of what changes could be made to remove them, the ALRC developed a set of framing principles that provided the lens for the consideration of any reform recommendations to be made.

Secondly, the Terms of Reference defined ‘older persons’ as anyone over the age of 45 years, which is consistent with the definition of ‘mature age worker’ used by the Australian Bureau of Statistics (ABS). The age cohort therefore comprised a very wide group, with varying capacities and needs stretching over several decades—raising particular challenges for the development of policy responses in this Inquiry.

Thirdly, the Terms of Reference recognised that ‘work’ is a wider concept than work in the labour market as paid work, through its inclusion of ‘other productive work’, which includes volunteer work and caring. There is a tension, however, between the concepts of ‘work’ and ‘other productive work’, where other productive work may itself act as a barrier to paid work—particularly with respect to unpaid care work. To resolve this tension, the ALRC focused on developing reform recommendations to enhance the capacity to combine paid work and caring—recognising the value of that care but also looking to enable paid workforce attachment and participation.

Fourthly, having to consider ‘legal frameworks’ in addition to laws meant that the Inquiry concerned more than just specific legislative provisions. It required consideration of things like policy and practice guides, codes of conduct, education and training about legal rights and responsibilities, and other related matters.

The law reform process

Commitment to widespread consultation is a hallmark of best practice law reform. In Law reform recommendations cannot be based upon assertion or assumption and need to be anchored in an appropriate evidence base. A major aspect of building the evidence base to support the formulation of ALRC recommendations for reform is community consultation, acknowledging that widespread community consultation is a hallmark of best practice law reform.⁶ Under the provisions of the *Australian Law Reform Commission Act 1996* (Cth), the ALRC ‘may inform itself in any way it thinks fit’ for the purposes of reviewing or considering anything that is the subject of an inquiry.⁷

The process for each law reform project may differ according to the scope of the inquiry, the range of key stakeholders, the complexity of the laws under review, and the period of time allotted for the inquiry. For each inquiry the ALRC determines a consultation strategy in response to its particular subject matter and likely stakeholder interest groups. The nature and extent of this engagement is normally determined by the subject matter of the reference—and the timeframe in which the inquiry must be completed under the Terms of Reference. While the exact procedure is tailored to suit

6 B Opeskin, ‘Measuring Success’ in B Opeskin and D Weisbrot (eds), *The Promise of Law Reform* (2005), 202.

7 *Australian Law Reform Commission Act 1996* (Cth) s 38.

each inquiry, the ALRC usually works within a particular framework, outlined on the ALRC's website.⁸

In this Inquiry two national rounds of stakeholder consultation meetings, forums and roundtables were conducted following the release of each of the consultation documents—the Issues Paper and the Discussion Paper. The ALRC also received 101 submissions from a wide range of participants.

The ALRC was assisted in this Inquiry by an Advisory Committee and two part-time Commissioners: the Hon Justice Berna Collier of the Federal Court, a standing part-time Commissioner of the ALRC; and the Hon Susan Ryan AO, Age Discrimination Commissioner, who was appointed specifically to assist the ALRC in this Inquiry. The ALRC was also assisted by a number of people as expert readers who commented on specific aspects of the Discussion Paper and Report.

Report structure

This Report is divided into eight chapters. The first two chapters introduce the Inquiry, describe the reform process and set out relevant conceptual and contextual issues. Chapter 3 concerns the keystone recommendation of a National Mature Age Workforce Participation Plan, to provide a coordinated policy response to addressing barriers to the participation of mature age persons in the Australian labour market. The ALRC suggests that the Advisory Panel on Positive Ageing, or a similar body, lead the development of this plan.

This is followed by five chapters focusing upon the specific areas identified in the Terms of Reference, as follows:

- Recruitment and Employment—Chapter 4
- Work Health Safety and Workers' Compensation—Chapter 5
- Insurance—Chapter 6
- Social Security—Chapter 7
- Superannuation—Chapter 8

Framing principles

The Recommendations for reform were developed in the light of six interlinking principles: participation, independence, self-agency, system stability, system coherence, and fairness:

- *Participation*—all Australians should feel valued and have the opportunity to participate fully in the life of our society. This reflects the Australian Government's 'Social Inclusion Agenda'.⁹

8 <www.alrc.gov.au/law-reform-process> at 21 March 2013.

