



Australian
Human Rights
Commission

Review of the Safety, Rehabilitation and Compensation Act 1988

**AUSTRALIAN HUMAN RIGHTS COMMISSION SUBMISSION TO THE
REVIEW COMMITTEE, DEPARTMENT OF EDUCATION, EMPLOYMENT
AND WORKPLACE RELATIONS**

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ABN 47 996 232 602
Level 3, 175 Pitt Street, Sydney NSW 2000
GPO Box 5218, Sydney NSW 2001
General enquiries 1300 369 711
Complaints info line 1300 656 419
TTY 1800 620 241

Australian Human Rights Commission
www.humanrights.gov.au

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1 Introduction

1. The Australian Human Rights Commission welcomes the opportunity to make a submission into the Review of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act). The Commission commends the Australian Government commitment to ensure that the SRC Act provides ‘fair and appropriate workers’ compensation arrangements for all workers covered by that legislation.’¹
2. The Review *Terms of Reference* frame the Government’s intention to ensure that the Comcare scheme will be ‘be exemplary in its scheme-design as well as in its service delivery.’² The Government also makes explicit that the federal scheme should ‘reflect contemporary social models and best practice’.³
3. In view of the Australian Government’s intention to provide an exemplary workers’ compensation scheme, and in keeping with its policy agenda to keep people in the workforce for as long as they are willing and able, the Commission recommends that all age limits on the payment of workers’ compensation provisions be removed from the federal Comcare scheme.
4. If the Government intends to provide an exemplary scheme, it should look to models of practice that do not discriminate on the basis of age, such as the workers’ compensation schemes in Western Australia and Queensland.
5. As it currently stands, the Comcare scheme (s 23(1) of the SRC Act) removes the entitlement to weekly incapacity benefits for injured employees once they reach the age of 65. For employees who are injured at the age of 63 or over, s 23(1A) provides for the payment of weekly incapacity benefits for a maximum period of 104 weeks.
6. The *Issues Paper* for this Review asks the following questions: ‘Should the weekly benefit cut-off age of 65 be increased to 67? If so, should that increase mirror the changes in the age pension age?’⁴ The Commission argues that this question should be extended to also ask whether the age cap should be removed completely. Workers’ compensation schemes that are considered ‘contemporary best practice’ in terms of non-discrimination are those that have been adopted by Queensland and Western Australia where the age limits have been removed completely.

2 Australian workers’ compensation schemes

7. Australia has 11 different workers compensation schemes, one operating in each State and Territory and three Commonwealth schemes. Most of Australia’s workers compensation schemes contain an age limit at which workers are no longer covered by the income replacement component of the scheme. In most jurisdictions, the age at which income replacement is cut off or limited is 65. While workers are covered for medical expenses if they are injured over the age of 65, without income replacement provision, workers without independent means would be forced to retire.

8. However, in Queensland and Western Australia, the workers' compensation schemes do not impose an age limit on income replacement. Instead they impose capped limits on the period of payment or on the amount that the schemes will pay to all workers. For example, WorkCover Queensland has a five year limit on payments or a capped amount of up to \$265,485 regardless of age.
9. Western Australia imposes a capped limit of \$190,701 or a capped weekly amount of up to \$2,156 for the period until the prescribed limit is reached. While there are limits to the Queensland and Western Australia schemes, the workers compensation provisions do not discriminate on the basis of age.

2.1 Are older workers more prone to injury?

10. It is difficult to know whether the workers compensation age limits are predicated on information that older people are more prone to workplace accidents or illness. In fact, there is little conclusive evidence to suggest older workers are a greater accident or injury risk in the workplace.
11. The ABS *Work Related Injuries* report found that people aged 65 years and over recorded the lowest rate of work-related injuries and illnesses of all age groups with 30 per 1,000 people (28 per 1,000 men and 34 per 1,000 women).⁵ The highest rates of work-related injury or illness were experienced in the 45 to 49 year age group (74 per 1,000 men and 70 per 1,000 women).⁶
12. The Australian Public Service Commission posits some theories as to why workers aged 65 years and older have lower rates of injuries and illness.

... older workers are more likely to be aware of safety in the workplace and, therefore, less likely to have an accident

... older workers tend to develop their own coping strategies (such as pacing, anticipation, planning and organisation) as they age, and these strategies may help them to reduce their injury risk

... selection factors may be important. That is, older employees may seek to move out of occupations or industries where their risk of injury or illness would otherwise tend to increase with age and into other forms of employment, phased retirement or early retirement. Older workers may also withdraw from the workforce prematurely and involuntarily due to ill health or disability.⁷

13. WorkCover SA finds that there are lower injury rates amongst older workers. In keeping with the ABS *Work Related Injuries* report, it finds that in South Australia:

It is not necessarily the person's chronological age that predisposes them to injury at work but their prolonged exposure to health and safety risk factors over time...

