

National Seniors

Australia

**Submission in Response to Grey-Areas- Age
Barriers to Work in Commonwealth Laws
Discussion Paper**

November 2012

About National Seniors Australia

With a quarter of a million members Australia-wide, National Seniors is the consumer lobby for the over-50s. It is the fourth largest organisation of its type in the world.

We give our members a voice – we listen and represent our members' views to governments, business and the community on the issues of concern to the over 50s.

We keep our members informed – by providing news and information to our members through our Australia-wide branch network, comprehensive website, forums and meetings, bi-monthly lifestyle magazine and weekly e-newsletter.

We provide a world of opportunity – we offer members the chance to use their expertise, skills and life experience to make a difference by volunteering and making a difference to the lives of others.

We support those in need – as a not-for-profit organisation, we raise funds and redirect monies received to older Australians who are most in need.

We help our members save – we offer member rewards with discounts from over 7,000 business across Australia, we offer discount travel and tours designed for the over 50s, and we provide older Australians with affordable, quality insurance to suit their needs.

Contact:

National Seniors, Public Affairs, Level 18, 215 Adelaide Street Brisbane QLD 4001

P: 1300 765 0 50 F: (07) 3211 9339

E: policy@nationalseniors.com.au

W: www.nationalseniors.com.au

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Introduction

National Seniors Australia (National Seniors) supports the majority of the Australian Law Reform Commission's discussion paper's proposals.

National Seniors believes that, if adopted by government, the proposals will remove many of the existing barriers to workforce participation facing older Australians.. However, National Seniors has major concerns regarding the possible outcome of Question 8-2 and 8-3 which consider increasing the preservation age and the age for tax free-access to superannuation

National Seniors believes that the current preservation age and age for tax free-access to superannuation must remain in place until a demonstrated improvement in the employment prospects of older workers is evident. National Seniors is concerned that an increase in either the preservation age or age for tax free access to superannuation would simply increase the number of mature age workers, and length of time they spend, on government support payments including Newstart.

Discrimination, from both employers and recruitment agencies, is the main barrier to employment for older workers Until we see a shift in attitudes, an increase in the preservation/tax free access age will serve only to move the cost of supporting mature job seekers from the individual (through their superannuation) back to the government (through support payments).

It may be appropriate to consider increasing the preservation age and the age for tax free access to superannuation once the average duration of unemployment for mature job seekers aligns with the average duration for all job seekers.

Job seekers aged 55 years and over currently languish in unemployment for an average 71 weeks compared to 41 weeks for job seekers aged 25-44 years.¹ National Seniors is optimistic that these recommendations, once implemented, will go some way in narrowing the gap in mature age and rest-of-population long term unemployment rates .

National Seniors believes that the only long lasting improvement in the participation rate of mature workers will be achieved through

- 1.) Educating all stakeholders including employers, recruitment agencies and the public on the value of mature workers; and

¹ National Seniors Australia, *Barriers to Mature Age Employment: Final Report Of The Consultative Forum On Mature Age Participation*, Productive Ageing Centre, P13.

- 2.) Providing financial incentives to the employer to hire mature workers and to the mature employee to continue to work or to re-enter the workforce.

National Seniors recommends that government immediately remove all discriminatory age restrictions and compulsory retirement provisions.

Recruitment and Employment Law

National Seniors supports Proposal 2-1: An assessment of recruitment agencies should be undertaken to assess compliance with appropriate laws in relation to older workers. An international comparison should also be a component of this assessment to determine any best practices which could be adopted by the Australian recruitment industry.

National Seniors supports Proposal 2-2: It would be beneficial if an independent third party was engaged to reviewed the Recruitment and Consulting Services Associations Code of Conduct to ensure that the proposed mature job seeker components are adequately incorporated. Random audits of insurance companies' compliance with the Code would also bring a degree of creditability to the Code.

National Seniors supports Proposal 2-3: The guidance material should include information on the barriers to employment that mature employees and job seekers face and the support that is available to overcome these barriers.

National Seniors supports Proposal 2-4: The awards should highlight the positive outcomes which can be achieved by hiring mature workers including the specific benefits applicable to the employer and recruitment firm.

National Seniors supports Proposal 2-5: Many mature workers are now taking on the role of carers, mature workers must have the same right to request flexible working arrangements as other employees. National Seniors research shows that one third of people aged 45 to 74 report caring responsibilities are a barrier to employment. More flexible work patterns would help 61% of non-employed carers and 50% of employed carers to start work or work more hours.²

National Seniors supports Proposal 2-6: The guide should be developed for negotiating and implementing flexible work arrangements for all workers with mature workers treated as a component of the whole workforce and not subjugated in a separate document.