9 Australian Government, *The Social Inclusion Agenda*, <www.socialinclusion.gov.au/> at 21 March 2013.

- *Independence*—older persons should have the ability to make choices about the form of participation they wish to make, including the capacity to determine when and at what pace withdrawal from paid employment takes place.¹⁰ It also involves the ability to make genuine choices between participation in paid work, unpaid work, or some combination of both.
- *Self-agency*—an individual should have the right to make decisions about matters affecting him or her. The principle of self-agency is one that underpins the idea of ‘independence’ and of ‘participation’. Like the principle of independence, self-agency also encompasses choice and the importance of being treated with dignity and respect, as reflected in the National Statement on Social Inclusion.¹¹
- *System stability*—laws and systems that are complex should remain stable and predictable. This is particularly relevant in areas such as superannuation. The Super System Review Panel emphasised that, because superannuation is a large and complex system, with ‘an increasingly important social and macroeconomic dimension’, rule changes ‘should be made sparingly and in a way that engenders member confidence’.¹² Other related principles are ‘coherence’ and ‘fairness’, which may be seen as aspects of a stable system, but also go further. They concern how the system operates in terms of impact on those affected and more broadly within the Australian community.
- *System coherence*—systems should be consistent, simple and transparent for individuals. This was a priority identified by the review of Australia’s tax system, chaired by Dr Ken Henry AC, in its review of the retirement income system.¹³ Complexity may cause disengagement in paid work. Lack of accessible information is another aspect of system coherence and an element of complexity, leading to poor understanding of rules and entitlements.
- *Fairness*—national resources should be distributed fairly and responsibility should be balanced between individuals and government. Fairness can be a consequence of coherence, consistency and the stability of the relevant systems involved. A further aspect is fairness between generations—that is, ‘intergenerational equity’. Issues important to intergenerational equity include the management of public debt and the funding of pension schemes. Fairness also encompasses ensuring basic rights and freedoms are enjoyed by older persons, and that there exists equality of opportunity in participation in paid and other productive work.

10 United Nations, *United Nations Principles for Older Persons—adopted by General Assembly resolution 46/91 of 16 December 1991*.

11 Australian Government and Social Inclusion Unit, *A Stronger, Fairer Australia—National Statement on Social Inclusion*.

12 Super System Review Panel, *Super System Review* (2010), pt 1, 4, principle 8.

13 The Treasury, *Australia’s Future Tax System: The Retirement Income System—Report on Strategic Issues* (2009), 15–16.

These reform principles guided the development of the targeted set of recommendations addressing the Terms of Reference in this Report.

The recommendations

Net effect

The Terms of Reference required the ALRC to review a number of distinct and discrete areas of law, to identify potential barriers to mature age persons' workforce participation, and to recommend law reform solutions. As finding the answers to enabling workforce participation by older Australians requires a broader focus than just on law, the ALRC considers that a major coordinating initiative is needed in the form of a National Mature Age Workforce Participation Plan. This is the first and keystone recommendation in this Report.¹⁴ Taken together, the other recommendations will amount to specific strategies in the implementation of the National Plan. Their net effect will be to provide:

- a coordinated policy response to enabling mature age workforce participation;
- consistency across Commonwealth laws and between Commonwealth and state and territory laws to support mature age workforce participation;
- a reduction in age discrimination;
- a greater awareness of mature age workers' rights and entitlements;
- support for maintaining attachment to the workforce for mature age persons; and
- work environments, practices and processes that are appropriate for mature age workers.

Achieving a coordinated policy response

In addition to the recommendation for a National Plan, other recommendations throughout the Report also reflect the theme of achieving a coordinated policy response, with the aim that:

- the social security and superannuation systems do not discourage or prevent workforce participation;¹⁵
- policy responses are guided by relevant reviews, which have considered issues affecting mature age workers;¹⁶ and
- certain agencies or bodies will work together to facilitate the development of coordinated policy responses.¹⁷

14 Recommendation 3-1.

15 Recommendations 7-3, 7-4, 7-5, 8-1, 8-3.

16 Recommendations 4-3, 4-4, 4-10, 4-12.

17 Recommendations 4-5, 4-6, 4-11, 4-12, 5-1, 5-3, 5-4, 6-4.

Improving consistency of laws

Some of the recommendations aim to improve consistency across Commonwealth laws and between Commonwealth and state and territory laws to support mature age workforce participation. These recommendations concern:

- Commonwealth workers' compensation laws;¹⁸
- the retirement age of judicial and quasi-judicial appointments;¹⁹ and
- the insurance exceptions in Commonwealth, state and territory anti-discrimination legislation.²⁰

Removing age discrimination

A number of recommendations are directed towards removing age discrimination in legislation and practice. In some cases the ALRC recommends amendments; in some, reviews. For example, reviews are recommended for:

- compulsory retirement ages of judicial and quasi-judicial appointments, and military personnel;²¹
- licensing or re-qualification requirements, with the Australian Human Rights Commission facilitating the development of guidelines to assist;²² and
- the insurance exceptions under Commonwealth, state and territory anti-discrimination legislation.²³

Amendments are recommended in specific areas:

- to ensure access to incapacity payments under Commonwealth workers' compensation schemes;²⁴
- to provide that government co-contributions of superannuation for low-income earners do not cease at age 71 years;²⁵ and
- to ensure the amount of compensation payable to an employee under the *Safety, Rehabilitation and Compensation Act 1988* (Cth) is not reduced by reference to superannuation.²⁶

Age discrimination is also addressed through recommendations directed towards promoting awareness of the rights and entitlements of mature age workers.

18 Recommendation 5-5.
 19 Recommendation 4-13.
 20 Recommendation 6-4.
 21 Recommendations 4-13, 4-14.
 22 Recommendation 4-11.
 23 Recommendation 6-4.
 24 Recommendations 5-5, 5-7.
 25 Recommendation 8-2.
 26 Recommendation 5-9.

Promoting awareness of rights and entitlements

Recommendations throughout this Report reflect the importance of promoting awareness of mature age workers' rights and entitlements: by recruiters, by job services providers, by employers, and by mature age workers. Mature age workers also need information that supports their ability to make choices in employment. They need to know what rights and entitlements they have to make such choices.

Promoting awareness of the rights and entitlements of mature age workers is therefore crucial and is seen in recommendations in this Report about:

- codes of conduct;²⁷
- national campaigns and audits;²⁸
- training;²⁹
- information provision;³⁰
- guidance material;³¹ and
- recognition of best practice.³²

Maintaining workforce attachment

A number of recommendations in this Report seek to enable mature age people to remain attached to the workforce. Maintaining workforce attachment is supported through recommendations to ensure:

- insurance coverage is available and appropriate for continued participation in work or other productive work;³³
- there are no gaps under the Commonwealth workers' compensation schemes in entitlement, and that incapacity payment periods are extended, to ensure injured mature age workers remain connected to rehabilitation and return to work support services;³⁴ and
- mature age workers are provided with longer periods of notice for termination of employment.³⁵

Recommendations are also directed towards improving employment services for unemployed mature age people. Recruiters are key gatekeepers in the employment process. Ensuring that they are aware of their obligations and appreciate the value of

27 Recommendations 4-3, 4-4, 6-6.

28 Recommendations 4-2.

29 Recommendation 4-5, 7-2.

30 Recommendation 4-8, 6-1, 7-1.

31 Recommendations 4-5, 4-8, 4-11, 5-3, 6-5, 7-3, 7-4.

32 Recommendations 4-6, 5-4.

33 Recommendations 6-1, 6-2, 6-3.

34 Recommendations 5-5, 5-6, 5-7.

35 Recommendation 3-7.

mature age workers is essential.³⁶ Similarly, mature age job seekers need to be supported by Job Services Australia staff who understand their needs.³⁷

Other recommendations seek to remove disincentives to work that may be associated with receipt of income support payments, including the Age Pension and Disability Support Pension.³⁸

Two recommendations in this Report are directed towards enabling carers to retain an attachment to the paid workforce. These recommendations:

- recognise the compatibility of paid work and caring responsibilities;³⁹ and
- support the flexibility in work that enables choices to be made in relation to caring.⁴⁰

Improving work environments, practices and processes

Ensuring that work environments, practices and processes are safe and conducive to worker health and wellbeing is central to facilitating the ongoing participation of mature age workers in paid employment and other productive work. Recommendations in this Report are therefore directed towards ensuring that health and safety issues affecting mature age workers are:

- considered in implementing the Australian Work Health and Safety Strategy 2012–2022;⁴¹
- included in Safe Work Australia’s research and evaluation strategy and work plans;⁴² and
- acknowledged through recognition of best practice.⁴³

Summary

The approach to law reform in this Report includes a mix of strategies, directed, for example, at legislation, codes of practice, guidelines, education and training. Although the Report is presented to the Attorney-General, some of its recommendations are directed to other government agencies and bodies, professional associations and institutions, for action or consideration.

