**Safe Work Australia’s Submission to the Willing to Work Inquiry**

Safe Work Australia leads the development of national policy to improve work health and safety (WHS) and workers’ compensation arrangements across Australia. This submission focuses on WHS and workers’ compensation implications for older workers.

In particular this submission examines the following:

* older workers and workforce participation
* work health and safety and older workers
* the injury experience of older workers
* workers’ compensation schemes
* changing the definition of retirement age, and
* return to work following injury.

Safe Work Australia’s predecessor the Australian Safety and Compensation Council published a report in 2007 which may be of use to the Inquiry - [*Are People with a Disability at Risk at Work? A Review of the Evidence*](http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/rr2007arepeoplewithdisabilityatrisk). The report concluded that:

* “Although the perception that employees with disability have a higher OHS risk is common, the evidence for Australian workers shows that people with disability do not have a higher risk of occupational injury, rather incidence of occupational injury is lower in people with disability, and
* Moreover, it was shown that the potential workforce of people with disability (those that are unemployed and those out of the labour force) have appropriate skills which could enable them to re-enter the workforce into occupations which are a low risk for traumatic injury.”

**Older workers and workforce participation**

The Australian Bureau of Statistics (ABS) Labour Force Survey Data in October 2015 showed that between 2005 and 2014 the number of older workers (aged 55 and above) grew by 55 per cent. This is significantly higher than the overall increase of 25 per cent in employee numbers during the same period.

The decision by the Australian Government in 2009 to progressively increase the qualifying age to receive the age pension from 65 to 67 between 2017 and 2023 is likely to further increase the number of older workers remaining in the workforce for longer.

Safe Work Australia data reveal that the number of older employees (that is, those covered by workers’ compensation) increased substantially in the 10 years to 2010-11. The number of employees aged 55–59 increased by 76 per cent (from 460 500 to 808 955), the number aged 60–64 increased by 177 per cent (from 185 883 to 514 794) and the number aged over 65 increased by 200 per cent (from 71 307 to 214 157) between 2000–01 and 2010–11.[[1]](#footnote-1)

The health benefits of good work are increasingly recognised in Australia and overseas. Safe Work Australia is a signatory to the consensus statement on the Health Benefits of Good Work developed by the Australasian Faculty of Occupational Medicine. Its document [*Realising the Health Benefits of Work*](http://www.racp.edu.au/advocacy/health-benefits-of-work)presents international and Australasian evidence that work is generally good for health and wellbeing, and that long term work absence, work disability and unemployment generally have a negative impact on health and wellbeing.

**Work health and safety and older workers**

Safe Work Australia has developed [*model work health and safety (WHS) laws*](http://www.safeworkaustralia.gov.au/sites/swa/model-whs-laws/model-whs-act/pages/model-whs-act) in partnership with state and territory governments, employers and workers, who are represented as Safe Work Australia Members. All jurisdictions except for Victoria and Western Australia, have enacted their own WHS legislation to mirror the model laws.

Under section 19 of the model WHS Act, a ‘person conducting a business or undertaking’ (PCBU[[2]](#footnote-2)) has a primary duty of care, as follows:

* All PCBUs must ensure, so far as is reasonably practicable, the health and safety of:
  + workers engaged, or caused to be engaged by the person, and
  + workers whose activities in carrying out the work are influenced or directed by the person, while workers are at work in the business or undertaking.
* This primary duty of care requires duty holders to ensure health and safety, so far as is reasonably practicable, by eliminating risks to health and safety. If this is not reasonably practicable, risks must be minimised so far as is reasonably practicable.

There is also an obligation on a PCBU to consult with workers as set out in sections 47-49 of the model WHS Act.

PCBUs must, so far as reasonably practicable, consult with workers who carry out work for the business or undertaking who are, or are likely to be, directly affected by a matter relating to health and safety: section 47. Consultation requires, among other things, that relevant information about the matter is shared with workers and that workers are given a reasonable opportunity to express their views or raise issues about work health and safety in relation to a matter: section 48.

