

# National Seniors

Australia

**Submission in Response to the Issues Paper  
*Grey Areas – Age Barriers to Work in Commonwealth  
Laws***

**June 2012**

## Introduction

Australians today live longer than any previous generation in our nation's history and typically enjoy better health in later life than their parents and grandparents. In the context of increased longevity, our expectations and hopes for the later years of our lives are changing also. One of the most significant social changes in recent years has been the emergence of a work-retirement continuum. Increasingly, people no longer work full-time, and then leave the workforce completely, becoming fully retired. For up to 20 years, a person's level of engagement in the workforce may cycle between periods of no paid work, full-time work and various levels of part-time paid work. Rather than a simple tapering off of work, anecdotal evidence suggests many people work full time on a seasonal basis (e.g. tax accountants during the tax season) and then either do not work for extended periods or work part time.

The demand from older Australians for permanent part-time work also appears to be significantly increasing, from those aged in their 50s through to those in their 70s. In 2008-09 for example, more than twice as many men who were not currently in the labour force but wanted a job, wished to work less than 35 hours rather than more, while for women the ratio was an astounding 16:1.<sup>1</sup>

Older workers and job seekers are not a homogeneous group and many factors may influence their ability to obtain/retain suitable work, particularly in the last 20-30 years of working life. We need to accommodate new and different styles of participation – new forms of work, new forms of contribution.

However, many older workers experience difficulty in finding suitable work and in retaining existing employment. The barriers they face are both personal (specific to the individual, e.g. skills levels) and structural (affecting whole groups). Removing these barriers will require multiple strategies, including a major change in attitude to overcome negative and inaccurate stereotypes of older workers, fostering and supporting continuous up-skilling and lifelong learning; working with enterprises to provide greater flexibility of working arrangements; and, of course, removal of institutional barriers.

National Seniors Australia welcomes this review of age barriers to work in Commonwealth laws by the Australian Law Reform Commission (ALRC) and considers it to be an important part of that reform process. The Australian Human Rights Commission reports that since the implementation of the Age Discrimination Act 2004, the majority of complaints it has received relate to employment (69.2%) and that most of these complaints were made by people over the age of 45.<sup>2</sup> We wish to acknowledge the work of the Australian Human Rights Commission in this area and to support the recommendations for reform contained in its recent report, 'Working Past our 60s', issued on 6 June 2012.

The topic of barriers to mature age workforce participation has been a major focus of the research work undertaken by National Seniors' Productive Ageing Centre (NSPAC) and that research underpins our input to the review.<sup>3</sup> In addition, we have sought comments from our

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<sup>1</sup> ABS 6239.0 Barriers and Incentives to Labour Force Participation July 2008-June 2009

<sup>2</sup> Australian Human Rights Commission, *Working Past our 60s: Reforming Laws and Policies for the Older Worker*, June 2012, p. 21

<sup>3</sup> Ageing and the Barriers to Labour Force Participation, NSPAC on behalf of the Consultative Forum on Mature Age Participation, December 2011

Stereotype Threat and Mature Age Workers, NSPAC, December 2011

Valuing and Keeping Older Workers, NSPAC, April 2010

members, many of whom have directly encountered systemic barriers in their search for employment, for continuing employment or for volunteering opportunities. The quotations in text boxes throughout the submission come directly from them.

## **Framing Principles**

While strongly supporting all of the proposed framing principles (participation, independence, self-agency, system stability, system coherence and fairness), National Seniors wishes to highlight the importance of the principle of system stability and propose the adoption of a further principle – choice – that should inform the ALRC’s deliberations.

### **System Stability**

The Government seeks to encourage older Australians to actively plan for later life and to take greater financial responsibility for their life choice, whether full retirement, full-time work or some mix of work and retirement. However, effective planning is only possible in a predictable and stable environment. Policy volatility can lead to consumer disenchantment and disengagement. For example, the recent policy reversal on concessional superannuation caps disrupts the retirement income planning of a particular cohort.

