



Submission to Australian Law Reform Commission

Review of Barriers to Older Workers

By the Australian Mines & Metals
Association (AMMA)

23 November 2012



AMMA is Australia's national resource industry employer group, a unified voice driving effective workforce outcomes. Having actively served resource employers for 94 years, AMMA's membership covers employers in every allied sector of this diverse and rapidly evolving industry.

Our members include companies directly and indirectly employing more than half a million working Australians in mining, hydrocarbons, maritime, exploration, energy, transport, construction, smelting and refining, as well as suppliers to these industries.

AMMA works with its strong of likeminded companies and resource industry experts to achieve significant workforce outcomes for the entire resource industry.

First published in 2012 by

AMMA, Australian Mines and Metals Association

GPO Box 2933

Brisbane, QLD, 4001

Email: julie.copley@amma.org.au

Phone: 07 3210 0313

Mobile: 0408 867 575

Website: www.amma.org.au

ABN: 32 004 078 237

© AMMA 2012

This publication is copyright. Apart from any use permitted under the *Copyright Act 1968 (Cth)*, no part may be reproduced by any process, nor may any other exclusive right be exercised, without the permission of the Chief Executive, AMMA, GPO Box 2933, BRISBANE QLD 4001

1 Background

1.1 Mature age workers in the resource sector

AMMA's vision is to grow Australia's economic prosperity to ensure Australia is an attractive place for investment and employment.

A significant factor in this regard is the availability of skilled employees.

In 2010, the Final Report of the National Resources Sector Employment Taskforce identified labour demand exceeding projected supply. The report stated that, by 2015, the projected shortfall could reach 36 000 tradespeople and that the skills shortage was not restricted to those directly in mining or construction but extended also to the allied service sector supporting mining and construction. Directly and indirectly, that includes the maritime sector. Industry research indicates that by 2016, 90,000 new jobs will have been created.¹

AMMA therefore supports strongly the objective of removing barriers to mature age workers remaining in, or returning to, the workforce.

1.2 Scope of AMMA submission

In that context, this submission addresses chapter 3 of the Australian Law Reform Commission (ALRC) discussion paper, *Grey Areas – Age Barriers to Work in Commonwealth Laws*. In particular, it addresses the second part of chapter 3 which focuses on workers' compensation, and proposals 3-5 and 3-6 and question 3-1, regarding amendment of the *Seafarers Rehabilitation and Compensation Act 1992* (Cth).

Section 19 of the *Seafarers Rehabilitation and Compensation Act* provides that the Act applies to the employment of various categories of employees (defined in section 4 to mean a seafarer, a trainee or a person ordinarily employed or engaged as a seafarer). AMMA's membership includes the range of categories in section 19.

1.1 DEEWR review of Seacare scheme

A review of the Seacare scheme, established under the *Seafarers Rehabilitation and Compensation Act*, is being conducted by the Department of Education, Employment and Workplace Relations. As the aim of the review is to modernise the Federal seafarer's workers' compensation scheme to ensure it is working effectively and efficiently for Australia's seafarers, it is likely that that review will examine matters to be addressed by ALRC proposals 3-5 and 3-6.

2 Proposed elimination of aged-based restrictions from *Seafarers Rehabilitation and Compensation Act*

2.1 Aged-based restrictions in the Act

Under the *Seafarers Rehabilitation and Compensation Act* a workers' compensation and rehabilitation scheme operates for specified employees. When the *Seafarers Rehabilitation and Compensation Bill*

¹ Dyball, P (2012) *Presentation to the 2012 AMMA National Conference*, Pit Crew Management Consulting, Perth, WA.

1992 received its second reading, Mr Snowden, then Parliamentary Secretary to the Minister for Employment, Education and Training, stated:²

This Bill introduces a new scheme of compensation and rehabilitation for seafarers who are injured in the course of their employment. It will replace the outdated and inadequate *Seamen's Compensation Act 1911* with modern and comprehensive rehabilitation and compensation arrangements similar to those applicable to Commonwealth employees ...

The Bill also restores the former nexus with the workers' compensation legislation applicable to Commonwealth employees. This is consistent with the unitary compensation structure applying across public and private sector employment in all the State and Territory workers' compensation schemes. This is a large and complex Bill with many essentially technical provisions.

Various provisions of the Act, such as section 44, provide for age-related workers' compensation entitlements.

2.2 ALRC proposals 3-5 and 3-6 and question 3-1

Chapter 3 of the ALRC discussion paper examines whether all age-based restrictions should be eliminated from Commonwealth workers' compensation legislation and, if so, how this might be achieved. It invites consideration of a three-tiered approach to reform; namely, that:

- retirement provisions be tied legislatively to age pension age;
- incapacity payment periods be extended; and
- workers over age pension age who can prove that, had they not been injured, would have continued to work, receive a supplementary payment.

Under ALRC proposals 3-5 and 3-6 respectively, the *Seafarers Rehabilitation and Compensation Act* would be amended to:

- ensure that retirement provisions are tied to the qualifying age for the age pension; and
- provide that workers who are injured at any age after two years prior to age pension age may receive incapacity payments for up to 104 weeks.

Via question 3-1, the ALRC asks whether the Act should be amended to provide that a worker, injured within two years of age pension age, should receive incapacity payments for a period longer than 104 weeks.

2.3 AMMA recommendation

AMMA suggests the ALRC should not recommend amendment of the *Seafarers Rehabilitation and Compensation Act*, but refer the relevant matters to the reviewer of the Seacare scheme.

When enacted, the *Seafarers Rehabilitation and Compensation Act* was designed to provide a cost-effective scheme which accommodated the particular circumstances of the industry:³

The new arrangements will be based on individual employer liability. This acknowledges that the individual employers and their insurers already have the necessary infrastructure in place to manage such arrangements and that the imposition of a Government fund on such a small industry, with around 6,000 employees, would not be cost-effective.

However, in practice, the premiums for employers participating in Seacare are high when compared with other workers' compensation schemes applying across public and private sector employment in

² Hansard, House of Representatives, 14 October 1992, 2145

³ Hansard, House of Representatives, 14 October 1992, 2145

Australia. The higher costs under Seacare include very high deductible amounts before insurance is called upon.

Accordingly, legislative amendment as proposed may:

- have significant cost implications for employers participating in Seacare;
- increase inconsistency between the costs of Seacare and other Australian workers' compensation schemes; and
- extend both the period during which workers' compensation is payable and entitlements to workers' compensation under the Seacare scheme.

As noted above:

- the Seacare scheme is being examined by a review conducted by Mr Robin Stewart-Crompton for DEEWR; and
- the DEEWR review is to consider whether the Seacare scheme continues to work effectively and efficiently for Australia's seafarers.

AMMA suggests, therefore, that the potential cost implications and scope for inconsistency of the proposed amendments be considered by the DEEWR review.

Recommendation

The ALRC should refer consideration of amendment of the *Seafarers Rehabilitation and Compensation Act 1992* to the review of that Act being undertaken for the Department of Education, Employment and Workplace Relations.