The Terms of Reference did not give unlimited licence to consider matters that were wider than ones anchored in the idea of workforce participation. Many throughout this Inquiry spoke about broader issues—and the ALRC gives voice to such concerns throughout this Report—but the Recommendations are kept within the brief as defined

36 Recommendations 4–3, 4–4, 4–5.
 37 Recommendation 7–2.
 38 Recommendations 7–3, 7–5.
 39 Recommendation 7–4.
 40 Recommendation 4–7.
 41 Recommendation 5–1.
 42 Recommendation 5–2.
 43 Recommendations 4–6, 5–4.

by the Terms of Reference. By drawing attention to wider concerns, however, this Report can provide a catalyst to further work as well as complement initiatives already in train. All such activity will have a place within the framework set by a National Mature Age Workforce Participation Plan.

Stop press—release of SRC Act Review Report

On 30 March 2013, as this Report was going to press, the Australian Government released the final Report of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) Review.⁴⁴

The ALRC's work in this Inquiry is referred to throughout the SRC Act Review Report and the Review made a number of recommendations of relevance to this Report. In particular, SRC Act Review Recommendation 7.16 is similar to ALRC Recommendation 5-5 and is in line with the ALRC's suggested approach in Recommendation 5-8. In addition, SRC Act Review Recommendation 7.5 mirrors ALRC Recommendation 5-9.

⁴⁴ P Hanks QC, *Safety, Rehabilitation and Compensation Act 1988* (Cth) *Review: Report* (2013) prepared for Department of Education, Employment and Workplace Relations.

Recommendations

3. National Mature Age Workforce Participation Plan

Recommendation 3–1 The Australian Government should develop a National Mature Age Workforce Participation Plan.

4. Recruitment and Employment

Recommendation 4–1 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 could 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.

Recommendation 4–2 The Australian Human Resources Institute should review its Code of Ethics and Professional Conduct to consider ways in which the Code could 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.

Recommendation 4–3 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

to assist recruitment agencies and consultants to engage constructively with, and recruit, mature age job seekers.

Recommendation 4–4 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.

Recommendation 4–5 Section 65 of the *Fair Work Act 2009* (Cth) should be amended to extend the right to request flexible working arrangements to all employees who have caring responsibilities.

Recommendation 4–6 The Fair Work Ombudsman (FWO) has developed material relevant to negotiating and implementing flexible working arrangements. The FWO should amend such material to include information for mature age workers, in consultation with unions, employer organisations and seniors organisations.

Recommendation 4–7 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. In the course of amending the *Fair Work Act 2009* (Cth), the Australian Government should consider increasing this period.

Recommendation 4–8 From 2014, the Fair Work Commission will conduct the first four-yearly review of modern awards. The review should consider the inclusion or modification of terms to encourage workforce participation of mature age workers.

Recommendation 4–9 The Australian Human Rights Commission and the Fair Work Commission, in consultation with the Australian Council of Human Rights Agencies, should develop guidance to:

- (a) clarify the interaction of the general protections provisions under the *Fair Work Act 2009* (Cth) and Commonwealth, state and territory anti-discrimination legislation; and
- (b) outline potential avenues for redress under this legislation for mature age workers.

Recommendation 4–10 Professional associations and industry representative groups are often responsible for developing or regulating licensing or re-qualification requirements. The Australian Human Rights Commission should facilitate the development of 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.

Recommendation 4–11 The Australian Government should initiate an independent inquiry to review the compulsory retirement ages of judicial and quasi-judicial appointments.

Recommendation 4–12 The Australian Government should initiate an independent inquiry to review the compulsory retirement ages for military personnel.

Recommendation 4–13 In conducting national campaigns and audits to ensure compliance with Commonwealth workplace laws, the Fair Work Ombudsman should ensure issues relating to mature age workers and job seekers are considered.

5. Work Health and Safety and Workers' Compensation

Recommendation 5-1 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.

Recommendation 5-2 Safe Work Australia should include work health and safety issues that may affect mature age workers in its research and evaluation strategy and work plans.

Recommendation 5-3 Safe Work Australia and state and territory work health and safety regulators have developed guidance material to assist persons conducting a business or enterprise, workers, and the representatives of each to respond to health and safety issues of all workers. Such material should be reviewed to ensure it includes information about issues that may affect mature age workers, including information about:

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

Recommendation 5-4 Safe Work Australia should work with state and territory health and safety regulators, unions and industry representatives to recognise best practice in work health and safety with respect to mature age workers in Commonwealth, state and territory work health and safety awards.

Recommendation 5-5 The *Safety, Rehabilitation and Compensation Act 1988* (Cth), the *Military Rehabilitation and Compensation Act 2004* (Cth) and the *Seafarers Rehabilitation and Compensation Act 1992* (Cth) should be amended to align the retirement provisions with the qualifying age for the Age Pension under the *Social Security Act 1991* (Cth).