### **Choice**

Multiple factors will come into play for each person as they make decisions about work and retirement, e.g. health, income, caring responsibilities, but artificial barriers based on age should not be amongst them. Irrespective of age, each person should feel they can make the choice about whether or not they work.

## **Age Pension (Questions 2-5)**

Research has shown that one in five pensioners who wanted to work declined part-time employment opportunities because it would cause a reduction in pension entitlements.<sup>4</sup> ABS statistics indicate the significant extent to which the interface between the income support system and employment acts as a disincentive: mature age Australians state that incentives to keep more of their pay (53%), maintain most of their welfare benefits or allowances (44%), and have less paperwork from government support agencies (43%) are important or very important for them as they consider joining the labour force.<sup>5</sup>

*“It should be as easy as can be possibly made for people to move into and out of work/income without heaps of repeating paperwork and delays and reporting.”*

Despite Centrelink’s attempts to simplify notification processes, the burden of compliance and the penalties for non-compliance (loss of benefits) continue to be a powerful disincentive to paid employment of any kind for many on the age pension.

### **Q5 Work Bonus**

By exempting \$6,500 pa of employment income from the income test and providing a mechanism to ‘smooth’ out uneven earnings (the Work Bonus ‘bank’), the Work Bonus usefully addresses some of the disincentives for age pensioners to work. National Seniors

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<sup>4</sup> Spoehr, Barnett & Parnis 2009, quoted in ‘Ageing and the Barriers to Labour Force Participation’ NSPAC December 2011, p. 25

<sup>5</sup> Quoted in Ageing and the Barriers to Labour Force Participation, NSPAC, 2011, p. 26

notes, however, that the Work Bonus is only available for people who are in an employee/employer relationship. The Bonus is not currently available for people who are self-employed. An expansion of the scheme to encompass self-employed age pensioners would act as an incentive for them to continue working and, potentially, to start micro-businesses.

In addition, National Seniors proposes that the level of the Work Bonus be fixed as a proportion of an employment based index, e.g. 10% of MTAW (MTAWE (\$128.49 pw at 31 March 2012), and adjusted annually. This reinforces the perception that the Work Bonus is an employment incentive.

## **Income Tax (Questions 6-9)**

### **Q8 Tax Offsets**

While 'keeping more pay' is a very strong incentive for mature age workers as they consider joining the workforce<sup>6</sup>, it is unclear that the current taxation offsets available to older Australians (Senior Australians Tax Offset, Pensioners Tax Offset, Low Income Tax Offset and the Mature Age Workers Tax Offset) actually achieve the Government's intent of encouraging workforce participation. The complexity and consequent lack of transparency of the taxation system inhibit the effectiveness of such offsets as incentives. An incentive that is not understood as such is not an incentive.

We note that, in line with the recommendations from the Henry Report, 'Australia's Future Tax System', the Government has announced the phasing out of the Mature Age Worker Tax Offset and that those born after 1 July 1957 will not receive the offset. While we welcome simplification of the taxation system and expect that the raising of the tax threshold to \$18,200 from 1 July 2012 will encourage more mature age Australians to participate in the work force, it is important to ensure that the tax-transfer system operates to encourage rather than discourage mature age workforce participation.

### **Q9 Other Changes to the Taxation System**

National Seniors strongly advocates the widening of the eligibility criteria for work-related self-education expenses for mature age Australians to include training undertaken in order to secure employment or upgrade current employment skills.

NSPAC research has found that barriers relating to skills, retraining and experience have a significant impact on mature age job seekers. The Consultative Forum on Mature Age Participation rated these barriers to labour force participation amongst the highest being faced by mature age Australians.<sup>7</sup> Yet research in Australia has also found that mature age Australians face a lack of appropriate training opportunities to upgrade their skills. Not only are existing programs often inappropriate for older people but significant cost can also be faced.<sup>8</sup> Centrelink provides support for retraining only to Certificate IV level.

Mature age Australians, whether unemployed, underemployed or working, who seek to re-skill themselves proactively to ensure their employability must do so entirely at their own cost, unless they meet the very narrow criteria for Government funded training. However,

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<sup>6</sup> Ibid.