In practice, measures a PCBU may take to discharge their primary duty of care to older workers may include:

* designing tasks for the working population that take account of the range of human dimensions and capabilities such as height, reach and weight and adapt work systems to accommodate the health/fitness status of a worker, or
* in designing work systems, taking into account the possibility that older workers may have a decreased physical capacity for physically demanding or fast-paced work ([*National Code Of Practice For The Prevention Of Musculoskeletal Disorders From Performing Manual Tasks At Work 2007*](http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/274/NationalCodeOfPractice_PreventionOfMusculoskeletalDisordersFromPerformingManualTasksAtWork_2007_PDF.pdf))

*Case Study : BMW in Germany*

*The following case study provides an example of how a factory redesigned a production line to take account of the changing needs of an ageing workforce.*

*Recognising the ageing profile of the workforce in its factories, BMW developed an innovative bottom-up approach for improving productivity. The project involved a pilot using a production line and staffing it with people with an average age of 47. Led by two production managers the project involved working with people on the line, supported by senior executives and technical experts, to develop productivity-improving changes, such as managing health care, enhancing workers’ skills and the workplace environment, and instituting part-time policies and change management processes. Direct investment in the project was approximately $50,000 and resulted in increased productivity by 7% in one year. See:* [*The Globe: how BMW is defusing the demographic time bomb.*](https://hbr.org/2010/03/the-globe-how-bmw-is-defusing-the-demographic-time-bomb/ar/1)

When considering the WHS implications of our ageing workforce, it is necessary to consider the changes that ageing may bring to physiological and cognitive abilities, depending on health, fitness and genetics. For example a person’s vision deteriorates around the age of 40 when the crystalline lens in the eye loses its flexibility and transparency, making it difficult to focus at close distances (presbyopia). On the other hand, some cognitive functions such as control of language or the ability to process complex problems improve with age.

Safe Work Australia recommends that workplaces consider both job demands and job control in designing work systems to improve older workers’ work ability. The concept of work ability, or workers’ capacity to meet the demands of their jobs was developed in Finland and is used in many countries across the world. As well as capturing factors related to the individual’s abilities, knowledge, health, functional capacity and motivation relating to work, the work ability model also recognises work, social and environmental (including government policy) factors that impact on a worker’s ability to work.

Safe Work Australia published a [*pilot study on Work Ability in July 2014*](http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/work-ability-in-australia-pilot-study). Findings that are relevant to this submission include that:

* workers with work related health issues, particularly work-related mental stress tended to report low work ability, and
* satisfied workers and those who intended to remain in their current role reported higher work ability than workers who were not satisfied with their jobs.

If work is designed and managed to eliminate or minimise hazards and risks to reduce the incidence of acute and chronic work-related injuries/conditions, work ability for all workers regardless of age will be improved. Improving work ability can extend working lives. As all individuals age in a different manner, chronological age does not necessarily mirror functional age, so it is important that age is not used to define workers’ work ability.

*Key principles of good work design*

As part of the [*Australian WHS Strategy 2012-2022*](http://www.safeworkaustralia.gov.au/sites/swa/australian-strategy/pages/australian-strategy), Safe Work Australia has developed a [*Handbook on the Principles of Good Work Design*](http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/good-work-design)*.* The principles can be applied to any workplace, business or industry. Good work design can eliminate or minimise hazards and risks for all workers, regardless of age.

The principles of good design encourage PCBUs to ensure that their physical workplace, work systems and the work itself are designed to accommodate the capacities of all workers. Good work design does not simply increase the workability of older workers; it makes workplaces safer and healthier for all workers.