Recommendation 5-6 The *Seafarers Rehabilitation and Compensation Act 1992* (Cth) should be amended to provide that workers who are injured after two years prior to Age Pension age may receive incapacity payments for the same period as under the *Safety, Rehabilitation and Compensation Act 1988* (Cth) and *Military Rehabilitation and Compensation Act 2004* (Cth).

Recommendation 5-7 If amended in line with Recommendations 5-5 and 5-6, the *Safety, Rehabilitation and Compensation Act 1988* (Cth), the *Military Rehabilitation and Compensation Act 2004* (Cth) and the *Seafarers Rehabilitation and Compensation Act 1992* (Cth) will provide that workers and members injured after two years prior to Age Pension age are entitled to receive incapacity payments for a period of 104 weeks. This period should be extended.

Recommendation 5–8 Safe Work Australia’s Strategic Issues Group for Workers’ Compensation should consider the definition of those categories of people covered by Commonwealth, state and territory workers’ compensation legislation to ensure volunteers are covered consistently.

Recommendation 5–9 Sections 20, 21 and 21A of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) reduce the amount of compensation payable to an employee by reference to the amount of superannuation derived from the employer’s contributions and by a further 5 % of the employee’s Normal Weekly Earnings. These sections should be repealed.

6. Insurance

Recommendation 6–1 The Insurance Reform Advisory Group, or a similar body, should facilitate the development of a central information source to provide mature age persons with clear and simple information about relevant and available insurance products.

Recommendation 6–2 The Australian Government should negotiate an agreement with insurers offering products in the Australian market requiring the publication of data upon which decisions about insurance offerings based on age are made.

Recommendation 6–3 The Australian, state and territory governments should review insurance exceptions under Commonwealth, state and territory anti-discrimination legislation.

Recommendation 6–4 The Australian Human Rights Commission should, in consultation with key insurance and superannuation bodies, develop guidance material about the application of any insurance exception as it applies to age under Commonwealth anti-discrimination legislation.

Recommendation 6–5 The General Insurance Code of Practice and the Financial Services Council Code of Ethics and Code of Conduct should include diversity statements or objects clauses that encourage consideration of the needs and circumstances of a diverse range of consumers, including mature age persons.

7. Social Security

Recommendation 7–1 The Department of Human Services should evaluate the effectiveness of communication of 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 possible exemptions from the activity test;
 - (c) how to calculate the effect of taking up paid work on income support payments;
- 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.

Recommendation 7–2 To enhance the capacity of staff of Job Services Australia, Disability Employment Services and the Indigenous Employment Program 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 and training tools about:

- (a) age discrimination;
- (b) the effect that illness, disability and caring responsibilities may have on the capacity of mature age persons to work;
- (c) diversity among mature age job seekers; and
- (d) Australian Government programs targeted at mature age job seekers.

Recommendation 7–3 The *Guide to Social Security Law* should be amended to provide that undertaking paid work for fewer than 30 hours per week will not trigger a review of qualification for Disability Support Pension.

Recommendation 7–4 The *Guide to Social Security Law* should provide that a temporary cessation of constant care due to participation in paid employment, unpaid 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.

Recommendation 7–5 The objective of Work Bonus is to provide an incentive for recipients of Age Pension and Veterans' Age Service Pension to continue in paid employment. To ensure that Work Bonus continues to achieve its objective, the following amounts should be indexed:

- (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).

8. Superannuation

Recommendation 8–1 The *Superannuation Industry (Supervision) Regulations 1994* (Cth) prohibit contributions by members aged 65–74 unless the member meets a work test. The work test requires the member to work for at least 40 hours over a 30-day period in the financial year. The Australian Government should review the work test and consider:

- (a) the policy objective of the work test;
- (b) whether that policy objective remains relevant;

- (c) how the work test contributes to achieving that policy objective; and
- (d) whether the work test in the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (Cth) should be consistent with the work test in the *Superannuation Industry (Supervision) Regulations 1994* (Cth).

Recommendation 8–2 Section 6(1)(e) of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (Cth), which provides that government co-contributions are payable only for people aged under 71 years, should be repealed.

Recommendation 8–3 The ‘Transition to Retirement’ rules were introduced into the *Superannuation Industry (Supervision) Regulations 1994* (Cth) to encourage continued mature age workforce participation. The Australian Government should review these rules to determine what changes, if any, are required to ensure they meet their policy objective. The review should consider matters including:

- (a) the use of the rules in practice;
- (b) whether there is sufficient access to the scheme;
- (c) the relationship to the concessional superannuation contributions cap; and
- (d) comparable international schemes.

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