² National Seniors Productive Ageing Centre, *Barriers to Mature Age Employment*, November 2012

There is a risk that devoting separate regulations/ documents focused on mature workers will imply that mature workers cost more and come with additional requirements and problems, which could act as a disincentive to employers.

Question 2-1. The Corporate Champions program is a commendable first step in promoting mature age employment. National Seniors is encouraged by the recent four year Commonwealth Government commitment to this program.

However, the Australian Government should also lead by example and apply world best practice to mature workers in the public sector. The Australian Government should develop public sector standards to promote the recruitment of mature workers, the removal of any reference to retirement age and the use of flexible work arrangements which could be voluntarily adopted by all States and Territories through a Council of Australian Governments' agreement.

National Seniors does not support Proposal 2-7 at this stage. In general it is appropriate to consider using the awards to develop incentives to encourage mature workforce participation. However, more detail is required before National Seniors is willing to support this proposal; caution must be taken to ensure that employers are not exposed to additional costs if they choose to hire mature workers.

National Seniors supports Proposal 2-8: The proposed increase in termination period does align with the increased amount of time mature workers remain out of the workforce. Again, this may act as a disincentive to employers to hire mature workers.

Question 2-2: The provisions under the *Fair Work Act 2009* should be retained until the outcome of the recently announced consolidation of anti-discrimination legislation is complete.

National Seniors supports Proposal 2-9: All professional associations should base their licensing and re-registration requirements on competency and not on age. This is extremely important considering question 8-2 and 8-3 which could result in a situation where a mature worker could be too old to gain re-registration of their profession and therefore no longer be allowed to work in their current position while also being not yet old enough to access their superannuation or the age pension.

National Seniors supports Proposal 2-10: Retirement should be based on competency and not age. All compulsory retirement ages should be removed.

National Seniors does not support Proposal 2-11: The retirement of mature military personnel should also be based on individual competency and not age. National Seniors is happy for a review to occur however in the interim the compulsory retirement ages should be removed.

Questions 2-3: A body could be established with a positive focus on rewarding employers who do recruit and value older workers. At this stage the reporting framework should be voluntary. As discussed in National Seniors' response to question 2-1 a pilot reporting framework could first be incorporated into the public sector.

National Seniors supports Proposal 2-12: The education campaign should focus on the benefits of hiring mature workers highlighting the mature workers' skills and experience and the financial incentives available for the Corporate Champions program and similar initiatives.

Work Health and Safety and Workers' Compensation

National Seniors supports Proposal 3-1: Work health and safety regulators should already be considering the health and safety issues that affect mature workers, as all workers regardless of age have the right to a safe working environment.

National Seniors believes that caution is needed when proposing an additional emphasis on mature workers' health and safety requirements. For example, creating new regulations which separately consider the health and safety requirements of workers based on age could send the message to employers that hiring older workers is accompanied by extra work, health and safety requirements and is therefore more costly than hiring younger workers, creating a further disincentive to hiring mature workers.

National Seniors supports Proposal 3-2: There should be on-going research into the work, health and safety issues affecting mature workers including research into the effectiveness of the current and future initiatives to increase mature age worker participation in the workforce.

National Seniors supports Proposal 3-3: National Seniors suggest that it may be more beneficial and less isolating if mature age worker-specific material is included within the generic material relating to the health and safety issues affecting the whole workforce. There is a risk that if separate guidance material is developed it may emphasise additional risks and obligations of hiring a mature worker and promote the stereotype that mature workers cost employers more and may discourage employers from hiring mature workers.

National Seniors supports Proposal 3-4: This award could also be used to promote a mature age workforce as a competitive advantage.

National Seniors supports Proposal 3-5:

National Seniors supports Proposal 3-6:

Question 3-1 No, the 2 year period of incapacity payments appears sufficient at this stage, given National Seniors response to Question 3.2 and the small number of claims which result in payments approaching a duration of one year.

Question 3-2: Yes, as not allowing a mature worker the opportunity to continue to receive payments is suggesting that all workers are planning to retire at the current pension age which is not the case and is contrary to the objectives of this paper. National Seniors believes that a Tribunal is a sound approach to determining if the compensation should continue and for how long.

National Seniors supports Proposal 3-7: All workers / volunteers regardless of what Act or jurisdiction they work under should be entitled to the same level of protection and compensation if injured.

Question 3-3: Yes, the subtraction of superannuation payments in place at the time of the incident from any incapacity payment does act as a barrier to workforce participation. Incapacity payments are designed to offset the loss of salary which the employee would otherwise receive while working and should not be reduce based on any assets/income test (including superannuation).