*Case study:* [*Catholic Homes, Melbourne*](http://www.safeworkaustralia.gov.au/sites/swa/workers-compensation/rtw-case-studies/pages/catholic-homes)*.*

*Catholic Homes is one of a series of case studies published on Safe Work Australia’s web site in early 2015 which illustrate exemplary organisational systems and practices for early intervention and return to work. A key theme apparent across all case studies is that good work health and safety and good return to work practices are intrinsically linked. The organisations interviewed were of the view that well run businesses treat prevention, early intervention and return to work as a continuum. An important aspect of the Catholic Homes case study is the focus on retaining an ageing workforce.*

*“The Workability Project within Catholic Homes is an initiative to retain older workers in a working environment that can pose risks due to the unpredictable nature of working with patients. The average age of the workforce in Catholic Homes is between 40 and 50 years and staff retention is high. One of the areas of focus has been ‘flexibility’ in shift work. The rationale is that flexibility in the length of shifts as well as the amount of physical work undertaken during the shift, or a combination of both, may reduce the possibility of injury for older workers. Catholic Homes reports that being flexible around shifts and tasks are key components of successful return to work outcomes.*

*‘We need to change the way we think’*

*In another initiative, Catholic Homes looked at combining a variety of suitable roles in sites across the business including retirement care, lifestyle management and community care. The various branches of the business contain a variety of roles that allow for a combination of administrative work and manual handling tasks to vary the working day. It also looked at varying shift times. Shifts in a hospital environment normally require the worker to be on the floor for a 7.6 hour shift. The Workforce Project explored the viability of a 4 or 6 hour shifts. Increasing the flexibility of how work tasks and hours are organised has resulted in a reduction in incident reporting, as workers are not exposed to excessive manual handling. This has also allowed older staff to remain engaged in the workforce for much longer.”*

**Injury experience of older workers**

The following draws information from three data sources:

* ABS survey of *Work-related injuries survey, 6324.0*
* The National Data Set for Compensation Based Statistics (NDS), and
* The Traumatic Injury Fatalities (TIF).

*ABS Work-related injuries survey*

The ABS Work-related injury survey is conducted every four years. It provides information about persons aged 15 years and over who worked at some time in the last 12 months and reported experiencing a work-related injury and illness in that period. The survey was conducted in 2005-06, 2009-10 and 2013-14. The most recent survey, [*Work-related injuries in Australia*](http://www.abs.gov.au/AUSSTATS/abs@.nsf/mf/6324.0/)*,* November 2014 found that the oldest age group (65 and over) reported the lowest incidence rate of work-related injuries or illness (24.8 per 1000 workers) of all age groups. Those in the 60-64 age group had the second lowest rate of injuries (36.4). Those in the 55-59 age group had the fourth highest incidence rate (46.2) exceeded by those aged 40-44 (47.5), 15-19 (50.4) and 50-54 (51.9). All age groups except the youngest experienced a decreased rate of work-related injury or illness compared with 2009-10.

*Accepted compensation claims*

The NDS is maintained by Safe Work Australia and collects information on all workers’ compensation claims under the Commonwealth and all state and territory workers’ compensation schemes. To standardise claims data from different schemes Safe Work Australia reports on accepted ‘serious claims’ involving one working week or more off work.

Frequency rates (claims per 1 million hours worked) are used as a better measure than incidence rates (claims per 1000 employees) of the likelihood of injury as they take into account the different pattern of work including part-time work.

Table 1 shows a breakdown of the frequency rate of claims by age. The table is further broken down by injuries (that is, acute injuries) and diseases and conditions which tend to be longer latency conditions. The frequency rate generally increases with age from a low of 4.9 (serious claims per million hours worked) for those in the 25-29 year age group to 8.7 in the 60-64 year age group. Those aged 65 and over have the third lowest rate (6.1). This may be due to a healthy worker effect whereby only fitter and healthier workers choose to work after the age of 65.

Not surprisingly, older workers have a higher frequency rate of claims related to long-latency diseases and disorders. When acute injuries are examined, the difference in rates between ages is less pronounced. The highest frequency rates of injuries were recorded by those aged 60-64 and those aged less than 20.