<sup>7</sup> Ibid p. 15

<sup>8</sup> Ibid p. 21

taxpayers are only able to claim a tax deduction for self-education expenses if those expenses relate to the work being undertaken at the time.

## **Superannuation (Questions 10-20)**

The repeated changes to superannuation policy, most recently in the 2012-13 Budget announcements, erode community confidence in the superannuation system and encourage more Australians to minimise, rather than maximise, their superannuation savings. This will ultimately be to the detriment of the whole community.

*"I am sick and tired of Governments being able to 'play' with superannuation especially for us over 50's or more still for the over 55's as it is so close to our retirement where we need certainty."*

Superannuation has been the subject of the greatest response from our members, particularly those aged over 50 who are still contributing to their superannuation funds. At the stage of their lives when many are finally able to start contributing more to their superannuation savings, because they have paid off the mortgage and their children have become more independent, they find the policy goalposts shifting constantly and their plans to maximise their retirement savings failing.

Over the last five years, this group, in particular, has suffered from a 'double whammy'. Their contributions cap has been decimated: from \$105,113 a year pre 1 July 2007, to \$25,000 a year from 1 July 2012. This period has coincided with the Global Financial Crisis and its aftermath, which saw superannuation balances plunge. It is only in the last few months that these balances have typically returned near to their pre-GFC levels. The recent decision to defer raising the concessional contributions cap means that many older Australians will be unable to achieve their goal of a comfortable standard of living in retirement and will have to supplement their retirement incomes with the Age Pension.

*'The Government needs to be reminded that older Australians still in work do so often as they need to continue to build their worth so they do not have to access Government benefits. The Government cannot have it both ways as if we cannot save more, then we will need to seek Government monies in the future and many of us prefer to be self-sufficient.'*

### **Qs 10 – 13 Superannuation Guarantee**

National Seniors welcomes the removal of the age limit on mandated employer superannuation contributions, due to come into effect from 1 July 2013. We strongly support the removal of all age restrictions that apply to voluntary contributions. Arbitrary age-based limits unreasonably restrict the capacity of employees over 65 to maximise their retirement savings and discourage mature age workers from continuing in employment. This is particularly detrimental in the case of people on low incomes who may wish to work longer to build their superannuation level and women who may have returned to the workforce after long absences.

*"Hello, I am a widowed, self-funded female, aged 77 years working a 10 hour week. Because of my age, I can no longer receive employee guaranteed superannuation nor contribute to my existing superannuation fund. This is ageist, unfair and undemocratic ... especially considering the Australian government's initiative towards encouraging senior employment in the workforce."*

## **Qs 14 – 15 Contributions Caps**

As noted above, the level of the concessional contributions cap is an important incentive (or disincentive) for older working Australians to save for their retirement. Finding the point at which people are encouraged to remain working and save for their retirement but discouraged from retiring early is delicate. However, a consistent approach is essential. Continued volatility can actively discourage people from maximising their superannuation savings.

The age limit imposed on the 'bring forward' rule has the potential to encourage mature age participants to retire before 65 to take advantage of the rule. While the work test may allow extension, it would be preferable to remove the age limitation. The current policy encourages a rush to retirement to beat the deadline and removal of the age requirement should provide for a more considered and better funded retirement.

## **Qs 16 – 18 Preservation Age; Transition to Retirement Rules**

The Henry Review (*Australia's Future Tax System*) recommended raising the preservation age to 67 years, in line with the age at which older Australians will become eligible for the Age Pension. Prima facie this would seem to be an effective incentive for older Australians to remain in the workforce. However, it raises the prospect of older Australians being unable to access either their own superannuation savings or the Age Pension until the age of 67.

Results from the 2011 ABS Labour Force Survey showed the share of long term unemployed in Australia increased significantly with age, especially for females. At age 60-64, almost 40% of unemployed people have been unemployed for longer than 24 months. For females, the long term unemployed comprise over 60% of the unemployed at this age.<sup>9</sup> Unless these barriers are addressed effectively and older workers are able to obtain and retain employment as easily as younger workers, there is a real risk that raising the preservation age will simply lead to a ballooning of the unemployment figures and a greater drain on the social security system, rather than to increased workforce participation.