International research findings indicate that older workers may take longer to recover from their injuries but WorkCover SA claims data do not show any increased duration times for older injured workers.⁸

2.2 Workers' compensation coverage beyond pension age

14. The Review *Term of Reference 1.5* requires that 'any legislative anomalies and updates that need to be addressed' ... [do] 'not disadvantage workers over the age of 65 and there is no gap between the workers' compensation age limit and the foreshadowed increase to the age pension eligibility age to 67 by 2023.'⁹
15. In order to not disadvantage *any* worker over the age of 65, the SRC Act must be amended to accommodate the increase in the eligibility for the Age Pension to 67 and extended beyond age 67 to people who remain in the workforce. While the gap between the new pension age and the Comcare workers' compensation scheme must be rectified, there is a broader requirement for coverage of workers aged 67 and older.
16. Any worker over 67 who is undertaking paid work in the same way as younger workers should have the right to fair and equitable treatment. It is discriminatory in action to provide differential treatment in coverage and entitlements to workers simply because they have reached a certain age.
17. The Commission would like to see a nationally consistent workers' compensation framework that provides coherence and fairness in the income insurance provisions for people who work beyond pension age for as long as they remain in the workforce.
18. While the Australian Government has an intention to harmonise some aspects of Australia's workers compensation schemes under its *National Workers Compensation Action Plan*, the terms of reference are limited to:
 - the assessment of permanent impairment, and
 - definitions of retirement age and the definition of a worker.¹⁰
19. The Commission would now like to see all jurisdictions review the age limits on their workers compensation schemes with the view to removing them.
20. In this Review of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) the Australian Government should consider the recent amendments to workers' compensation in Western Australia.
21. The WA Minister for Finance, Commerce and Small Business announced that the changes in 2011 were to have 'a positive economic and social impact' for Western Australia where there is 'record low unemployment and a need to maintain experienced and skilled people'.¹¹
22. The Australian Government is making significant investments to keep people in the workforce for as long as they are fit and able.¹² The current limits to the Comcare workers' compensation provisions are at cross purposes with many Australian Government policies and initiatives aimed at retaining an experienced mature-age workforce.

3 Recommendation

23. The Australian Human Rights Commission recommends the following amendments to s 23(1) of the SRC Act:

- The removal of all age limits on weekly incapacity payments for workers covered by the Comcare scheme; and
- The inclusion of non-discriminatory weekly incapacity payment provisions, similar to those adopted for the Western Australia's workers' compensation scheme.

¹ Department of Education, Employment and Workplace Relations. Terms of Reference for Safety, Rehabilitation and Compensation Act 1988 (SRC Act) 2012. At <http://www.deewr.gov.au/WorkplaceRelations/Policies/Pages/SRCActReview.aspx> (viewed 15 October 2012).

² Department of Education, Employment and Workplace Relations. Terms of Reference for Safety, Rehabilitation and Compensation Act 1988 (SRC Act) 2012. At <http://www.deewr.gov.au/WorkplaceRelations/Policies/Pages/SRCActReview.aspx> (viewed 15 October 2012).

³ Department of Education, Employment and Workplace Relations. Terms of Reference for Safety, Rehabilitation and Compensation Act 1988 (SRC Act) 2012. At <http://www.deewr.gov.au/WorkplaceRelations/Policies/Pages/SRCActReview.aspx> (viewed 15 October 2012).

⁴ Peter Hanks QC, Review of the *Safety, Rehabilitation and Compensation Act 1988* – Issues Paper, September 2012. At <http://www.deewr.gov.au/WorkplaceRelations/Policies/Pages/SRCActReview.aspx> (viewed 15 October 2012).

⁵ Australian Bureau of Statistics, *6324.0 - Work-Related Injuries, Australia, 2009-10*, 2010. At <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/6324.0Main+per+cent20Features32009-10?opendocument&tabname=Summary&prodno=6324.0&issue=2009-10&num=&view=> (viewed 1 November 2010).

⁶ Australian Bureau of Statistics, *Work-related injury or illness down, men still at most risk*, 6324.0 - Work-Related Injuries, Australia, 2009-10. (Media Release, 13 December 2010). At <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/6324.0Media+per+cent20Release12009-10?opendocument&tabname=Summary&prodno=6324.0&issue=2009-10&num=&view=> (viewed 1 November 2011).

⁷ Australian Public Service Commission, *Productive and safe workplaces for an ageing workforce*, 2003. At <http://www.apsc.gov.au/publications03/maturecomcare3.htm> (viewed 1 November 2011).

⁸ K. Barnett, J. Spoehr, E. Parnis, *Exploring the Impact of an Ageing Workforce on the South Australian Workers' Compensation Scheme*, Key findings, The Australian Institute for Social Research, 2008. p.4.

⁹ Department of Education, Employment and Workplace Relations. Terms of Reference for Safety, Rehabilitation and Compensation Act 1988 (SRC Act) 2012. At <http://www.deewr.gov.au/WorkplaceRelations/Policies/Pages/SRCActReview.aspx> (viewed 15 October 2012).

¹⁰ Safe Work Australia, *National Workers' Compensation Action Plan 2010–2013*, Commonwealth Government Australia, pp. 4-5. At <http://safeworkaustralia.gov.au/AboutSafeWorkAustralia/WhatWeDo/Publications/Pages/WCPlan2010-2013.aspx> (viewed 18 October 2011).

¹¹ Western Australian Minister for Finance, Commerce and Small Business, Better Workers' compensation for over 65s, (Media Release 18 August 2011). At <http://www.mediastatements.wa.gov.au/Pages/default.aspx?ItemId=143293> (viewed 19 October 2011).

¹² Australian Government department of Employment, Education and Workplace Relations, *Experience+ New incentives and support for mature age job seekers*. At <http://www.deewr.gov.au/Employment/Programs/ExpPlus/Pages/supportformatureagejobseekers.aspx> (viewed 18 October 2012).