Safe Work Australia maintains that well designed work that takes account of the differing skills and abilities of workers can reduce the incidence and frequency of injuries and disease for all workers regardless of age.

**Table 1: Frequency rates (serious claims per million hours worked), 2011–12 to 2013–14 combined**

|  |  |  |  |
| --- | --- | --- | --- |
| **Age group** | **Injuries** | **Diseases and conditions** | **Total** |
| <20 | 6.0 | 0.6 | 6.6 |
| 20-24 | 4.8 | 0.9 | 5.7 |
| 25-29 | 3.8 | 1.1 | 4.9 |
| 30-34 | 3.9 | 1.3 | 5.2 |
| 35-39 | 4.3 | 1.7 | 6.0 |
| 40-44 | 4.8 | 2.0 | 6.8 |
| 45-49 | 5.2 | 2.2 | 7.4 |
| 50-54 | 5.6 | 2.4 | 8.0 |
| 55-59 | 5.6 | 2.4 | 8.0 |
| 60-64 | 6.3 | 2.4 | 8.7 |
| 65+ | 4.8 | 1.3 | 6.1 |
| **Total** | **4.8** | **1.7** | **6.5** |

While the frequency rate of serious claims increases with age, it has decreased over time for all age groups including older workers. In the 12 years to 2012-13, the frequency rate of serious claims for workers aged 55 and older decreased from 10.3 (serious claims per million hours worked) in 2000-01 to 8.1 in 2012-13. This represents a decrease of 21 per cent.

An analysis of workers compensation claims by broad age groups can be found in [*Australian Workers’ compensation Statistics 2012-13*](http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/australian-workers-compensation-statistics-2012-13)*.*

*Fatalities*

The rate of injury fatalities also increases with age to age 64 and then increases markedly after the age of 65. In 2014 the worker fatality rate (deaths per 100 00 workers) was:

Less than 25 1.18

25-34 1.08

35-44 1.10

45-54 1.71

55-64 2.17

65 & over 7.10

These data include all workers, not just those covered by workers’ compensation schemes. The high fatality rate for those aged 65 and over is partly explained by the very high number of injury fatalities of self-employed farmers aged over 65. Of the 30 deaths that occurred in the Agriculture industry in 2014, 10 were of workers aged over 65.

Due to the relatively small number of workers aged over 65, the fatality rates are volatile from year to year. Nevertheless the overall trend is down for all age groups including older workers.

An analysis of fatalities can be found in Safe Work Australia’s [*Work-related traumatic injury fatalities report, 2014*](http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/work-related-traumatic-injury-fatalities-australia-2014)*.*

**Workers’ compensation schemes and older workers**

There is a common misconception that statutory workers’ compensation is not available to people after ‘retirement age’. This is not true. Eligible workers are covered by workers’ compensation no matter at what age they are injured but there are retirement age provisions in some schemes and these are detailed below.

*Medical payments*

Generally, under all workers’ compensation schemes, a worker may be eligible for medical and rehabilitation costs and lump sum payments for permanent impairment regardless of their age.

*Weekly incapacity payments*

Workers’ compensation schemes are either ‘long tail’ or ‘short tail’. Long tail schemes continue to pay weekly incapacity payments for the duration of the worker’s incapacity. ‘Short tail’ schemes impose a benefit period or amount restriction on all claimants. The period or restriction is applied to a worker regardless of their age.

The Commonwealth, Victoria, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory schemes are all ‘long tail’ schemes. Under these schemes continued weekly payments are generally subject to regular reviews of work capacity. Entitlement to weekly incapacity payments for injured workers ceases once they reach retirement age (**in most schemes, previously defined as age 65**) .For workers who are injured close to or **after retirement age**, schemes provide for the payment of weekly incapacity benefits for a period of between one year and two and a half years, depending on the scheme. This allows time for the worker to either recover and return to work, or make the transition into retirement.