Insurance in Australia

National Seniors supports Proposal 4-1: Older Australians often indicate that they experience difficulties in accessing and understanding information about insurance products.

A central portal would be useful to provide clear and simple insurance information. However this information must be offered to mature workers via a number of mediums and not just online. Many older Australians still prefer to utilise other mediums of communication including face-to-face interactions

The insurance industry should be encouraged to utilise plain English removing unnecessary jargon and complexity from all policy documents and contracts where possible.

Insurance industry staff should be provided with training to develop the skills to clearly and effectively communicate with mature workers and senior Australians. National Seniors' members report that the current level of customer support is

far below a desirable level and adds to the difficulties associated with accessing insurance information.

National Seniors also supports the creation of mature age specific products based on real risk data and not on assumptions based on age stereotypes.

National Seniors supports Proposal 4-2: National Seniors believes that Australia must attempt to be at the forefront of international insurance practices, capitalising on all new developments and initiatives.

National Seniors supports Proposal 4-3: Yes, the insurance industry should be encouraged to consider the needs of mature persons; the General Insurance Code of Practice is an appropriate starting point to ensure compliance.

Question 4-1: National Seniors supports the inclusion to consider the needs of mature persons within all industry codes. The central portal as discussed in Proposal 4-1 could be utilised to hold a register of compliant insurers and also maintain a list of outstanding complaints against the insurance companies.

The portal could also maintain a public list on compliant insurance companies/products which have been ranked according to “mature friendly” criteria.

Question 4-2: National Seniors believes that the insurance exemption under the Age Discrimination Act 2004 should only be allowed where there is supporting actuarial or statistical data, where there is no data then no exemption should be available.

Question 4-3: The power of the Australian Human Rights Commission under s54 of the *Age Discrimination Act 2004* is not sufficient. National Seniors believes that the insurer seeking to invoke the insurance exemption should only be allowed to do so based on the submission of the actuarial or statistical data.

The justification for the decision and the data used to make the determination on the appropriateness of the exemption should be released to the public.

National Seniors supports Proposal 4-4: There should also be public and consumer group consultation of the development of any guidance material regarding the application of the insurance exemptions under the *Age Discrimination Act 2004* or consolidated anti-discrimination legislation.

Social Security

National Seniors supports Proposal 5-1: Older Australians continue to report a lack of knowledge and a high level of confusion regarding the eligibility for income support payments and work incentives. There is also fear about the potential loss of concessions and support payments if seniors undertake additional paid work.

The communication of this information should occur through a number of mediums not just online, many older Australians still prefer to utilise other mediums of communication including face-to-face interactions.

National Seniors supports Proposal 5-2: Staff of employment agencies should be trained in how to communicate this essential information with mature job seekers. There should also be a mechanism (potentially a new key performance indicator) in place to determine how effective the employment agencies are at communicating this information to mature job seekers. This performance indicator could become a key factor the government considers when determining government funding and awarding employment contracts to agencies.

Question 5-1: Clear and accessible communication regarding the incentives and employment options available; and additional financial incentives for both the employer and employee to support the hiring of older workers would assist mature job seekers in their search for employment.

Question 5-2: An investigation of the impact of reducing the withdrawal rate for income support payments should be part of the reforms. A reduction of the withdrawal rate will make it financially more attractive for mature age workers to continue working or recommence work.

Recent National Seniors research has indicated that seniors would be willing to lose an average maximum of 35% of their pension to work as much as they want.³

The mature worker who transitions from volunteer work to paid employment should be rewarded with a reduction of the withdrawal rate or a one off bonus payment.

Questions 5-3: Lack of information regarding all support payments including the Disability Support Pension is acting as a disincentive for older Australians to work. The confusion regarding the interaction of support payments with paid

³ National Seniors Australia, *Barriers to Mature Age Employment: Final Report Of The Consultative Forum On Mature Age Participation*, Productive Ageing Centre, P18.

employment alone is enough to act as a major disincentive for seniors to stay in the workforce.

National Seniors supports Proposal 5-3 and 5-4: On condition that the care receiver's needs are being met, carers who return to the workforce should be encouraged to work and not disadvantaged by this choice regardless if this work is from home or in external settings.

The continued excess of 25 hours of employment, voluntary work, education or training (over 2 months) could be used to initiate a review of the carers' allowance. However this must not be used to automatically stop the carers' payment.

National Seniors supports Proposal 5-5: The indexing of the income concessions and maximum unused concession balances relating to the Work Bonus. However, National Seniors believes that the Work Bonus should be extended to self-employed workers and be fixed as a proportion of an employment based index, e.g. 10% of the male total average weekly earnings adjusted annually.