We note also that the convergence of the preservation age with the age at which people become eligible for the Age Pension and unrestricted access to their superannuation effectively means the preservation age becomes redundant and provisions such as the Transition to Retirement rules would need to be restructured.

The current age limits should be maintained but incentives for mature age participants should be extended to assist those desiring to continue working or where a low income worker needs to increase the level of superannuation before retirement.

A survey in 2006 showed that only half of the respondents were aware or very aware of the Transition to Retirement measure. Two thirds of people stated that use of this option is unlikely. Further, 75% of those in older age groups stated their use of this measure is unlikely, despite having highest awareness and being closest to eligibility age.<sup>10</sup> Although Transition to Retirement measure is not widely used, it offers flexibility and choice and National Seniors views it as an important option for older Australians. Participants have the certainty of salary from continued, although reduced, employment hours and taxation benefits from using superannuation funds to both supplement their income and increase the superannuation pool. Promotion of the availability and benefits of the scheme should be

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<sup>9</sup> Ibid p. 27

<sup>10</sup> Ibid p. 23

undertaken to assist mature age workers to make informed choices on whether to make use of the scheme.

## **Social Security (Questions 21-30)**

### **Q 21 Information accessibility**

Information about entitlements is readily available for those who are skilled at navigating the internet. However, a 2008 survey by the Australian Bureau of Statistics found that 51% of Australians aged 55 and over did not have access to an internet connection in 2006. This compared with 29% of Australians aged 5 and over.<sup>11</sup> For Centrelink customers in particular, the cost of internet connections can also be a major barrier to internet use. People in regional and remote Australia have little, if any, opportunity to use community-based internet facilities, e.g. in public libraries.

Current information about payments and entitlements must continue to be made available in print form or the already marginalised will be further marginalised. Although National Seniors has been advised by the Department of Human Services that print remains the default method of communication with seniors, members have reported feeling coerced by Centrelink staff into using on-line communications.

## **Employment (Questions 34-46)**

### **Q 34 Practices of Private Recruitment Agencies**

Studies have found that some recruitment agencies are reluctant to accept older workers as clients or recommend them to employers.<sup>12</sup> It is impossible to know whether recruitment agencies are acting in this way because of their own view of older workers or under instructions (implicit or otherwise) from their clients.

*“Most likely you will be interviewed by persons who are younger and they are affected by the general ageism discourse in society. The problem with much of the discrimination experienced is how to prove it and those that discriminate ... know it is hard to prove and a fairly safe space to quietly discriminate against someone trying to obtain employment or in any other sphere of life.”*

*“Selection for employment when the panel is in their 30s is almost never going to happen due to age and often higher experience threat. Many older workers would be happy to accept an award wage less than their entitlement just to be working – introduce different levels so can compete with young people who are in the bottom of the award ladder.”*

*“I have been getting the interviews okay, but as soon as they meet me and see that I’m a senior, I either get no answer or to be told they have got someone else.”*

*“On two occasions, whilst attending either the first or second interview, I overheard the comment, or similar, “but he is 65”. This was never put to me directly, as it could be interpreted as discriminatory. In both cases, I was not successful. I was informed that the successful candidate was better qualified.”*

The experiences of the members given above highlight the insidious nature of age discrimination and the difficulty of counteracting it. The involvement of older people in

<sup>11</sup> NSPAC, *Older Australians and the Internet: Bridging the Digital Divide*, September 2011, p.15

<sup>12</sup> NSPAC, *Ageing and the barriers to Labour Force Participation in Australia*, December 2011, p. 18

selection processes could, however, assist in breaking down both the conscious and unconscious ageism of workplaces.