The reasons for cutting off benefits at retirement age and providing time limited benefits to workers injured close to or after age retirement age are:

* to contain scheme costs and employer premiums, and
* to avoid the situation of injured workers remaining on weekly incapacity payments well past the age at which they would have retired had they not incurred an injury.

The short-tail schemes (Queensland and Western Australia) do not have an age cut-off in their workers’ compensation schemes. Instead their schemes limit weekly incapacity payments for all injured workers, regardless of age, by other means.

In June 2012, New South Wales amended its workers compensation arrangements to introduce a five year cap on the receipt of weekly incapacity benefits (with an exception for injured workers with more than 20% whole person impairment). New South Wales has retained a cap on weekly incapacity benefits of 12 months if the worker is injured after retirement age. If a worker is injured before retirement age, weekly incapacity payments cease 12 months after the worker reaches retiring age regardless of when the incapacity payments commenced.

It is critical that the misconception, shared by some lobby groups for older Australians, that employees are not covered by workers’ compensation after the age of 65 is corrected as it may deter older workers from continuing at work or deter employers from employing older workers. The statutory limitations (in long tail schemes) of weekly incapacity payments across jurisdictions for workers who are injured at, close to, or beyond retirement age are at Appendix A.

**Changing the Definition of Retirement Age**

Safe Work Australia completed work on the ‘definition of retirement age’ and recommended that those jurisdictions that defined ‘retirement age’ as ‘age 65’ in their workers’ compensation legislation, should change the definition to be ‘the age at which a person is eligible for the age pension under the *Social Security Act 1991* (Cth).’ This recommendation was to ensure that there is no gap between cessation of weekly incapacity payments and the qualifying age for the age pension as it increases between 2017 and 2023. The recommendation was sent to relevant Ministers in late 2013.

South Australia has since enacted new legislation (*Return to Work Act 2014 (SA)*) which defines retirement age as the qualifying age for the age pension. The Commonwealth has the *Improving the Comcare Scheme Bill 2015* before the Senate to change the definition for the purpose of the *Safety, Rehabilitation and Compensation Act* 1988 (Cth).

The Australian Capital Territory has indicated it will amend its legislation in 2016 to change the definition of retirement age to the qualifying age for the age pension. Tasmania has also indicated that it is currently considering changing its definition of retirement age to the qualifying age for the age pension. Victoria has so far not indicated when it will change its definition of retirement age.

**Return to Work following a compensated injury**

Safe Work Australia commissioned the Social Research Centre to analyse combined data from the 2013 and 2014 National Return to Work (RTW) Surveys by age. The aim was to understand how differences in age can impact on the experiences of injured workers in the workers’ compensation claim process, their health and recovery and their return to work following an injury. The following six age groups were used: 15-25, 26-35, 36-45, 46-55, 56-60 and 61+ years.

Key findings of the analysis show there was very little difference between older workers and other age groups in regards to the perception of their treatment by employers and others following injury.

Return to work outcomes were examined for workers whose claim was lodged 7-9 months prior to the survey using three measures:

* Returned to work – the proportion of people who had returned at any time since their claim was lodged
* Current return to work – those who were at work at the time of the survey, and
* 3-month stable return to work – those who were back at work at the time of interview and had been working continuously for three months or more.

Older workers aged 61+ had slightly lower RTW rates than the average. Overall 76% of injured workers reported that they were currently working in a paid job at the time of the interview compared to 72 per cent of workers aged 61 or over. The analysis showed that the second oldest age group (56-60) had similar RTW rates as the three age groups between 26 and 55.

The report at Attachment A provides details of the analysis. The report will be published early in 2016.

**Future work**

Safe Work Australia will continue to progress policies and potential programmes to further good work design and increase the workability of older workers. In particular, Safe Work Australia is currently examining the work health and safety of older workers in physically demanding jobs under its Emerging Issues Program. The aim of the project is to identify issues including common causes of injury and potential interventions to reduce injury and improve the workability of these workers.

Safe Work Australia also has a number of projects aimed at improving return to work outcomes following injury for all workers including older workers.