National Seniors supports Proposal 5-6: Considering the age discrimination mature job seekers face, it would be unreasonable to expect mature persons to re-engage with the work force without the same level of entitlements and support for eligible education as is available to a younger job seeker.

National Seniors research reports that 36% of mature job seekers have indicated that they have experienced job search exclusion which they attribute to mature age.⁴

Family Assistance and Child Support

There is evidence to suggest that older generations are increasingly acting as second time parents by helping to raise grandchildren⁵.

This growth of mature age carers must continue to be recognised and their support payments protected. Any addition of a work, income or asset test would be a disincentive for mature carers to continue to work and would be contrary to the government's objective of encouraging mature age worker participation within the workforce.

⁴ National Seniors Australia, *Barriers to Mature Age Employment: Final Report Of The Consultative Forum On Mature Age Participation*, Productive Ageing Centre, P16.

⁵ Bengston, V. (2001). *'Beyond the Nuclear Family: The increasing importance of multigenerational bonds.'* Journal of Marriage and Family 63(1): 1-16.

Income Tax

The complexity and consequent lack of transparency of the taxation system inhibits the effectiveness of the current tax offsets and financial incentives. National Seniors believes that a review should be conducted to ensure that all the tax incentives for mature age workers are understood by the individuals they are meant to be encouraging to work; and are achieving the outcome they were designed to achieve (ie increased mature age workforce participation).

Superannuation

National Seniors supports Proposal 8-1: The current 75 year age limit on voluntary contributions is age discriminatory and discourages individuals from continuing to work past 75 years. It also sends a message to society that individuals beyond the age of 75 should not be in the workplace.

Question 8-1: National Seniors does not support any increase to the work test minimum hours as any increase may act as a disincentive to mature age workers to continue working. Similarly, National Seniors does not support any decrease to the age from when the work test is applied.

National Seniors supports Proposal 8-2 and 8-3: as these changes to allow voluntary employer superannuation contributions should occur to ensure consistency and equity following the proposed changes in proposal 8-1.

National Seniors supports Proposal 8-4 and 8-5: The proposals would remove the age discrimination and apply and action the work test as the determining eligibility criteria for spouse contributions. National Seniors believes that regardless of age all employees and their spouses should have access to the same rights and incentives for voluntary employer and employee super contributions.

National Seniors supports Proposal 8-6: The proposed change will benefit those willing to contribute themselves. The current age restriction is discriminatory and contrary to the objective of the government to encourage mature worker participation. The extension of the co contribution similar to proposal 8-1 is an incentive to remain in the workforce

National Seniors supports Proposal 8-7: National Seniors supports an on-going review of all incentives and tax concessions to ensure they are being used in the manner originally intended and that they achieve the desired results. If the incentives and concessions are not achieving the intended purpose the funding should be reallocated to more effective initiatives to increase mature age participation in the work force.

Question 8-2 and 8-3: National Seniors does not support any increase to the preservation age or the age for tax-free access to superannuation.

National Seniors believes that before any increase to these ages is considered the current long term unemployment rate for mature workers must align with average long term unemployment figures. Mature age job seekers aged 55 years and over experience an average duration of unemployment since their last full-time job of 71 weeks compared to 41 weeks for job seekers aged 25-44 years.⁶

If the preservation/tax-free access age were raised with the current level of age discrimination then the mature job seeker would simply remain on the Newstart allowance for a longer period of time thus increasing the cost to government.

An increase in mature age participation rates should be achieved through encouragement and incentives and not by changing an already complex system. National Seniors research indicates that a lack of certainty regarding superannuation rules has impacted the retirement plans of 39% of pre retirees.⁷

Management of Longevity Investment Risk

National Seniors believes that there should be greater public education of the benefits of annuities and similar financial products (which can manage longevity risk) to promote their uptake..

There should also be an investigation into providing incentives to increase their popularity.

However, National Seniors does not support any future mandatory requirement to purchase annuity products or any restrictions on the current levels of lump sum superannuation payments.

⁶ National Seniors Australia, *Barriers to Mature Age Employment*: Final Report Of The Consultative Forum On Mature Age Participation, Productive Ageing Centre, P13.

⁷ National Seniors Australia, *Barriers to Mature Age Employment*: Final Report Of The Consultative Forum On Mature Age Participation, Productive Ageing Centre, P18.

References

1. Bengston, V. (2001). *‘Beyond the Nuclear Family: The increasing importance of multigenerational bonds.’* Journal of Marriage and Family 63(1): 1-16.
2. National Seniors Australia, 2012, *Barriers to Mature Age Employment: Final Report Of The Consultative Forum On Mature Age Participation*, Productive Ageing Centre.