### **Q 35 Flexible Working Arrangements**

Flexibility of working arrangements is valued very highly by older workers. An NSPAC analysis of data from 2008-09 has shown that being able to work part time hours was the incentive most likely to encourage older people to join the labour force, cited by 75% of respondents aged 55-69 who wanted paid work, were available to start work but not actively looking. Amongst this age group other important incentives related to flexible working arrangements were being able to work a set number of hours on a set number of days (67%), to vary start and finish times (59%) and to work from home (47%).<sup>13</sup>

National Seniors strongly supports amending s65 of the Fair Work Act but further proposes that all employees should be able to request flexible working arrangements. Those industries and workplaces where it is impractical to offer flexibility could have blanket exemptions. The risk of amending s65 to include age is that employers may avoid recruiting people of that age and above in order to avoid the perceived complexity of having to consider flexible working arrangements if they are requested. As noted above, mature age job seekers already face considerable discrimination in the recruitment phase.

### **Q 39 Compulsory Retirement/Relicensing Ages**

Consistent with the abolition of compulsory retirement ages for commonwealth statutory office holders and public servants, National Seniors supports the removal of a compulsory retirement age for Justices of the High Court and any courts created by Parliament.

National Seniors acknowledges the need for regular review points for licensing and re-qualification in a number of industries and professions. However, it is our view that while it may be acceptable to have an age determined review point, it is not appropriate to have age determined cut off points. Licensing and re-qualification should be dependent on capacity, not chronological age. People of the same age often have widely differing physical and mental capacity.

### **Q 43 Regulation and Monitoring**

National Seniors suggests regulatory and monitoring initiatives risk being counterproductive and that 'pull' mechanisms (e.g. modelling of best practice) are more effective than coercive measures.

### **Q 46 Other Changes to the Employment Law Framework**

As noted earlier in this submission, older job seekers face major skills barriers when applying for employment. Those exiting long term employment often do not have current job search skills, nor do they have widely marketable employment skills. This situation faces whole groups of workers, not just individuals, e.g. groups currently exiting from long term manufacturing in Victoria. Their efforts to obtain employment are hampered by the lack of support for re-training beyond basic 'blue collar' simple skills. The employment law framework should interact with the social security system in ways which facilitate the reskilling of older workers. Flexibility is needed in both systems for the particular needs of older job seekers and older workers to be addressed.

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<sup>13</sup> Ibid, p.23



*“With limited suitable jobs and employer reluctance the answer may lie with self-employment ... There should be more micro loans, incentives, mentor support so people can be independent.”*

## **Workers Compensation and Insurance (Questions 47-51)**

### **Q 48 Workers’ Compensation**

National Seniors believes that older workers deserve the same workers’ compensation protection as the rest of the workforce and supports the removal of all age based restrictions. The raising of the pension age to 67 increases the urgency of this matter.

### **Q50 Insurance Policies**

We note there has been some lifting of age barriers within the income protection insurance industry but most income protection insurance for the trades industry cuts out at 60, although there is no age limit to holding an Australian Registered Trade Certificate. Where income protection insurance is available, increasing premiums continue to act as a barrier to mature age self-employed workers.

## **Migration (Questions 53-55)**

The age barrier in skilled migration visas deprives the workforce of the skills of a significant group of potential migrants. Many of the occupations listed on the Skilled Occupation List (SOL) require high level qualifications. Migrants over 50 with these skills bring much needed expertise and experience.

### **Q53 Skilled Migration Visas**

Given the raising of the pension age to 67 and current Government policy to encourage us to work past traditional retiring age, it is reasonable to increase the age limit on skilled migration visas. If a potential migrant satisfies all other criteria for a skilled migration visa, age should not be a barrier.

### **Q54 Points Test**

National Seniors supports amending the ‘points test’ to include a new category ‘mature employment’, allocating a certain number of points to all applicants over 45. Alternatively, the ‘points test’ could refrain from apportioning any points based on age.

### **Q55 Employer-sponsored Visas**

All skilled migrants over 50 should be treated similarly and without discrimination. National Seniors supports removing the age exemption for permanent employment-sponsored visas..

## About National Seniors Australia

National Seniors Australia is the largest organisation representing Australians aged 50 and over, with around a quarter of a million members nation-wide. This broad-based support enables National Seniors to provide a well informed and representative voice on behalf of its members and contribute to public education, debate and community consultation on issues of direct relevance to older Australians.

**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.

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