Australian jurisdictions are also currently progressing policies, programmes and guidance material on and for older workers. For example, WorkSafe Tasmania has recently published [*Safe and Healthy: A Guide to Managing an Ageing Workforce*.](http://worksafe.tas.gov.au/__data/assets/pdf_file/0003/283782/BetterWork_Ageing_WorkforceT.pdf) The guide addresses common misconceptions about the capabilities of older workers, and promotes good work design changes that may assist in keeping older workers employed and productive. It also reiterates that by improving and maintaining a safe and healthy work environment, an employer can improve productivity through the benefits it provides to both younger and older workers.

Appendix A

Retirement age provisions in workers’ compensation schemes.

* **Commonwealth (Comcare)**

an employee who is aged 63 and over when injured is entitled to a maximum of 104 weeks of weekly incapacity payments – section 23(1A) of the *Safety, Rehabilitation and Compensation Act 1988* (Cth

* **Commonwealth (Department of Veterans’ Affairs)**

a person who is aged 63 and over when injured is entitled to 104 weeks of compensation – section 121 of the *Military Rehabilitation and Compensation Act 2004* (Cth).

* **New South Wale**s

Section 52 of the *Workers Compensation Act 1987 No 70* (NSW) provides:

(1)  In this section:

***retiring age***, in relation to a person, means the age at which the person would, subject to satisfying any other qualifying requirements, be eligible to receive an age pension under the [*Social Security Act 1991*](http://www.comlaw.gov.au/) of the Commonwealth.

(2)  If a person:

(a)  receives an injury before reaching the retiring age—a weekly payment of compensation is not to be made in respect of any resulting period of incapacity for work occurring after the first anniversary of the date on which that person reaches the retiring age, or

(b)  receives an injury on or after reaching the retiring age—a weekly payment of compensation shall not be made in respect of any resulting period of incapacity for work occurring more than 12 months after the first occasion of incapacity for work resulting from the injury.

* **Victoria**

If a worker in injured within 130 weeks of reaching retirement age *(defined as age 65)*, or after retirement age, they are eligible for weekly payments for up to a maximum of 130 weeks – section 169 of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) .

* **South Australia**

Weekly payments cease if the worker qualifies for the age pension under the *Social Security Act 1991* (Cth) or if there is a normal retiring age for workers in employment of the kind from which the worker’s injury arose. However if a worker is injured within 2 years of their retirement age, or after their retirement age, they are eligible for weekly payments for up to 104 weeks from the date of the injury - section 44(1) of the *Return to Work Act 2014* (SA).

* **Tasmania**

Weekly incapacity payments cease if a person has accessed 9 years of weekly incapacity payments – section 69B(2) of the *Workers Rehabilitation and Compensation Act 1988* (TAS). Further, if the compensable injury occurred before or on the date upon which the worker reached the age of 64 years, the weekly payments cease at 65 years of age (section 87(1)(a)). If the injury occurs after the worker turns 64, weekly incapacity payments cease one year after the worker was injured (s 82(1)(b)). If the terms or conditions may allow a worker to work beyond 65 years of age, they may apply under section 87 to the Tribunal to extend the period of weekly incapacity payments.

* **Australian Capital Territory**

If a worker is injured at age 62 or younger, they are entitled to incapacity payments until they reach 65 - section 39(3)(b) of the *Workers Compensation Act 1951* (ACT). If a person is 63 years of age or older at the time of injury, they are entitled to up to 2 years of weekly incapacity payments - section 39(3)(c).

* **Northern Territory**

A person injured at 65 or older (rising to age 67 as the qualifying age for the age pension increases) is entitled to 104 weeks of incapacity payments - section 64 of the *Return to Work Act* (NT).

1. ABS. Employee number denominator data used for the calculation of incidence rates by Safe Work Australia. [↑](#footnote-ref-1)
2. The meaning of a PCBU is set out in section 5 of the WHS Act [↑](#footnote-ref-2)